

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Richland County

S.C. Supreme Court

G. Thomas Cooper, Jr., Circuit Court Judge

JOHN PORTEE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000732

APPENDIX

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1 I haven't been objecting, but --

2 *THE COURT:* All right.

3 *MR. MEADORS:* Judge, I'm trying to go through it
4 as efficiently as I can.

5 *THE COURT:* I understand. He can object if he
6 wants to.

7 *MR. STRICKLER:* Every once in a while I have to.

8 Q And did you or did you not have an occasion to talk
9 with Jahquetta Owens?

10 A I did.

11 Q Did you take a statement from her?

12 A I did.

13 Q I've got a few other matters before we go to the
14 tapes. You talked to Ms. Hunter how many times on
15 September 3rd?

16 A On September 3rd I talked to her twice.

17 Q You took two statements from her?

18 A I took two statements. I talked to her.

19 Q And did you talk to her on September 6th?

20 A I did.

21 Q And in any of those three statements did she say she
22 didn't take John Portee to Wendy's?

23 A No, sir.

24 Q Based on your training, in the second and third
25 statements she just added more of her involvement?

- 1 **A** Yes, sir.
- 2 **Q** And then the last, I believe another statement you
- 3 took from her was a while later when she gave you
- 4 some letters?
- 5 **A** Yeah. I took a handwritten statement from her that
- 6 day about the letters.
- 7 **Q** It wasn't this letter we saw in court the other day?
- 8 **A** No, sir.
- 9 **Q** Had you ever seen this letter before?
- 10 **A** That's the first time I'd seen that. No, sir.
- 11 **Q** Beg the Court's indulgence. You testified that -- if
- 12 I can approach again, please, sir. You saw the
- 13 defendant and the clothing. Will you look at 139 and
- 14 tell me if you recognize that?
- 15 **A** That's the clothes he was wearing when he was
- 16 arrested.
- 17 **Q** Do you need any gloves?
- 18 **A** No.
- 19 **Q** Did these appear to be old or new to you when you saw
- 20 them?
- 21 **A** They appeared to be new.
- 22 **Q** And these are the clothes when you saw him on
- 23 September 3rd?
- 24 **A** Yes, sir.
- 25 **Q** Now, did you get anything -- 139 we move in evidence

1 without objection.

2 **MR. STRICKLER:** No objection.

3 (WHEREUPON, State's Exhibit No. 139 is admitted
4 into evidence.)

5 **Q** If you'll hear me out and then just tell me if you
6 recognize these and do they relate to this case.
7 143, 142, 140; start with those. Do those relate to
8 these case?

9 **A** These are all the items he had on him when was
10 arrested.

11 **Q** 140 is a hat. And what does it say on there?

12 **A** Wendy's. Service Excellence.

13 **Q** 143?

14 **A** A black wallet and his keys.

15 **Q** Taken from Defendant John Portee?

16 **A** Yes, sir.

17 **Q** And 142?

18 **A** That was the money that he had on him.

19 **MR. MEADORS:** Your Honor, 142, 143 and 140.

20 (WHEREUPON, State's Exhibit No. 140 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 142 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 143 is admitted
25 into evidence.)

1 Q And was a swab also taken of Mr. Portee at some
2 point?

3 A Yes, sir.

4 Q And that's State's 141, correct?

5 A Correct.

6 MR. MEADORS: 141, Your Honor.

7 THE COURT: Okay.

8 (WHEREUPON, State's Exhibit No. 141 is admitted
9 into evidence.)

10 Q How much money is in there?

11 A \$213.

12 Q Now, Investigator, is the individual that told you or
13 said, you know, what's up or what's all this about
14 and the person that said, you know what this is
15 about, and the person that said, well, I heard
16 something happened at Wendy's and the rest of the
17 statement you said, that he said he went by there and
18 knocked and nobody was there; is that person in the
19 courtroom?

20 A He is.

21 Q Please point him out.

22 A Mr. Portee sitting at the table right there.

23 MR. MEADORS: We'd ask the record so reflect.

24 THE COURT: Okay.

25 Q Does the Alvin S. Glenn Detention Center record

1 conversations of inmates who are housed there?

2 **A** They do.

3 **Q** And is that notice on the wall and visible for all to
4 see that your calls are being recorded?

5 **A** Not only is it visible on the wall but it is audibly
6 heard whenever you make a phone call from there to
7 both parties, whoever it is you're calling and to
8 whoever is making the call.

9 **Q** That was my next question. But, I mean, first of all
10 you can read it on the wall?

11 **A** Right.

12 **Q** It says so, right?

13 **A** Right.

14 **Q** And then on the tape, it says on there this is a
15 recorded phone call, correct?

16 **A** Correct.

17 **Q** All right. And are those calls collected in a hard
18 drive at Alvin S. Glenn Detention Center?

19 **A** They are.

20 **Q** And do you all have access to those phone calls?

21 **A** We have one computer at our office that's kept in a
22 locked office with limited access where we can access
23 it.

24 **Q** But you can't -- it's like if I was in jail, you
25 couldn't go put in John Meadors and see what all

1 these calls I'd made, could you?

2 **A** No, sir.

3 **Q** Do you have to have a phone number that you're
4 looking for to go in and see if that phone number has
5 been dialed from there?

6 **A** Once you get into the system you have to put in a
7 target number. And once you put in that number, it
8 will pop up all the calls that were made to that
9 number.

10 **Q** And is one of the reasons these are monitored for
11 security reasons for the jail?

12 **A** I don't know why they do it. I mean ...

13 **Q** Would that be one reason that would make common
14 sense?

15 **A** I would think so.

16 **Q** And in this case do you have a couple of phone calls
17 that you listened to?

18 **A** Yes, sir.

19 **Q** And is that the voice of John Portee?

20 **A** It is.

21 **MR. MEADORS:** Begging the Court's indulgence.

22 **THE COURT:** All right.

23 **MR. MEADORS:** Your Honor, this is State's 147
24 (sic), which both sides have previously agreed to
25 these two phone calls.

1 **THE COURT:** Okay.

2 **COURT REPORTER:** I'm sorry. What number did
3 you --

4 **MR. MEADORS:** 146.

5 (WHEREUPON, State's Exhibit No. 146 is admitted
6 into evidence.)

7 **Q** And, Sergeant, is this a phone call from 9-24-06?

8 **A** Yes.

9 **Q** Ms. Outen, would you please play this phone call.

10 (Whereupon, the tape is played for the jury)

11 **MR. MEADORS:** Your Honor, for the record, that
12 was 146. Now, the next phone call is State's 145
13 without objection. And it would be a phone call
14 September 13th, 2006.

15 **THE COURT:** Okay.

16 (WHEREUPON, State's Exhibit No. 145 is admitted
17 into evidence.)

18 **Q** And before you start, you've listened to this phone
19 call. Is that John Portee's voice on there also?

20 **A** Yes, sir.

21 (Whereupon, the tape is played for the jury)

22 **Q** Did he say, "I wish I'd left that bag with you"?

23 **A** That's what it sounded like to me.

24 **Q** Now, let me ask you something, Sergeant. After Lucas
25 and his dog and Anna Elsey found that green bag, did

1 you tell John Portee you'd found that bag?

2 A No, sir.

3 Q Did you tell Heather Hunter?

4 A I don't remember telling her.

5 Q And he didn't know you'd found the bag on September
6 the 3rd?

7 A No, sir.

8 Q He didn't know you found it on September -- the date
9 of that phone call?

10 A Obviously not.

11 Q Now, does he have a nickname of "Beanie"?

12 A Yeah. He's got it tattooed on his neck.

13 Q Just a few more questions. On September 3rd, 2006,
14 how many people were scheduled to come in and open up
15 at Wendy's?

16 A Three. _____

17 Q How many were there when you got there?

18 A Two.

19 Q Were they dead or alive?

20 A They were dead.

21 Q Who was the other person that was supposed to open
22 up?

23 A John Portee.

24 Q Who was seen running into woods behind
25 with a green bag?

1 **A** John Portee.

2 **Q** And what date was that green bag found behind

3 **A** September the 3rd, 2006.

4 **Q** And what, if any, firearm was found in that bag?

5 **A** The firearm that was matched to the bullets pulled
6 from the victims and the two shell casings found at
7 the scene.

8 **Q** The two projectiles from Mama C and Ms. Bolton?

9 **A** Yes, sir.

10 **Q** That's all. Thank you.

11 **MR. STRICKLER:** May we approach very briefly,

12 Your Honor?

13 **THE COURT:** Sure.

14 **MR. STRICKLER:** I'm prepared to cross
15 immediately after.

16 (Whereupon, a bench conference is had)

17 CROSS EXAMINATION

18 **BY MR. STRICKLER**

19 **Q** Good afternoon, Sergeant.

20 **A** Good afternoon.

21 **Q** Not too much to go over with you really. If I
22 understood your testimony correctly, when you went to
23 Hawthorne Avenue you were traveling in an unmarked
24 car?

25 **A** Yes, sir.

1 Q Okay. Were you preceded by a marked car?

2 A Yes, sir.

3 Q So you had a marked car come down the street, and
4 then you were following it in I think you said a
5 pick-up truck?

6 A Yes, sir.

7 Q Now, Mr. Meadors asked you about the second and the
8 third statements of Ms. Hunter. Just elaborating on
9 the first statement she gave, there was a substantial
10 elaboration because in the first statement she
11 doesn't indicate he went in the building, doesn't
12 indicate she heard any shots, right?

13 A She didn't indicate she heard the shots in the first
14 statement, but I believe she did indicate she saw him
15 go in the building.

16 Q All right. I'll stick with not hearing any shots.

17 A Okay.

18 Q Okay. And then there was substantial elaboration
19 about events away from Wendy's, correct, what
20 happened later in the day and all that stuff?

21 A She went into more detail. Yes, sir.

22 Q Now, you indicate that when John was brought back to
23 you at Hawthorne Street you told him "You know why
24 you're being arrested." Right?

25 A After he questioned me why he was in custody; yes,

1 sir, I did respond that he knew why we had him in
2 custody.

3 Q And then you claim he said that he went by work at
4 Wendy's at 7:45, knocked and then left, right?

5 A That's what he told me. Yes, sir.

6 Q And where is -- when did you make note of that
7 statement on his part?

8 A I noted it in my follow-up notes.

9 Q Okay. When did you prepare your follow-up notes?

10 A After the investigation was complete.

11 Q After the investigation was complete. These are the
12 typed notes?

13 A Yes, sir.

14 Q Okay. I have a copy of them.

15 A Yes, sir.

16 Q So investigation was complete what? How long down
17 the line?

18 A The last entry into my notes was October 24th, 2006.

19 Q Okay. And I believe -- I didn't record all of
20 this -- you say you started with the Sheriff's
21 Department in what? 1993?

22 A Yes, sir.

23 Q Okay. And you started as a uniformed deputy and then
24 went to investigations?

25 A Yes, sir.

1 Q And when did you go to investigations? Two or three
2 years, is it? Or longer than that?

3 A Whenever Sheriff Lott took over. It was like '97,
4 '98, something like that.

5 Q So you've been an investigator for a substantial
6 period of time in various areas of investigation,
7 right?

8 A Yes, sir.

9 Q Okay. Fair to say that you've conducted thousands of
10 investigations? I don't want to over or understate
11 it.

12 A I don't know. I don't know how many. A lot.

13 Q Certainly hundreds, possibly thousands?

14 A Definitely hundreds.

15 Q Okay. Now, this second phone call was played just
16 now?

17 A Yes, sir.

18 Q When was it made?

19 A I'll have to check the records. September -- was it
20 13th?

21 Q September 13th?

22 A I believe that's what the solicitor said.

23 Q September 13th, some ten days subsequent to Mr.
24 Portee's arrest, correct?

25 A That's correct.

1 Q And if I understand the questioning from Mr. Meadors,
2 it's surprising because if he hadn't put the bag
3 where it was he wouldn't know about it because he
4 didn't even know the police had recovered the bag?
5 Wasn't that the questioning of you?

6 MR. MEADORS: Your Honor, I don't know if he can
7 speculate what's in my mind.

8 A I don't know whether he knew that we recovered the
9 bag or not. I didn't tell him. And he didn't ask --
10 he didn't -- he didn't give us a statement. So --

11 Q Ten days after the fact you had and your agency had
12 talked with a number of people regarding identifying
13 the green bag, correct?

14 A Correct.

15 Q Including relatives of his, correct?

16 A We spoke to his mother. Yes, sir.

17 Q Stretch of the imagination to think that perhaps he's
18 talked with his mother in the ten days between his
19 arrest and the time this phone call was made?

20 (No response)

21 Q Furthermore, who is he speaking to in this phone
22 call?

23 A It was an unidentified male.

24 Q Right.

25 A We never identified him.

- 1 Q Do you know what bag he's talking about?
- 2 A I can guess.
- 3 Q Well, you can guess. I understand that. Do you know
- 4 what bag? Does he identify it as the bag with the
- 5 gun in it?
- 6 A No.
- 7 Q Correct?
- 8 A No. He did not say that he dropped the bag that had
- 9 a murder weapon in it. No, sir.
- 10 Q How about -- I don't know -- a bag of cocaine dropped
- 11 off some place --
- 12 A He wasn't specific.
- 13 Q -- that he used to sell to get him some money? You
- 14 heard him needing money in another telephone call,
- 15 right? He needed money?
- 16 A He didn't specify which bag. But there was only one
- 17 bag we found off of Lakeside.
- 18 Q Does this phone call talk about whether the bag is
- 19 found?
- 20 A It talks about Lakeside. He's telling the guy to go
- 21 to Lakeside. And then the phone call runs out
- 22 because it runs out of minutes.
- 23 Q Now, 139 is the clothes that were recovered from Mr.
- 24 Portee?
- 25 A Yes, sir.

1 Q Okay. This is the hat that was recovered from Mr.
2 Portee? No?

3 A In that was a Wendy's hat, a blue Wendy's hat.

4 Q Okay. This is in the box of clothing that was
5 recovered from Mr. Portee?

6 A Okay.

7 Q Well, I just want to establish -- do you have your
8 full file up there with you?

9 A Yes, sir.

10 Q Specifically, do you have a return for a search
11 warrant that was executed on Mr. Portee's mother's
12 residence on Center Street?

13 A Yes, sir. It's in here.

14 Q There was a return on the search warrant as a listing
15 of what's recovered during a search, right?

16 A Yes, sir.

17 Q If you could reference that return, please, and see
18 if you find reference to a hat on that return?

19 A Just give me a second here. I've got to go through
20 all these.

21 Q Sure. There's a lot of paper. I understand.

22 A All right. The return was from the house on Center
23 Street. It says two aprons and a laundry basket were
24 found in the bathroom, back left bedroom, two pair of
25 pants in the laundry basket in the bathroom, black

1 gray and white Nike shoes on the bed in the back
2 bedroom, Wendy's hat by dresser in the back left room
3 by Investigator Gonzales, and three Wendy's shirts
4 with five socks and a white and green pillowcase.

5 Q Okay. So evidently, perhaps he was wearing a black
6 hat at the time he was arrested and not the Wendy's
7 hat, and the Wendy's hat was recovered from the
8 search warrant of his house or his mother's house?

9 A According this search warrant, it was. It says a
10 Wendy's hat. It doesn't specifically say what it
11 looked like. It just says Wendy's hat.

12 Q Well, do you have more than one Wendy's hat in
13 custody in this case? You don't?

14 A Not that I know of; no, sir.

15 Q You've got a Wendy's hat and a black hat. All right.
16 Thank you.

17 MR. MEADORS: Very briefly.

18 REDIRECT EXAMINATION

19 BY MR. MEADORS

20 Q Mr. Strickler asked you about your report and when
21 you took that statement down that the defendant gave
22 you at Hawthorne?

23 A Yes, sir.

24 Q Is the top of your report listed 9-4-06?

25 A Yes, sir, it is.

1 Q Is that when -- this happened on the 3rd?

2 A This is the report date.

3 Q Okay. Did you take that statement down
4 contemporaneously, when it was given to you, and put
5 it in your file?

6 A I did.

7 Q And this report is dated the 4th?

8 A Yes, sir.

9 Q We've got some of these other clothes coming down
10 right now. The search warrant Mr. Strickler was
11 asking you about, the apron and all that came from
12 the search warrant, you all collected those items?

13 A Yes, sir.

14 Q And was this hat, Wendy's hat, listed coming from the
15 search warrant that you just read?

16 A It was. Yes, sir.

17 Q And the black hat Mr. Strickler showed you was here?

18 A Yes, sir.

19 Q That's my error. This came from the search warrant,
20 correct?

21 A Yes, sir.

22 MR. MEADORS: Your Honor, we'd offer the next
23 exhibit of the clothes that are coming down, I know
24 without objection.. And that number will be 155 when
25 they get here. Beg the Court's indulgence.

1 Q Now, as a part of your investigative file, there's
2 been some testimony about GSR. That came back
3 negative from the victims, didn't it?

4 A Yes, sir.

5 Q That's all. Thank you.

6 THE COURT: He can step down. He's sworn. He
7 can identify the clothes when they come in.

8 MR. MEADORS: Yes, sir. Stan Kessler. Dr.
9 Kessler.

10 Q Is that it?

11 A That's it.

12 MR. MEADORS: Your Honor, he has to testify to
13 that. I apologize. And without objection.

14 (WHEREUPON, State's Exhibit No. 155 is admitted
15 into evidence.)

16 MR. MEADORS: Dr. Kessler is coming in
17 momentarily. Dr. Stan Kessler.

18 DR. STANSON C. KESSLER, after being duly sworn,
19 testifies as follows:

20 THE CLERK: Please have a seat and state your
21 full name for the record.

22 THE WITNESS: Good afternoon. My name is
23 Stanson Coleman Kessler.

24 DIRECT EXAMINATION

25 BY MR. MEADORS

Dr. Stanson C. Kessler - Direct by Mr. Meadors

517

1 Q Good afternoon, Dr. Kessler.

2 A Good afternoon.

3 Q You're our final witness of the day. So thank you
4 for being here, sir. Would you please tell the
5 ladies and gentlemen of this jury about Dr. Kessler,
6 where you're born and you're raised, where you were
7 raised, sir?

8 A Okay. I was --

9 Q Wait a minute. Wait a minute. Give them your
10 background, your training, your education and your
11 education specifically in the field I'm going to ask
12 you to testify today as an expert?

13 A Yes, sir. I was born and raised in Baltimore,
14 Maryland, and I went to medical school at the
15 University of Maryland, undergraduate school at the
16 University of Maryland. And then I trained in
17 forensic medicine at Dade County Medical Examiner's
18 Office in Miami, Florida. And I am boarded in
19 forensic pathology which is the study of sudden and
20 unexpected death. I am boarded and trained in
21 anatomic pathology.

22 Most of my career I spent at Harvard Medical
23 School in the Medical Examiner's Office for the
24 Commonwealth of Massachusetts, where I started as an
25 assistant medical examiner and I was the chief

1 medical examiner. Recently I have been the chief
2 medical examiner for the state of Alaska after
3 working here for three years, and I have recently
4 been appointed as a professor in forensic medicine at
5 the University of Tennessee in Knoxville, where I'll
6 be going at the end of this month.

7 Q I can't help but ask this. But very briefly, the
8 difference between pathology and forensic pathology
9 is what?

10 A Well, it's not a difference per se. One is a sub
11 specialty of the other. To become a forensic
12 pathologist you have to be a general pathologist
13 first because so much of medicine and pathology are
14 involved with examination of people that have died.
15 You have to know general disease, and pathology is
16 the study of disease. Forensic medicine is the
17 sudden and unexpected diseases. So if someone can
18 die suddenly at home, that would be under the purview
19 of the medical examiner's office and you do a
20 forensic autopsy. Because you do drugs, you do
21 poisons and toxins and it evaluates someone for all
22 those things. Whereas a normal hospital autopsy you
23 wouldn't be doing those specifically.

24 And the difference is basically that it's more
25 training and expertise in the field of medicine. So

1 you become a pathologist. I did an internship, a
2 residency in pathology. And that was three years.
3 And then I spent two more years in forensic medicine
4 studying. And so I'm boarded in both anatomic and
5 forensic medicine.

6 **MR. MEADORS:** We'd offer Dr. Stan Kessler as an
7 expert in the field of forensic pathology, Your
8 Honor.

9 **MR. STRICKLER:** And I have no voir dire for the
10 doctor.

11 **THE COURT:** Okay. We'll qualify him.

12 **Q** In an ideal world, how do you like to see victims'
13 bodies before you do an autopsy?

14 **A** I like to see them as they come into our morgue. In
15 the ideal world, I'd like to see them at the scene.
16 I would go to a scene and have had numerous
17 experience, especially in Miami, where I'd have one
18 or two scenes a day.

19 **Q** But in this case, have I shown you pictures of the
20 bodies at Wendy's?

21 **A** Yes, you have.

22 **Q** And showed you how they were laying?

23 **A** Yes, sir.

24 **Q** In addition to that, did you have the -- did you
25 examine the bodies of the two victims in this case?

1 A Yes.

2 Q Ms. Carlaus Johnson and Ms. Latora Bolton?

3 A Yes, I did.

4 Q When did you perform the autopsies?

5 A I performed the autopsies on 9-4-2006 at 11, and the
6 other one I performed the same day at 10.

7 Q And your office, do you perform these autopsies in
8 the morgue?

9 A Yes. The morgue at Palmetto Richland Hospital.

10 Q I guess let's start with Ms. Johnson's body, Carlaus
11 Johnson.

12 A Yes, sir.

13 Q Can you tell the ladies and gentlemen of the jury
14 what you do when you first -- what did you do?

15 A Well, first you pull the bodies out. They come in
16 what we call a body bag. That's to keep evidence
17 from transferring that you don't want to transfer.
18 So they come in a big plastic bag. You unzip that.
19 And you look at the bodies as they come into the
20 morgue. You look at their clothing. You took to see
21 if there's any evidence of trauma. You put the body
22 on a stretcher. You move the bag. You see if
23 there's evidence of anything you can see, any unusual
24 clothing material, any unusual materials that are
25 attached to the body.

1 Then you undress the body. You photograph it
2 first, an as-is photo. Then you undress the body and
3 you photograph any areas that are abnormal, a couple
4 of shots that are normal so you can jog your memo
5 when you come, say, to court or review the case
6 later.

7 And then you examine specific areas of trauma.
8 And if there are areas of trauma you photograph them
9 closely. You photograph them with scale rulers so
10 you'll be able to reproduce that later. Then before
11 you go ahead; in this instance it was a gunshot
12 wound, you do an x-ray of the body to show the
13 position of the metallic fragments of the bullet or a
14 whole bullet that are in the body. On x-ray you can
15 see these. So it gives you an idea of where you're
16 going to look for the bullet.

17 Then you proceed with the general autopsy after
18 you've recorded the height, the weight, hair color,
19 eye color, examination, the abdomen, what have you.
20 You do a pretty thorough examination and then put
21 that down both in written format, notes, and you
22 dictate it later.

23 Q And in going right to the evidence of trauma that you
24 found on Ms. Johnson -- and, first of all, how old
25 was Ms. Johnson?

1 **A** She was 53.

2 **Q** And can you tell the ladies and gentlemen of the jury
3 what evidence of trauma you found?

4 **A** Yes. She had a distant gunshot wound of the left mid
5 face located if you go from the top of the head down,
6 five and a half inches down from the top of the head
7 and two inches to the left of mid-line. So it was
8 basically in the middle of the left cheek she had a
9 gunshot wound.

10 It was a large circular wound. It was
11 three-eighth's of an inch, and it had an abraded
12 margin, a little margin around it that was
13 one-sixteenth of an inch. And that was mostly in the
14 upper end. And then it went through the skin and the
15 subcutaneous tissues, and it entered the mouth, went
16 through the mouth, entered the floor of the mouth
17 causing massive trauma as it went through these
18 structures. And then it went through the back of the
19 throat and went into the posterior aspect where the
20 spinal cord is, so to speak, and the vertebral
21 bodies. And the vertebrae are these hard bones that
22 we have that are layered on one another. You have
23 seven in the neck, twelve in the thorax and five in
24 the lumbar and then some in the sacrum. And these
25 are our spinal cord and our spine.

1 So it went through the third cervical vertebra.
2 That's one of those building blocks, so to speak,
3 that hold the neck up. And it fragmented it. It
4 just blew it apart. And the spinal cord which takes
5 messages from the brain goes to the muscles and takes
6 sensory messages from the muscles of our body, goes
7 to the brain, that was fragmented. It tore that
8 apart.

9 And the bullet was found in the -- kept going
10 you through -- now, realize the spinal canal and the
11 spinal cord and the vertebra you can actually feel in
12 the back of your neck. So after it did that it sort
13 of went through the muscles and it was found in the
14 subcutaneous tissues in the neck on the right side.

15 So I found a large caliber, mushroomed
16 projectile which was copper jacketed, like it was
17 curled around it, and then an inner core of lead,
18 gray lead. I marked this, put it into evidence.

19 So this was a gunshot wound that went from the
20 cheek on the left to the back of the neck, so to
21 speak, on the right. It went from up to down, in
22 this kind of direction. It went from front to back
23 slightly at an angle. And it went from the left to
24 the right.

25 This was a lethal wound. Passing through the

1 cord and fragmenting it and the vertebra would have
2 produced instantaneous death, produced a lot of
3 bleeding. The last few gasps of breaths aspirated
4 blood into the lungs.

5 Q So your opinion to a reasonable degree of medical
6 certainty as to the cause of death of Ms. Carlaus
7 Johnson for the record is what?

8 A Gunshot wound to the left face.

9 Q How long would she have lived after that or could she
10 have lived after receiving that gunshot wound?

11 A Within seconds she would have been dead.

12 Q And this is contained in State's 130. And it's
13 already in evidence. But in here, was this the
14 bullet that you took from Ms. Johnson's body?

15 A Do you want me to open it?

16 Q Is it marked on there?

17 A Yeah. It's my mark. And this is the code, and this
18 is my handwriting on the back. So that's the bullet
19 from the decedent.

20 Q I'm going to have you come down when you finish our
21 next victim and just look at these charts briefly.

22 A Sure.

23 Q But could we move on now to Ms. Bolton's body?

24 A Sure.

25 Q And before I do that, did Ms. Carlaus Johnson have

1 any signs of what we know in our world as defensive
2 type wounds?

3 A None. None at all.

4 Q You also had the occasion to examine Ms. Latora M.
5 Bolton's body?

6 A Yes, I did.

7 Q And how old was she?

8 A She was 29.

9 Q And again, do you look over her body and the
10 condition it's in and photograph it and also look for
11 trauma?

12 A Yes, I do.

13 Q And in this case could you now tell us, just skipping
14 right to the evidence of trauma portion of your
15 report what, if any, trauma did you find on Latora
16 Bolton's body?

17 A Sure. She also had a distant gunshot wound. And
18 distant, I mean more than eight inches again. This
19 was located in the left temple which is up in this
20 area. It's again about five inches down from the top
21 of the head and about four and a half inches to the
22 left of mid line. So it's right about in the middle
23 of the temple in this side.

24 Similar to the other wound, it a three-eighth's
25 of an inch circular wound with an abraded margin of

1 sixty-one-sixteenth's of an inch. I didn't see any
2 stippling or powder burn which would make it closer
3 than about eight inches.

4 The underlying bone was beveled inwards. It
5 tells me that's the direction it's coming from. It
6 went through the tissue. It went through the brain.
7 It went through the skull causing the skull to have
8 multiple fractures. It fragmented the brain. And
9 again it went posteriorly towards the area of the
10 brain we call the foramen magnum and the first
11 cervical vertebra, again hitting the cord there which
12 was fragmented, the spinal cord. And it was found in
13 that region at the base of the skull where the skull
14 and the first cervical vertebra come together.

15 This was a similar bullet. It was a large
16 caliber copper jacketed core, copper jacket and a
17 core. I marked it with a base, put it in police
18 custody. And this is a penetrating gunshot wound as
19 the other one was. There were a bunch of fragments,
20 small metallic fragments that couldn't have been
21 removed. They were seen on x-ray. But 95 percent of
22 the bullet I removed and we put that into evidence.

23 Now, this similarly is the same direction. It's
24 the left side of the body. It's going downward.
25 It's going from left to right and front to back.

1 Realize the first one was going in this direction.
2 And the first one is going from the cheek to the side
3 of the neck and the back. This one is going from the
4 temple to a little bit further back but basically the
5 same direction as the wound was from the other side.
6 I'm talking about where the muzzle was in relation to
7 the body.

8 Q Well, in your experience as a forensic pathologist,
9 in reviewing at least the position of the bodies, do
10 you have an opinion whether or not the shooter could
11 have stayed in the same position and killed both
12 ladies?

13 A I do have an opinion.

14 Q What is that?

15 A I think it's most consistent with that, that he
16 stayed in the same position and shot both; the same
17 angle, the same pathway, the same projectile.

18 Q This is -- you just told us about what you took from
19 Ms. Bolton's body. Is that it?

20 A Yes. And this is the other one. This is the other
21 projectile that's in evidence right here.

22 Q And you take these, collect them and give them to law
23 enforcement for future testing that they do, right?

24 A That's correct.

25 Q Doctor, I've just got a couple more. With Your

1 Honor's permission, if you'll step down, Doc.

2 A Sure.

3 Q And do you have an opinion about -- if you'll switch
4 so madam court reporter can hear you. If you'll get
5 over here. I didn't want her to get mad at me. Do
6 you have an opinion -- you don't have to go that far,
7 Doctor. But how long would Ms. Bolton have lived?

8 A Within seconds. Again, this fragmented her brain and
9 the base of her skull, almost instantaneous.

10 Q And did Ms. Bolton have what appeared to you again in
11 our field what is known as defensive type wounds?

12 A She had none.

13 Q This is Ms. Johnson. Ms. Johnson's. Did you prepare
14 these?

15 A Yes, sir.

16 Q Can you show the jury -- I know you told them -- but
17 on here just the angle you're talking about?

18 A You can sort of see it on here. Here is where the
19 bullet winds up. Realize that's here. It comes in
20 from the cheek which is here and goes to there. And
21 then I'll do it again. Here. In that direction. So
22 it's coming through this way and coming back.

23 Realize this is a three-dimensional structure.

24 You can spin it around. But it's coming this way all
25 the way around. I'm sorry. This way all the way

1 around, from the cheek to the back of the neck.

2 They're so similar it's almost an exact copy.

3 Q If I am Mama C or Ms. Johnson and I'm here and the
4 injury is here on me, would the shooter in your
5 opinion been to my left?

6 A He would have been to your left and above you.

7 Q And when you say above you, Doctor, in what direction
8 was the bullet going?

9 A The bullet is going down.

10 Q Would it be -- reviewing the -- let me show you this
11 here. You have looked at State's 34 before and seen
12 the position of the bodies, correct?

13 A Yes.

14 Q In your opinion as a forensic pathologist, having
15 reviewed the pictures and the bodies, would it be
16 consistent with Ms. Johnson being down perhaps when
17 she received this?

18 A She would have to be down. If she was standing,
19 unless the shooter was up on a stool or something, he
20 wouldn't have been able to have that type of
21 projectile, the bullet go in that pathway.

22 Q Could she have been down perhaps looking in the safe?

23 A That's true.

24 Q Could she have been on her knees?

25 A Yes. She could have been. It's a relative position

1 between the two. She is going to be below him a good
2 bit to get that angle going down.

3 Q And based on looking at the pictures, who would you
4 say in your opinion after looking at these pictures
5 and examining these bodies, who received the first
6 shot?

7 A I would think that Ms. Johnson did because she was
8 lying in the corner and the other body was on top of
9 her.

10 Q Is this a diagram you also prepared of Ms. Bolton?

11 A Okay. Again, here is the wound up here. Here's the
12 initial entry gunshot wound. I'm going to make
13 dotted lines to show that it's going through the
14 tissue that you don't see. But it's going in that
15 way. If this is the wound here, it's coming in this
16 direction. And this is about where the first
17 cervical vertebra is. Realize the other one was
18 where the third was. The other one is down there.

19 So it's again going downward through the -- I'm
20 sorry -- downward through the body, and back. It's
21 hard to project on this. But it's very a similar
22 projection, pathway. It's coming down and it's going
23 in that direction, backwards, downward, left to
24 right. This is a little higher up in the temple.
25 Realize the other wound is here. But it's almost

1 parallel pathways. It tells me the shooter shot
2 without changing his position very close to one
3 another to get those pathways to be the same angle
4 exactly like that.

5 Q And you said distance is greater than eight inches?

6 A Yeah. I mean, if you test fire the gun, most bullets
7 will stop giving off stippling and powder residue in
8 about eight inches; maybe a little more, some a
9 little less. But that's sort of a rule of thumb. So
10 further than eight my opinion. Eight inches is only
11 about that far. So it's -- we consider that distant,
12 anything beyond that. That's why it's called
13 distant. In reality it's not really distant. It's a
14 small little room and very consistent with that. But
15 closer than that distance you see powder burns. And
16 if it's contact, which is right at the skin itself,
17 you see a different kind of wound.

18 Q And you didn't see any powder burns or stippling?

19 A No, I didn't.

20 Q Doctor, I'm sitting here not just because I'm tired.
21 But you've seen the pictures?

22 A Yeah.

23 Q I can't -- is the injury that you've shown there and
24 described on Ms. Bolton consistent with the killer
25 being to her left and shooting down?

1 **A** Yes.

2 **Q** Consistent with her being in a chair?

3 **A** A chair, down on her knees, on the floor, anything
4 again. But the chair is most consistent.

5 **Q** And if --

6 **A** Because I saw a chair there.

7 **Q** -- Ms. Bolton in State's 34, if this is Ms. Bolton
8 and her legs over there, would that injury be
9 consistent with her having been sitting in that
10 chair?

11 **A** Yes.

12 **MR. MEADORS:** Your Honor, State's 153 and 154
13 without objection.

14 **THE COURT:** Okay.

15 (WHEREUPON, State's Exhibit No. 153 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 154 is admitted
18 into evidence.)

19 **Q** Doctor, you can have a seat back. I'm sorry. I
20 can't remember. Did you give your opinion to a
21 reasonable degree of medical certainty on Ms.
22 Bolton's cause of death?

23 **A** Yes. The cause of death was gunshot wound to the
24 left temple.

25 **Q** Thank you, Doctor.

1 **MR. STRICKLER:** I have no questions, Your Honor.

2 **THE COURT:** You can step down.

3 **MR. MEADORS:** If we could approach, Your Honor.

4 **THE COURT:** Okay.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** All right, jurors. We're going to
7 break for the day. There are A lot of exhibits in
8 there. The State represents that's their last live
9 witness. But they have to make sure they have, you
10 know, 150 something exhibits in and properly numbered
11 and so forth. It will take them an hour or so to go
12 over it and make sure.

13 So again, don't talk to anybody about the case.
14 Don't look up anything on the Internet. Don't call
15 TV, ask them are you on TV. You're not going to be.
16 And so forth. But we'll crank it back up in the
17 morning. And we'll actually I think finish tomorrow.
18 Is that fair? To the jury tomorrow one way or the
19 another, right?

20 **MR. STRICKLER:** I think you're right. Yes, sir.

21 **THE COURT:** So we'll start at a reasonable hour.
22 You all be here at 9:29. All right.

23 (Jury out at 4:50 p.m.)

24 **THE COURT:** Okay. Mr. Strickler.

25 **MR. STRICKLER:** Yes, sir.

1 **THE COURT:** As I understand it from the side
2 bar, and of course the witnesses, I mean visitors can
3 leave or not. They can stay in here. But that's all
4 the witnesses for today. The State represents they
5 have no further witnesses.

6 **MR. STRICKLER:** Yes, sir.

7 **THE COURT:** And they're going to make sure they
8 have all their documented evidence introduced and
9 properly numbered. So, effectively, they have
10 rested.

11 **MR. STRICKLER:** Yes, sir.

12 **THE COURT:** So it's just a formality of them,
13 Mr. Meadors saying in the morning that we rest. At
14 that point of course it's up to the defendant to
15 prepare a defense or to testify or not. I know
16 you've discussed it with him in detail, but I
17 probably need to ask Mr. Portee or talk to Mr. Portee
18 just a little bit since he doesn't have to make that
19 decision today.

20 Mr. Portee.

21 **MR. PORTEE:** Yes, sir.

22 **THE COURT:** At some point in the morning,
23 probably around 9:35, the State is going to rest.
24 That means they're not going to put in any additional
25 evidence. At that point you have the right to

1 present a defense, to call witnesses. You can
2 testify yourself or not. Nobody can make you
3 testify. Nobody can keep you from testifying.

4 I am certainly not trying to press you one way
5 or the other. There are good reasons for testifying,
6 good reasons for not. I saw a photograph that was
7 not an exhibited to the jury of you in a uniform. So
8 there's a chance that you have a prior record. I
9 don't know. But if you do, Mr. Strickler would cover
10 that as to whether it could come in or not if you
11 testified.

12 If it came in, I would certainly tell the jury
13 they couldn't consider the fact that you had a prior
14 record as indicating you committed a crime, but they
15 could consider it on the issue of believability of
16 course, as they say, just like any other witness.

17 And of course some people make good witnesses;
18 some don't. Some people who testify, the State can
19 cross examine you, ask tricky questions and what have
20 you. So it's a big decision. You've got all night
21 to think it over. So you don't have to tell me now.
22 But in the morning. I'll ask you again in the
23 morning after we get here. But that's all.

24 **MR. STRICKLER:** Thank you, Your Honor.

25 **THE COURT:** Just confer with Mr. Strickler and

1 Ms. Thomas tonight, any family members or anybody you
2 want to, talk over whether you think you should
3 testify or not.

4 MR. PORTEE: Yes, sir.

5 THE COURT: Okay.

6 MR. STRICKLER: Thank you, Judge.

7 THE COURT: Now, the State having effectively
8 rested, I assume we can move forward in the morning.
9 So if you have any motions, now might be the time,
10 because it's kind of funny to bring -- the jury feels
11 funny if you bring them in and Mr. Meadors just
12 stands and up says 'we rest', and I say 'jurors, step
13 back out.' They say, why were we brought in?

14 But, I mean, if you come up with some by in the
15 morning, I'll certainly entertain them. But I take
16 it you just move for a directed verdict. And that
17 with a heavy heart is denied.

18 MR. STRICKLER: Yes, sir. Exactly.

19 THE COURT: And verdict forms will just be not
20 guilty or guilty or guilty, not guilty, however you
21 type them on the three counts.

22 MR. STRICKLER: Yes, sir.

23 THE COURT: As far as the charges go, it's just
24 simple. If there's something you want me to charge,
25 you can write it down. Mere presence. Presence at

1 the scene is about the only thing you've got. A
2 circumstantial evidence case of course.

3 **MR. STRICKLER:** Yes, sir.

4 **THE COURT:** That's about it. If he elects not
5 to testify, you can tell me whether you want me to
6 tell them not to consider it or not.

7 **MR. STRICKLER:** I can tell you that right now.
8 I would like you to tell them that.

9 **THE COURT:** Okay. That's fine. That's about it
10 off the top of my head.

11 **MR. STRICKLER:** It's pretty much standard
12 evidence charges and murder charge, armed robbery
13 charge. I don't see a lot -- as we discussed in
14 chambers earlier, I just don't see a lot that is out
15 in left field on this case at all.

16 **THE COURT:** Like I said, if you have something
17 you would like me to charge with specificity, as
18 assuming it's good law, I'll be happy to charge it in
19 the morning. And Mr. Meadors the same thing. If you
20 want me to charge a reasonable doubt charge that you
21 all can agree on, just hand it up. Otherwise, I tell
22 them it's the kind of doubt that causes an ordinary
23 person to hesitate to act.

24 **MR. MEADORS:** We prefer the firmly convinced,
25 Your Honor.

1 **THE COURT:** If you want that, that's up to you.
2 If you want firmly convinced --

3 **MR. MEADORS:** I don't know if I care.

4 **THE COURT:** Write it down and show it to Mr.
5 Strickler. I don't want to hear any whining about it
6 later.

7 **MR. MEADORS:** We'll talk and let Your Honor know
8 in the morning either way. Judge, I think there may
9 be one charge, that the victim does not have to be
10 alive if the robbery occurs we ask you to consider.

11 **THE COURT:** I'm sorry?

12 **MR. MEADORS:** The victim does not have to be
13 alive when a robbery occurs. We'll have some law and
14 will present that to the Court in the morning.

15 **THE COURT:** That's right. That's my
16 understanding.

17 **MR. MEADORS:** Judge, could I get some -- and
18 this is whatever. It is what it is. But assuming
19 nothing is put up, just for my own mind, what time
20 would you want to start arguing?

21 **THE COURT:** Right away.

22 **MR. MEADORS:** Okay. That's all.

23 **THE COURT:** And you would argue and then Mr.
24 Strickler, I take it, if you didn't put anything up.

25 **MR. STRICKLER:** If I didn't put anything up.

1 Yes, sir. So the record will reflect that I've moved
2 for a directed verdict at this point.

3 **THE COURT:** You did.

4 **MR. STRICKLER:** At this point in time, or at
5 such point in time as the State rests, Judge.

6 **THE COURT:** Got it.

7 **MR. STRICKLER:** Just on the general
8 insufficiency of the evidence --

9 **THE COURT:** Right.

10 **MR. STRICKLER:** -- to support going forward on
11 the charges against Mr. Portee. And I take it that
12 Your Honor will deny that at the appropriate time,
13 too.

14 **THE COURT:** I am afraid I have to deny it.
15 There's ample evidence that a jury could find him
16 guilty.

17 **MR. STRICKLER:** Yes, sir. I understand.

18 **THE COURT:** But since nobody saw him do it, if
19 he testifies, they could find him not guilty.

20 **MR. STRICKLER:** Yes, sir.

21 **THE COURT:** It's up to the jury. Okay. See you
22 all in the morning.

23 **MR. MEADORS:** Thank you, sir.

24 **MR. STRICKLER:** Thank you.

25 (Whereupon, the proceedings are concluded for

1 the day, to be reconvened tomorrow morning)
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1 Thursday, January 15, 2009

2 **THE COURT:** Okay. The State has been over all
3 of their exhibits and so forth and everything is in?

4 **MS. MCDUFFIE:** No, sir, Your Honor. Your Honor,
5 it is my understanding that for some reason State's
6 61, 62, 63 and 64 were never formally introduced. So
7 at this time we would like to move them into
8 evidence.

9 **MR. STRICKLER:** We have no objection to any of
10 these, Your Honor.

11 **THE COURT:** All right. Then 60 whatever through
12 60 whatever can come in.

13 **MS. MCDUFFIE:** 61 through 64.

14 (WHEREUPON, State's Exhibit No. 61 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 64 is admitted
17 into evidence.)

18 (Note - State's Exhibits 62 and 63 were previously
19 received in evidence)

20 **THE COURT:** And that will conclude the State's
21 case.

22 **MR. MEADORS:** That will be correct.

23 **THE COURT:** So, Mr. Strickler, have you
24 discussed with Mr. Portee in detail whether or not he
25 has elected to testify or not testify?

1 **MR. STRICKLER:** Yes, sir. I discussed that with
2 him on a number of occasions, most recently last
3 night after court, and confirmed the substance of the
4 conversation this morning.

5 **THE COURT:** And what's his pleasure going to be?

6 **MR. STRICKLER:** Your Honor, he's indicated to me
7 he does not wish to testify in this matter.

8 **THE COURT:** All right. So are you on his behalf
9 calling any additional witnesses?

10 **MR. STRICKLER:** No, sir.

11 **THE COURT:** Well, then we will proceed to
12 summations and instructions.

13 **MR. STRICKLER:** Yes, sir.

14 **THE COURT:** Did you prepare proposed verdict
15 forms?

16 **MR. STRICKLER:** I have, Your Honor. Prior to
17 that, I'm always a little fuzzy on this. But if
18 necessary, I would renew my previously stated
19 directed verdict motion obviously on the same
20 grounds, as there's been no testimony at the end of
21 the defense case.

22 **THE COURT:** Okay. The motion is denied. Mr.
23 Meadors, did you all night do great research and have
24 a jury charge that you would like on reasonable doubt
25 or anything else?

1 **MR. MEADORS:** Not all night.

2 **MR. STRICKLER:** I have a proposed verdict form
3 which I have supplied the State, Your Honor, to
4 review.

5 **THE COURT:** All right.

6 **MR. STRICKLER:** I also have a specific request
7 to charge in this matter, which I don't know whether
8 or not you give it. I have also supplied that to the
9 State.

10 **MR. MEADORS:** Judge, you don't have your
11 standard -- if you like this verdict form ...

12 **THE COURT:** Okay.

13 **MR. MEADORS:** I don't particularly like it, but
14 if Your Honor does, I have no strenuous objections.

15 **THE COURT:** To what?

16 **MR. MEADORS:** The verdict form.

17 **THE COURT:** Yeah. I usually put "by unanimous
18 consent" on there. We tell them they have to be
19 unanimous. So it's not necessary. All right.

20 **MR. MEADORS:** These are two charges on armed
21 robbery I briefly discussed with Your Honor
22 yesterday, that I believe the law is that the victims
23 don't have to be alive -- I handed you two copies --
24 do not have to be alive when the robbery occurs.

25 **THE COURT:** All right.

1 **MR. MEADORS:** And, Judge, about three minutes
2 ago, and maybe prior to that, Ms. McDuffie was, I was
3 served with a notice of alibi, which I think under
4 the rules requires ten days notice. We did it all
5 reciprocal. Obviously the trial is about over, so it
6 couldn't be ten days notice. It's under Rule 5
7 obviously.

8 **MR. STRICKLER:** It's not a notice of alibi.
9 It's a request to charge the defense of alibi. The
10 alibi in this case has been --

11 **THE COURT:** Well, specifically, I can't charge
12 Mr. Strickler's request to charge as presented since
13 you say the defendant claims that he was not at the
14 scene. He has not testified, et cetera. So I have
15 to prove that the -- I'm not going to charge alibi as
16 such. I'm just going to say the State has the burden
17 of proving that he was present and did the crime and
18 was not elsewhere. If there is evidence in the case
19 that he was elsewhere, he couldn't have been there,
20 could he?

21 **MR. STRICKLER:** Sir, I --

22 **THE COURT:** I'll paraphrase it. I'll say the
23 evidence presented could raise the issue of alibi. I
24 can't comment on what he claims. Alibi to me just
25 means elsewhere. So the State has got to prove the

1 rest of it. And that's all I'm going to say.

2 **MR. STRICKLER:** And I understand that, Your
3 Honor. I especially need that point clarified with
4 the jury, because from the State's own witness came
5 testimony that my client said, 'I've got my alibi.'

6 **THE COURT:** There is evidence in the case,
7 right?

8 **MR. STRICKLER:** Yes, sir.

9 **MR. MEADORS:** It is what it is. I mean, I still
10 think under the rules I've got to --

11 **THE COURT:** You knew about it all along that
12 statement was coming in because you're the one that
13 wanted to put that statement in, not him.

14 **MR. MEADORS:** Right. But is Your Honor saying
15 you're not going to charge alibi? You're still going
16 to say we've got to prove he was present?

17 **THE COURT:** I'm not going to charge it as he has
18 it written because that's a direct comment on the
19 facts.

20 **MR. MEADORS:** So we've got to prove he's present
21 at the crime.

22 **THE COURT:** You've got to prove he's present at
23 the crime. If he's -- he did not present a defense,
24 other than argument. So I can't say that is a
25 defense because you didn't claim it.

1 **MR. STRICKLER:** I understand, Your Honor.

2 **THE COURT:** That's all.

3 **MR. MEADORS:** Your Honor, I blew this up for
4 you, Judge. Reasonable doubt.

5 **THE COURT:** I don't need it blown up. I need it
6 in a little small thing.

7 **MR. MEADORS:** Sure. But I think this is the
8 law, what I've had charged over the last several
9 years. We would ask to you charge State v. Darby.

10 **THE COURT:** All you've got to do is have it
11 typed up and hand it up here; I'll be happy to charge
12 it.

13 **MR. MEADORS:** Thank you.

14 **MR. STRICKLER:** And I'd ask that you charge in
15 addition to the charge you indicated you would use
16 yesterday which was -- I'm sorry. May I take a look
17 at this?

18 **THE COURT:** Yeah.

19 **MR. STRICKLER:** I thought you indicated
20 yesterday that your charge was hesitate to act.

21 **THE COURT:** Yeah. Sure.

22 **MR. STRICKLER:** Well, I'd ask that you give that
23 in addition to this.

24 **THE COURT:** I will. Now, I plan no charge on
25 flight unless you all agree on a charge on flight.

1 **MR. MEADORS:** I don't think Your Honor can
2 charge it. I'm going to argue it obviously.

3 **THE COURT:** That's what I was just saying.

4 **MR. MEADORS:** Yes, sir.

5 **MR. STRICKLER:** I agree.

6 **THE COURT:** And I do think I charge mere
7 presence, however.

8 **MR. STRICKLER:** Yes, sir.

9 **THE COURT:** Anything else?

10 **MR. MEADORS:** Beg the Court's indulgence.

11 **THE COURT:** Sure. I mean, certainly I'm
12 charging circumstantial evidence, since there's no
13 video camera there or live testimony, somebody saw
14 something happen.

15 **MR. STRICKLER:** Yes, sir. Certainly.

16 **THE COURT:** Now, Mr. Strickler, basically when
17 they come out and the State rests, I will just tell
18 them -- I mean, I have to look to you. If you say we
19 rest --

20 **MR. STRICKLER:** Yes, sir.

21 **THE COURT:** -- and then I tell the jury the
22 defendant is not -- or he rests, that means he
23 intends to present no additional evidence. So we're
24 going to proceed to summations. But they are to --
25 that he does not have to testify and his not

1 testifying creates no inference of guilt on his part
2 and that's not something they can even discuss while
3 they decide the case.

4 **MR. STRICKLER:** Yes, sir.

5 **THE COURT:** Or words to that effect. You know,
6 I don't read things like a lot of judges. It doesn't
7 always come out exactly like I tell you.

8 **MR. STRICKLER:** I understand, Judge.

9 **THE COURT:** But I've never been reversed on a
10 charge. The Court of Appeals did one time, but the
11 Supreme Court set them straight on that. All right.
12 Now, Mr. Meadors, just out of idle curiosity, how
13 long do you anticipate your summation will take?

14 **MR. MEADORS:** No more than 30 minutes.

15 **THE COURT:** Well, whatever.

16 **MR. STRICKLER:** Half hour, 45 minutes, the same
17 sort of ratio.

18 **MR. MEADORS:** Can I have just 30 seconds
19 before --

20 **THE COURT:** What I was going to say, I want to
21 say a couple of things. All right now. We've had
22 visitors in here the whole time and you all have been
23 more or less under control. When the lawyers start
24 summing up, the jury needs to have close attention to
25 what they say. And they're going to allude to what

1 happened and so forth. And sometimes -- I don't know
2 what will happen -- but sometimes Mr. Meadors, for
3 instance, gets emotional. All right. I don't need
4 anybody to stand up saying, yeah, that's right, or
5 anything like that. I don't need you to say
6 anything. The same thing with Mr. Strickler. I
7 don't want you saying, no, that's not so.

8 In other words, you all can stay in here, but if
9 anybody makes any noise, agreeing or disagreeing or
10 saying, oh, no, or anything, you're out of here. And
11 that includes clapping one way or the other. Not
12 that you all will do that.

13 **MR. MEADORS:** Can we have just a minute to get
14 something together real quick?

15 **THE COURT:** We will take five minutes so
16 everybody can go comb their hair and whatever.
17 Ms. Pendergrass, are you still there?

18 **THE CLERK:** I am.

19 **THE COURT:** If you will tell the jury it will be
20 five more minutes and then we'll be ready to go.

21 (Whereupon, a break is taken)

22 **THE COURT:** All right, Mr. Meadors. On the
23 charge, I recognize whatever. You can argue that
24 about few things in the world that we know with
25 absolute certainty. But that's not something that I

1 charge. That's just puff.

2 MR. MEADORS: You do charge we don't have to
3 prove it beyond all doubt?

4 THE COURT: I charge what you have here, firmly
5 convinced. That's all.

6 MR. MEADORS: Thank you.

7 THE COURT: But that stretches it. I mean, all
8 those cases got reversed by adding puff to it over
9 the years. Now they're trying to sneak it back in.
10 It will get reversed again. All right. The State
11 ready?

12 MR. MEADORS: Yes, sir.

13 THE COURT: Good for the State. Defense is
14 ready?

15 MR. STRICKLER: Yes, sir.

16 THE COURT: All right.

17 (Jury in at 9:53 a.m.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: The jury is present. You may
20 proceed.

21 MR. MEADORS: If it pleases the Court, the State
22 of South Carolina rests.

23 THE COURT: All right. When the State says they
24 rest, that means they are going to present no more
25 evidence. However, outside of their presence they

1 did introduce four things. You probably need to do
2 that so they'll know, if they were keeping a record
3 of it.

4 **MS. MCDUFFIE:** Your Honor, at this time we would
5 introduce State's Exhibits 61, 62, 63 and 64.

6 **THE COURT:** Okay. Now you rest. All right.
7 The State having rested, defense.

8 **MR. STRICKLER:** Your Honor, if it please the
9 Court, the defense rests.

10 **THE COURT:** Okay. Jurors, when the defense says
11 they rest, that means they intend to present no more
12 evidence. Now, I recognize that Mr. Portee has not
13 testified. Remember he is presumed innocent.
14 There's no burden on his part to prove that he's not
15 guilty. He can testify or not. If he elects not to
16 testify, that creates no inference of guilt against
17 him at all. The State still has the burden of proof
18 beyond a reasonable doubt. And once you start
19 deliberating you all can't even consider the fact of
20 whether he testified or not on the issue of whether
21 the State has met its burden of proof.

22 There are good reasons for testifying, good
23 reasons for not. One of the good reasons for not
24 testifying, the State gets to open and close if they
25 put up any evidence. If they don't put up any

1 evidence, they being the defense, the defense gets to
2 close. The State has to go first.

3 Now, what you're going to hear in just a second
4 are going to be some of their closing arguments. I
5 just call it summation because you don't get to talk
6 back. All right. The State is going to sum up their
7 position. Then the defense will sum up their
8 position. And then we'll take a break. You're not
9 to discuss the case during the break we will take
10 after that. But they're not going to sum up for a
11 long period of time. And then we'll take a break.

12 And then during the break Ms. Pendergrass will
13 order lunch for you. But we won't have great
14 choices. Okay. It's not like you're going to get
15 ribeyes or something like that. But you will order
16 lunch during the break. Come back and I'll instruct
17 you on the law, and then you all will go back and
18 decide the case. I don't know who is going to sum
19 up. But, Mr. Meadors, are you summing up?

20 **MR. MEADORS:** May it please, Your Honor?

21 **THE COURT:** Sure.

22 **MR. MEADORS:** Ms. McDuffie, Mr. Strickler,
23 Ms. Thomas, "It's not a threat; it's a promise. It's
24 not a threat; it's a promise." He followed through
25 on that promise. "I am going to kill you. I'm going

1 to kill you." And he did.

2 Latora Bolton, 29; Carlaus Johnson, 53, they're
3 dead. They are dead. That's what this case is
4 about, the murder of these two ladies as they worked
5 at Wendy's.

6 Ladies and gentlemen, thank you all for being
7 here. And good morning. I've been introduced. My
8 name is John Meadors. I'm the Deputy Solicitor for
9 the Fifth Judicial Circuit. You all saw my boss
10 Monday sitting right up here in this chair, Solicitor
11 Barney Giese.

12 And on behalf of Solicitor Giese and Assistant
13 Solicitor Joanna McDuffie, I want to thank you all
14 for being here. And I mean that. Thank you for
15 being here. Thank you for the attention you've given
16 this case, for listening, for caring. We've all got
17 different roles in this system, which is still the
18 best system in this world. I have my role. Mr.
19 Strickler, Ms. Thomas, Ms. McDuffie. His Honor has
20 the role, Judge Kinard, as the judge of the law.

21 But the judge came through here a few years ago,
22 just like you all were sitting here Monday, and was
23 telling all the jurors about their role, a female
24 judge. And she said, and I've always remembered it,
25 she said to that jury and I'll say to you all now

1 that you all have the most important role of anybody.
2 No disrespect to the judge or all these lawyers here.
3 We're in this courtroom day in and day out. That's
4 all I've ever done. I love this job. I love it
5 because I get to be a part of the system that seeks
6 and tries to find justice.

7 But we're in here all the time. But it's like a
8 basketball team, as the judge said. We're always
9 there, but it's like we get a star player every week,
10 an MVP who comes and joins that team and then
11 determines the outcome of the game. And that's the
12 way it should be. You, the jurors, come in. You
13 listen to the facts. You hear the law the judge
14 says, and you all decide what the truth is. That's
15 the way it should be.

16 Now, when you come in here you bring in here
17 your talents, your skills, everything you've learned
18 over your life, your common sense. And you don't
19 leave that in the jury room or downstairs. You
20 brought that in here with you. And that's what
21 you'll use more than anything as you decide what the
22 truth is, your good old common sense. Thank you for
23 being here and thank you for your attention.

24 I am going to be as brief as I can, but I'm
25 going to try to cover everything. This is called

1 closing arguments. I've always been amazed it's not
2 really an argument. You can't say, well, John, what
3 about this? What about that? I can't talk to you
4 all. It's not an interaction. But it's a chance for
5 us to review the evidence and the reasonable
6 inferences.

7 After I get through Mr. Strickler or Ms. Thomas
8 will be allowed to get up and tell you what their
9 version of the facts are. All I can ask you to do is
10 keep listening, keep paying attention as I know you
11 will.

12 I'm going to briefly go over the law, very
13 briefly. His Honor will charge it in the end, as
14 we've all said. And before I get to that I want to
15 talk to you about the burden on you all. The burden
16 on the State. Excuse me. The burden on the State in
17 this case is the same burden that's all across this
18 country. You all know what it is. We've got to
19 prove the defendant guilty by what? Beyond a
20 reasonable doubt. You all have all heard of it. It
21 didn't mean beyond all doubt. That's impossible.
22 You can never prove anything beyond all doubt. We've
23 got to prove it beyond a reasonable doubt, beyond a
24 doubt that makes reasonable folks hesitate to act.

25 It's also said it's firmly convinced. If you're

1 firmly convinced of the defendant's guilt, then you
2 must by your oath find him guilty. If on the other
3 hand you aren't, you must find him not guilty.

4 In my struggle to understand what seems like
5 this basic simple concept over the years, I've come
6 to realize that not everything is a reasonable doubt.
7 You don't come in here looking for reasonable doubts.
8 You come in here and you listen and you decide what's
9 credible. Sometimes there may be questions. And
10 sometimes I realize questions are just questions. If
11 there's a question out there that wasn't answered,
12 that doesn't mean it's a reasonable doubt. It
13 doesn't mean the final decision you can't decide.
14 There may be questions. An unanswered question is
15 not a reasonable doubt.

16 I respectfully submit Mr. Strickler might imply
17 or infer that some things that are really not at the
18 heart of this case might be a reasonable doubt. They
19 aren't. I'm going to try to cover them as I go
20 through.

21 Ladies and gentlemen, you all know what the
22 defendant, John Portee, is charged with. He's
23 charged with murder. What is murder? It's the
24 unlawful killing, intentional killing of another
25 living, breathing human being with malice

1 aforethought. You've all heard those terms. What
2 does malice mean? It just sounds wicked. Malice
3 does. Malice is an evilness, a wickedness, a
4 spitefulness, a meanness one person shows to the
5 other.

6 Now, how can we prove that to you all as
7 representatives of the State? Well, the law says,
8 and His Honor is going to charge you, there are a
9 couple of ways we can prove malice. One way is
10 express malice. We don't always have it. Quite
11 frankly, we don't usually have it. We've got it in
12 this case. I am going to kill you.

13 Talking to Ms. Outen right there who helps keep
14 me organized, yesterday she said, is there any more
15 way to express it? Can there be more express malice?
16 I'm going to kill you.

17 Well, what's the other type of malice that the
18 law allows? You're allowed to infer malice from the
19 use of a deadly weapon. Doesn't that make sense? If
20 I have got a .45 and I point it at you and you're
21 sitting at your desk or you're down on your knees or
22 whatever Ms. Johnson was doing and you pull that
23 trigger and out comes a deadly bullet, the law says
24 you can infer that I meant to kill them with that,
25 infer the use of a deadly weapon. A .45 is a deadly

1 weapon. Showed it twice in this case. The facts are
2 begging you to infer malice with that. We've got
3 them both here.

4 That second term is malice aforethought. I
5 don't know how to -- in this state we don't have to
6 prove, and it's not the law, that there's
7 premeditation. That's not the law in this state. We
8 don't have to show somebody planned to do something,
9 that they thought about it, wanted to do it. I
10 suggest here he might have been thinking about it
11 since that argument. But we don't have to show that.

12 All you have to say, malice aforethought, all we
13 have to show for aforethought is that the instant of
14 pulling that trigger he meant to kill them. Well,
15 there's no doubt about that here. After he fires the
16 first shot he fires another one. Malice
17 aforethought.

18 Now, we must also prove the cause of death. And
19 I'm going to talk about that later. You all heard
20 what the doctor said. The cause of death is unlawful
21 killing of another with malice aforethought.

22 Now, he's also charged with armed robbery. Ms.
23 McDuffie told you it's the carrying away, in this
24 case of Wendy's, in the presence of these two ladies.
25 They took it by means of force or intimidation while

1. armed with a deadly weapon. Is there any doubt about
2 that? Is there any doubt about it? \$1600 is
3 missing, as Ms. McDuffie said in her opening, 800
4 apiece, is what the defendant, John Portee, decided
5 their lives were worth that day. Armed robbery,
6 murders.

7 Now, the judge is also going to charge you that
8 the victim doesn't have to be alive when the money is
9 taken from them. I don't know when that money was
10 taken. I don't know when the defendant ordered them
11 to give them that money. It's probably before. But
12 we don't have to prove they were alive when they took
13 it. It's got to be contemporaneous, at the same
14 time.

15 You've heard different types of evidence in this
16 case, ladies and gentlemen. There are different
17 types of evidence the law allows us to present. One
18 type is direct evidence. Direct evidence is evidence
19 that a person gathers with one of their senses. I
20 see it. I hear it. I feel it. I touch it. They
21 come in here and take this witness stand and say this
22 is what I heard, I saw. You've had that.

23 You've got circumstantial evidence, wonderful
24 circumstantial evidence in this case, we respectfully
25 submit the evidence shows. Two types of evidence are

1 generally presented, direct and circumstantial.

2 Direct, as I said, is the testimony of a person who
3 asserts or claims to have actual knowledge of a fact,
4 like an eye witness. Circumstantial evidence is the
5 proof of a chain of facts and circumstances
6 indicating the existence of a fact. Proof of a chain
7 of facts and circumstances indicating the existence
8 of a fact. Isn't that beautiful?

9 There's absolutely no distinction between the
10 weight or value to be given to either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty of circumstantial evidence than of direct
13 evidence. You should weigh all the evidence in the
14 case; and after weighing all the evidence in the
15 case, if you believe beyond a reasonable doubt he's
16 guilty, you must find him guilty.

17 You all know what circumstantial evidence is.
18 You go to bed at night. It's not snowing. You get
19 up in the morning, it's snowing; it snowed. You
20 didn't see it. There's something circumstantial in
21 this case. I almost want to say it's direct. It's
22 the gun, the weapon, the bullets that came from
23 there.

24 You've also seen and been presented documentary
25 evidence, pictures, forensic evidence. What

1 happened? Where do I start? We start with the
2 threat, don't we? We start with the threat the week
3 before. On the week before the threat there's been
4 some testimony on the 25th, and Mr. Strickler asked
5 one of the witnesses the day before, the 24th. It
6 was the week prior. That Tuesday, that Wednesday,
7 that Thursday, the 24th, maybe that Thursday. But
8 there is a threat.

9 Do you remember Ms. Patrice Trapp when she was
10 on the phone and she got a call from Latora Bolton
11 and Latora said, and Ms. Trapp said, she was upset.
12 She was excited. That's called an excited utterance,
13 and under the law we're allowed to present that to
14 you.

15 She said, Ms. Trapp told you all, Latora said he
16 threatened to kill me. And he said, It's not a
17 promise; it's a threat (sic). She was so upset that
18 Patrice Trapp had to get another individual to go out
19 there and calm them down. And it did. Ms. Trapp
20 ended up not having to come.

21 But who else told us about that threat?
22 Stephanie Crumpton did, didn't she? Stephanie said
23 she was there. And we learned what it was about.
24 It's what one of the reasons these ladies died for.
25 He's working up front at Wendy's and he's told by his

1 manager to go on over to the drive-thru line. Well,
2 I'm not going to do that. They make more than I do.
3 I'm a better worker. I'm not going to do that. And
4 words are exchanged.

5 Ms. Latora, she didn't follow his instructions;
6 she talked back some, too. They were both written
7 up. But that's why it's pure evidence. We don't
8 have to have motive, but we've certainly got it here.
9 In his mind he's upset, he's angry. Stephanie tells
10 us that. And what does she say? I heard him. I
11 heard him threaten her and say it's not a promise.
12 "It's not a threat; it's a promise." I heard him say
13 that.

14 Well, on cross Mr. Strickler said, well, when
15 you talked to Wendy's, what did you say? You didn't
16 say it then. And what does Stephanie Crumpton say?
17 I didn't know he was going to really kill them. I
18 didn't know he was going to really kill them. When
19 you kill two people, it's necessary to say what is
20 really said. Well, that's the truth, isn't it?

21 And how self-authenticating is it? Ms. Trapp
22 had already said that she got the call from Latora
23 and said that's what happened, and now Stephanie
24 said, yeah, I said it. No, I didn't want to put it
25 in there. I didn't want to believe it. We all

1 worked together. Is there any doubt about the
2 threat, expressed malice?

3 They go there that Friday, the 2nd. Heather
4 drops him -- Heather takes him to Wendy's. That's a
5 consistent thing. She takes him to Wendy's. And
6 they think, Ms. Trapp thinks it's settled. It wasn't
7 settled with him yet. He actually wanted to work the
8 next day. Is that unusual? Yeah. Nobody really
9 usually wants to work on the weekend. Was he
10 thinking about it then? Don't know. Don't have to
11 prove it. Check that schedule. Latora was working
12 the next day, that Saturday.

13 Well, then what happens next in our timeline,
14 ladies and gentlemen? It's now September 2nd, that
15 Saturday. It's September 2nd. And what do we know
16 happened that day? Well, we know that the night of
17 that night on the Saturday, John Portee, the
18 defendant, got the car of Heather Hunter and went
19 somewhere, took her car that night.

20 We go into Sunday morning. We know he got back
21 at her house about 5:30, 5:30. And once he gets
22 there he goes down and lays down and sleeps.

23 But let me talk right now about Heather Hunter.
24 The judge is also going to talk to you about the
25 credibility, believability of witnesses. He is going

1 to charge you and tell you you can believe all of
2 what a witness says. You can believe some of what a
3 witness says. It's up to you. You can believe none
4 of what a witness says.

5 Ms. Heather Hunter on September the 3rd gave two
6 statements. The first statement as it came out took
7 John Portee to Wendy's. The second statement later
8 that day took him to Wendy's. She waited on him. He
9 went, came back, went, came back, then left. Gave
10 some other details about what she did. On the 6th,
11 on the 6th, yeah, we went there. He went in. He
12 came back. Went back inside. I hear two loud
13 noises. He comes back outside. What were those
14 noises? He didn't answer her.

15 And then in that third statement she says we
16 went to Georgia. He wasn't acting right, didn't want
17 to come inside. We ended up leaving because of the
18 way he was acting. And, y'all, none of those three
19 statements did she ever say I didn't take him to
20 Wendy's. All of that was consistent. She left her
21 role out of it, didn't want to put herself there.

22 And how do we know -- and everybody is attacked
23 for that. She says, well, you know, my kids were
24 being threatened. I was down there. He implies that
25 with his questions. Even brought me into it. That

1 statement, testimony was the same statement that
2 she'd given two years, a few months before I even met
3 her on September 6th. That's what she testified to.

4 And think about that statement, that last, that
5 third statement and her testimony here today when she
6 said when I went back over it with her. She said
7 when they were coming back from Georgia, when they
8 were coming back from Georgia I saw some money in his
9 wallet. I said, where did you get that money? And
10 at first he said, well, that's from my girlfriend at
11 the bank. Nobody would make that up.

12 And I said, did you get mad? I got mad. I got
13 mad. I got mad. I got kids. You take care of me.
14 Then he said, I got tired, I was tired of being broke
15 and it came from Wendy's. That's real. Always took
16 him to Wendy's, told him about coming back, told him
17 about his demeanor. Nobody told her to say that.
18 The truth came out. She was worried about herself
19 and her involvement.

20 She was charged for not giving that information.
21 That's the law. Mr. Strickler says my future is in
22 her hands. No, ma'am. No, sir. It's in the hand of
23 that judge or another judge. I told her on the stand
24 I'll be fair with her. I will. I will. But her
25 statement was given, those statements, two and a half

1 years before I even met her. To argue anything
2 otherwise, respectfully, I resent it.

3 She gave a fourth statement, talks about the
4 letters she gave. And, you know, I'm naive I guess.
5 I'm 47. And I put somebody up on the stand. And I
6 guess if my mom was still here, she'd say stay real,
7 son. But I should have realized it. I should have
8 expected it. When she gets on the stand here, she
9 was seven and a half months pregnant with his child
10 at the time, got one of his children. I should have
11 expected, I've been around, that something was going
12 to come out. And this letter comes out.

13 We all know what that is. And as I thought
14 about it last night into the wee hours this morning,
15 you know, that really makes her more credible. She's
16 trying to be on -- maybe trying to be on everybody's
17 team. Worried about herself. But you know what the
18 truth is and you saw her. And I said, did you hear
19 those noises? I heard them. Is there any doubt
20 about it?

21 Let's go back to that Sunday. He gets back to
22 the house at 5:30, goes down, rests for while. What
23 do we know is going on at Wendy's? Well, we know
24 Carlaus Johnson got there at 8:05. There's a receipt
25 for that. There's no question. What does that mean

1 also? What does that mean, ladies and gentlemen?
2 That means that Latora Bolton had to either come in
3 with her or already be in there because only the
4 managers have keys. So they both had to be there by
5 8:05. You look in here. You see the coffee. Ms.
6 Johnson like her coffee. Mama C, she loved her
7 coffee in the morning. She had her coffee. We know
8 from inside that she was making the lettuce. It's
9 back there set up. We know that Ms. Bolton was
10 inside getting the books ready. Ms. Trapp tells you
11 they do that. They get the money from the night
12 before. It was a Sunday. So they couldn't go to the
13 bank the day before. So they had money in the
14 bottom. They're getting the drawer ready. All those
15 were in those pictures. And she's going to try to
16 tell Ms. Johnson how much lettuce to make.

17 And then what else do we know? This is an
18 incredible timeline. Incredible. At 8:15 Ms. Jones
19 calls. Ms. Jones calls. And says, I'm checking.
20 I'm starting to work there next Monday. She'd worked
21 with them previously at Beltline. And what does she
22 tell them? She's excited. She's looking forward to
23 working there that Monday. Do you remember that?
24 And then back the she's talking to Ms. Bolton asking
25 her when she's going to work, and she says she hears

1 Mama C in the background, Ms. Johnson, and she's
2 going, hey, we're going to set new records and have a
3 good time. Little did they know that minutes later
4 they'd be dead. They were excited and wanted to
5 work.

6 Is that maybe when the defendant came to the
7 door that first time and knocked and they're back
8 there talking to her? I don't know. We don't have
9 to prove that. There's not a video. I wish there
10 was. There'd be a question of the video if there
11 was.

12 He goes to the car, comes back to the car. And
13 there is no other way this could have happened,
14 ladies and gentlemen. And I'll tell you why in a
15 minute. He comes back. And obviously Ms. C. or Ms.
16 Bolton have to let him in. There's no other way.
17 There couldn't have been anybody else, we
18 respectfully submit. Because, as Ms. Trapp said,
19 when we open up in the morning, employees have to
20 come in the back. They can't come anywhere else.
21 And nobody else comes in that store except employees
22 before it's open. And they come in the back and we
23 lift up the flap to see.

24 Three people were scheduled to work. Two were
25 dead. The other person is not there. The only other

1 person who was supposed to be there was Mr. Portee.
2 I respectfully submit the inference Ms. Johnson let
3 him in. At that point what happened? That goes back
4 to a reasonable doubt. You can never ever know
5 exactly what happened because witnesses are dead.

6 So we look in there. We see the lettuce. Did
7 he march her back there right then? He probably did.
8 He takes her back to the office. We know one thing.
9 Old Ms. Bolton, she's sitting there getting the
10 drawer ready. Does he get Ms. Johnson to go down and
11 get that money? Was it already on the desk with Ms.
12 Bolton?

13 One thing we know for sure, you've seen the
14 pictures; Ms. Johnson is on the other side of Ms.
15 Bolton. She had to either be reaching down or she
16 might have been on her knees praying. I think she
17 was praying whether she was reaching for the money or
18 not. But it had to be that way because the doctor
19 said the shot came down and she would have been hit
20 first. And it went in her cheek and then obliterated
21 her spinal cord.

22 And then what's the next shot? As she's sitting
23 in the chair. You can still see her feet down and
24 her head back. Shot here to Ms. Bolton, into her
25 brain, into her spinal cord. Malice? He takes the

1 money and he leaves.

2 Now, they go to Georgia. They go back, get the
3 kids and go to Georgia. What's happening now? Well,
4 later on in the morning you've got your employees
5 coming, don't you? You've got Ms. Crumpton. You've
6 got Jahquetta Owens. It's kind of funny about old
7 Jahquetta. It's not funny. But she left a note.
8 Jahquetta, all these witnesses, this is traumatic for
9 everybody; but she's a special child.

10 I don't know what her relationship with John
11 Portee is, but she told the truth. She got there
12 that morning. She saw the water. She didn't know
13 what was going on, thought maybe something else was
14 wrong. She clearly didn't think it was a murder.
15 She left a note on her car. I was here, waited.

16 Ms. Crumpton came, waited. They left. Finally
17 Ms. Trapp is called. And the importance of Ms.
18 Trapp, obviously you saw her and felt her testimony
19 of the bodies. That's real. That's what you react
20 when you see two bodies. And what does she do? She
21 tells you all the doors were locked. Only the three
22 managers had the keys. All the doors were locked.
23 The back door locked. No forced entry. No door was
24 open. Nothing on the roof, as Ms. Elsey told you.
25 The only way to get in is with employees letting

1 employees in when you open up in the morning. Nobody
2 else would have been let in. Nobody.

3 Well, what else do we know? She got her son who
4 went through the drive-thru. You all know that. She
5 got him to unlock it. The police come. The police
6 come, ladies and gentlemen. The police get put on
7 trial a lot. Either it takes too long to solve a
8 crime or it's too quick.

9 Well, they came in. They found a shell casing.
10 They found a shell casing. They bring the dog. They
11 start tracking the dog. Now, at this time, this
12 murder happened between 8:15 and 8:40. Because you
13 remember, you remember Ms. Jones called back at 8:40.
14 They're dead then. They're dead then.

15 So between 8:30 and after 2, law enforcement is
16 there. They don't know what's going on. They're
17 trying to find out. They bring the dog there. The
18 dog just happens to hit some scent. It could have
19 been anything. It could have been an animal. It
20 could have been anything that had come by there.

21 They go, Anna Elsey, lieutenant collects that
22 evidence. It's got no evidentiary value. That's not
23 a reasonable doubt. Swabs are taken. The only DNA
24 that came out is what you heard about. I'm going to
25 talk about it in a minute. No evidentiary value

1 whatsoever. It could have been anybody coming
2 through there.

3 They collect the shell casings. Well, at this
4 point, you all remember this. This is stuff I want
5 to point out. Patrice Trapp said she comes out and
6 she's seeing it. She's kind of -- I think she says
7 she faints. They said, there are two bodies in
8 there. What does she say? There ought to be three.
9 There should be three if he wasn't the killer.

10 And that's what law enforcement zeroes in on.
11 Yes, ma'am. Yes, ma'am. Isn't that what they're
12 supposed to do? Three were supposed to work. Two
13 were dead. Mr. Godwin, Ms. Trapp, who else is
14 supposed to work? John Portee. How does he usually
15 get here. Heather Hunter usually takes him. That's
16 a constant thing. Brought him that Friday before,
17 brings him this day. She drives him. He drives her
18 car. So what do they do? They get an address for
19 Ms. Heather Hunter. That's what law enforcement
20 does.

21 Now, what's going on this time with the
22 defendant and Heather Hunter? They're coming back
23 from Georgia. I talked to you about that. She talks
24 about his mood, the money. That money came from
25 Wendy's. I'm tired of being broke.

1 What else is going on? He's coming back.
2 Because again, his mood was so bad they left and came
3 back. Between 12 and 1 according to Ms. Owens the
4 defendant called her and said, well, the police were
5 out there. My cousin told me. Well, that wouldn't
6 work. How would he even know? He's trying to find
7 out if anybody has any information. That's
8 incredible.

9 She says I don't know what you're talking about.
10 Later Ms. Williams calls Jahquetta Owens calls and
11 she goes down. He knew the police were coming. How
12 else would he have known if he hadn't done the crime
13 himself?

14 Who else does he call? Well, he calls Demetrius
15 Gallman. And you all remember Demetrius. Demetrius
16 I think had been working somewhere, at Lizard's
17 Thicket, was sick and went home, woke up later on
18 that afternoon and saw that he been called by the
19 defendant.

20 He calls him back. And he said, man, what's
21 going on at Wendy's? And before I forget, when he
22 talked to Jahquetta Owens, let's talk about
23 consistently inconsistent. Consistently
24 inconsistent. What was the defendant telling
25 Jahquetta Owens. The defendant called her and said

1 he didn't go to Wendy's. He called and the phone
2 just rang. Credibility, believability? That's what
3 you have to decide the case on.

4 And what does he tell Demetrius Gallman? Well,
5 I went to Wendy's at 7:45. Not called. I went to
6 Wendy's. Didn't get an answer, called his mom. She
7 said call the police. He said no. You know, lying
8 is easy as you are moving forward. It's when you
9 have to stop and you're confronted with it. That's
10 when they catch up.

11 Defendant said he wasn't working. He went to
12 Georgia and that was his alibi. We have to prove the
13 defendant was at the scene of the crime. We go
14 through his actions, his words, physical evidence.
15 His alibi. Demetrius said, does that surprise you;
16 yeah, that surprised me he used the word alibi.

17 He's coming back from Georgia. At this time law
18 enforcement, Sergeant McRoberts, has already
19 conferred with his captain, Stan Smith. They've got
20 an address. They call the defendant's mama. As a
21 result of that they realize that he may be going to
22 Hawthorne Street. The defendant has come back into
23 town. He's been to Georgia with Chaz and Stacy and
24 Heather. They're coming back into town.

25 He drops them off at Hawthorne, or they drop him

1 off at a friend's house somewhere. He stays there
2 for a while. He gives them some money to go buy some
3 stuff. You heard the detail of that. They come back
4 and pick him up. He's changed his clothes. I don't
5 know exactly when he changed them but he changed
6 them. I wonder why. He changed his clothes.

7 Look at these clothes. They look new to me.
8 Heather said he changed them changed. Chaz said he
9 changed them. He's coming back to Hawthorne then
10 after they pick him up from his friend's house.

11 Now, folks, \$1600 was stolen. I don't think Mr.
12 Strickler will get up here and say where is the rest
13 of the money. I'll tell you one thing. He was gone
14 for a while. There's 200 and something bucks in
15 here. I don't know what he did with that money. He
16 did something. Here is the rest of the cash.

17 Two people got this. Jed Clampet, just kind of
18 carrying around money, and somebody who's done a
19 robbery and murders. That's not Jed Clampet. This
20 isn't Beverly hills. I don't know what he did with
21 that other money. We don't have to prove all that
22 other money. That's not a reasonable doubt. I don't
23 think he'll harp on it.

24 He comes back home. They pick the defendant up
25 from his friend's house. They're coming back home.

1 Law enforcement at this point has met at Region
2 Three. Look at the timeline. They're all coming
3 back to Hawthorne. And in our world, into my life
4 comes Chaz Hunter. Chaz Hunter is the man of that
5 house. He is the man of that house. He's got
6 character. Yes, ma'am. She was -- Heather did a --
7 raised him right. He's the man, a man having to grow
8 up quicker than most brats.

9 But he gets back and he's up at the porch
10 looking down. They get back, all of them. And what
11 does he say he saw? Not one question on cross. I
12 see John Portee walk across the street into the woods
13 and get a bag. And I see him come back to the house
14 and go inside to the bathroom. Then I see him come
15 back out of the house and take off. He actually said
16 he put his head down and he went like this, leaving
17 with the bag.

18 At that point McRoberts in a trunk I think, in a
19 marked unit, come around. And at this point
20 McRoberts says the defendant takes off. That's
21 flight. I'm allowed to argue flight. I had a story.
22 I was going to tell you about it. But it's time --
23 I'm going a little -- when you all were kids, when I
24 did something wrong, bust a window out of one of my
25 neighbors where I grew up, I ran. That's what you

1 do. Evidence of guilt. Flight. You run. I had to
2 pay for the window and I got punished. There are
3 consequences with your choices.

4 But he took off. And Gonzales said I saw
5 something he was carrying. Chaz says he has that
6 bag. He takes off and he goes in the woods. Well,
7 because they met at Region Three, they've surrounded
8 the area. He's caught by one of the officers up on
9 Lakeside Road. You all see the map in there. There
10 is no bag.

11 What happens then? He comes back to the
12 defendant. Excuse me. He comes back to Sergeant
13 McRoberts. He comes back to Sergeant McRoberts. He
14 is brought back to him. The defendant is. He says,
15 "What you looking for me for? What's going on?"
16 Sergeant McRoberts says, "You know what's going on."
17 Well, then he says not that I called. Well, I went
18 by there earlier, at 7:45. Nobody was there. Then I
19 went on to Georgia. Lying is like breathing for him.
20 If he breathes, it's that easy for him.

21 He is taken down to the Sheriff's Department..
22 What happens after that? Lucas is called, David
23 Lucas and his dog. They go right -- and he'd just
24 gone in the woods. They go in the woods. And what
25 do they find? Say it with me in your mind. He finds

1 a bag. And what's in the bag? A gun. And what else
2 is in the bag? An ID with John Portee. What else is
3 in the bag? These cards to the Gentleman's Club with
4 his DNA on it, with his name tag, with his gun.
5 Incredible. Incredible. What happens next?

6 Chaz gives a statement. Heather gives her
7 statement. The officers have taken statements from
8 Jahquetta. They know about the threat. And then
9 what happens next? We get some phone calls we played
10 for you yesterday. We get some phone calls.

11 And it says on there your phone call is being
12 recorded. It says on there at the top you're being
13 recorded. You all go listen to it. One of them says
14 as he's talking to somebody, I submit to you it's a
15 family member, we need to get Heather on the team.
16 You all need to start being nice to her. Don't be
17 mean to her with your nose stuck up in the air. Be
18 nice to her. We need to get her back on the team.
19 She's crucial. Incredible. They got her back on at
20 least the roster when she testified. But you all
21 know what the truth is. And then what else do we
22 hear? What else do we hear? Get her back on our
23 team. Get her back on our team.

24 And then that other phone call. That other
25 phone call. He says, man, I wish -- they've got me

1 down. I wish I would have left that mother-fucking
2 bag with you because I had to throw it away.
3 September 13th. That's an admission, isn't it? I
4 wish I had left that mother-fucking bag with you.

5 Well, Mr. Strickler said, what bag would that
6 be? Would that be a bag of drugs? How many bags did
7 he have out in the woods that night? Well, how do
8 you know, too? What other evidence? And he says did
9 he know whether or not they had found the bag, law
10 enforcement? I don't know. It doesn't matter. It
11 doesn't matter. I submit he didn't. But if he did,
12 it doesn't matter.

13 He's talking about the bag, that I wish I'd
14 thrown that away and given it to you. I don't know
15 if you're going to be able to get it. It seems like
16 to me that's saying he thinks it's still out there.
17 It's on the other side of town once you go up
18 Lakeside. That's where it was found, near Lakeside.
19 So you're going to see this little -- and then the
20 call ended. Reasonable doubt?

21 And finally, ladies and gentlemen, you heard
22 from the last two witnesses, Latora and Carlaus. You
23 heard from them. You're saying no, no, we didn't.
24 Yeah, you did. Because as they were down there, no
25 defensive wounds. You remember what the doctor said?

1 What's that mean? They didn't have a chance. They
2 didn't have a chance to defend themselves. Sitting
3 there at that table, counting the money, getting
4 ready.

5 They left something for you. They left
6 something for you. Inside Latora's body, this was
7 pulled out. You all keep this. You find it, Doctor.
8 It's going to lead to the killer. It's going to lead
9 to the third person that's on that sheet that's
10 supposed to work that day, the only other person who
11 could have got in there. No doubt about it. And
12 maybe this will help you. Take it from me.

13 And Latora said, I got one, too. Take it. Take
14 it. Go back there and feel this. It's them. It's
15 the victims. And go back there and get that gun and
16 feel malice. You want to feel malice? Feel it.
17 Pass it around. The judge says you can take it back
18 there.

19 And what happened when they collected this? The
20 doctors gets it, brings it back, gives it to law
21 enforcement, gives it to David Collins. And you
22 watched him. Is he professional, care about his job?
23 I even asked him. He loves his job. He gets these.
24 He gets the gun. He test fires a bullet. That's
25 what they do. He looks at it under the microscope.

1 And the grooves and the shell casing they found from
2 Wendy's are the same as the grooves of the test fired
3 bullet he did.

4 And this bullet and the bullets from both
5 bodies, the core of one of them, no; but the other
6 one matched to both bullets from testifying. They
7 matched. They matched, ladies and gentlemen. These
8 bullets from their bodies came from the gun that had
9 John Portee's ID and DNA in it. That's my opinion in
10 my expert field. There is no doubt about it.

11 Ladies and gentlemen, I want to thank you all
12 for being here. I was going to connect the dots, and
13 I'm not going to do it. I was going to write out
14 guilty and connect the dots. But this really is like
15 that, like that game we played when we were little,
16 connecting the dots.

17 Three were to open. I'm going to do it. Three
18 to open. Three were to open. Well, let me start
19 off. There's a threat. Three were to open. Two of
20 them are dead. The only way to get in that store,
21 the only way to get in there is if you're an employee
22 and an employee lets you in. The other person that's
23 supposed to be there didn't show up, did he? Didn't
24 show up.

25 We get an address. Well, first we find the

1 shell casings. We see their bodies, how they were
2 laying. There wasn't any defensive wounds. We get
3 an address. We go and we go to Hawthorne Road, see
4 the defendant. The defendant runs.

5 Well, before that, Chaz, after the defendant had
6 changed clothes, sees him go across the street and
7 get a bag. And then he sees him take that bag into
8 the woods. And then law enforcement catches him. He
9 doesn't have a bag. We send the dog. We get the
10 bag. And in the bag is his ID. In the bag is his
11 DNA. His DNA is on the hat. It's a partial DNA
12 profile in there, another woman. It could be
13 anybody? It's not a reasonable doubt.

14 All DNA came back to him. There were some
15 profiles they couldn't develop on the gun that. So
16 they couldn't match it to anybody. That's not a
17 reasonable doubt. We heard nine or ten minutes of
18 cross on that. There was nothing they could do with
19 it.

20 They found the gun in there. They take the gun
21 to David Collins. They get the bullets from the
22 bodies of the ladies. David Collins matches the
23 bullets. And then we hear the defendant say, let's
24 get her on our team, let's get her on our team. God,
25 I wish I had given you the bag. Folks, I didn't even

1 mention Heather in here. You didn't need Heather to
2 prove this case. If you don't even have Heather,
3 you're got beyond a reasonable doubt. I didn't even
4 mention Heather in there.

5 You go back and he had the money. It came from
6 Wendy's. I'm tired of being broke. You don't need
7 Heather. Is there any reasonable doubt in here? We
8 respectfully submit there's not.

9 On September 3rd, 2006, he exercised his
10 greatest power. My dad told me as a small child that
11 your greatest power is your power to choose. He
12 chose to take the life of Latora Bolton and Carlaus
13 Johnson because he was mad and because he needed
14 money. He ended their lives.

15 It's now time for you to exercise your greatest
16 power, your power to choose. And after you hear the
17 law and you return to your room, on behalf of Ms.
18 McDuffie and myself, Sergeant McRoberts -- and law
19 enforcement did an excellent job in this case. They
20 got in, they zeroed in on it, they did the right
21 thing. What if they'd waited? What if they hadn't
22 found that bag? Is it too quick? Thank you,
23 Sergeant McRoberts. Thank you, Captain.

24 Go back there and exercise your greatest power,
25 your power to choose, that on September 3rd, 2006,

1 John Portee was the only person that could have got
2 in there. John Portee too that .45 and decided for
3 whatever reason to end those ladies' lives and take
4 the money, and we're going to find him guilty. Thank
5 all of you.

6 **MR. STRICKLER:** May it please the Court, sir?

7 **THE COURT:** Sure.

8 **MR. STRICKLER:** Mr. Foreman, ladies and
9 gentlemen of the jury, this is a case about tunnel
10 vision. This is a case of which the police focused
11 in on John immediately. It's a case about a few
12 other things. It's a case about listing of evidence.
13 It's a case about evidence that you haven't heard.

14 I thought at one point it was a case about
15 trying to have a trial based on passion rather than
16 reason. And certainly Mr. Meadors' closing was
17 passionate.

18 I objected at one point early in the trial. I
19 believe there was testimony regarding a witness not
20 working at Wendy's, stopping the day after. I
21 thought that was irrelevant. And I believe that
22 objection, His Honor overruled me. And he was right.
23 It turns out it is relevant. Because they elicited,
24 the State elicited, that each person there, the fact
25 that they quit working at that place after this

1 occurred.

2 How is that relevant? It's relevant in two
3 ways. It's relevant in that it shows that the State
4 wants you to go ahead and just the case based on
5 passion without any evidence, and it goes to show
6 what bias these witnesses had against John Portee,
7 what prejudice they had against John Portee.

8 There is no doubt. They left Wendy's. It
9 changed their lives. Somebody has got to tell you
10 that. There is not doubt that the State wants you to
11 judge the case on passion and prejudice. I was wrong
12 and the judge was right when he overruled my
13 objection.

14 I want to discuss a couple of legal issues with
15 you and then I'm going to briefly review the evidence
16 in the case. I'm not going to talk about the law.
17 His Honor will discuss the law. I don't have any
18 real difference with Mr. Meadors as far as what the
19 law is in the case.

20 Let's just get a couple of things straight up
21 front. There is no question that a murder took
22 place. That's not an issue. Nothing that I or
23 Ms. Thomas has done in the trial of the case has been
24 intended to demean either of the ladies in this case.
25 No one deserves to die in that fashion, period.

1 Similarly, no one deserves to be tried for the
2 most serious offense in the state of South Carolina
3 while the evidence is lacking or by giving their
4 comments through the witnesses. Just once again,
5 it's passion and prejudice. And it doesn't mean that
6 I'm cold hearted. I understand people have loss.
7 People react to it.

8 I'm saying that the law in South Carolina says
9 that you all as you sit as jurors have no friends to
10 reward nor enemies to punish. You're to judge the
11 case based on the facts as they're presented and on
12 the law as the judge charges it, and that's it. And
13 that's what I'm going to ask you to do.

14 Now, a couple of things? As you've been told by
15 His Honor, John is presumed innocent. John is
16 innocent unless and until you all decide otherwise.
17 He's presumed innocent unless and until you all
18 decide otherwise based upon the truth presented from
19 the witnesses beyond a reasonable doubt that he is
20 guilty. That's the law.

21 Now, I'm going to talk about what a reasonable
22 doubt is, what it is, what it isn't. What is it is
23 the highest burden of proof that there is in the law
24 of this land, the law of this state, the law of this
25 country. I mean, if you're in a car wreck case in

1 here trying it, they use a preponderance of the
2 evidence. If one convinces you just a little bit
3 more than the other, they win.

4 There is an intermediate standard. Listen to
5 the name on the intermediate standard. It's called
6 by clear and convincing evidence. That's not the
7 highest level. Clear and convincing evidence. The
8 highest standard is proof beyond a reasonable doubt.
9 That's what you need to find in this case.

10 And I would like to talk with you about bias,
11 prejudice, demeanor of the witnesses. You will be
12 the judges of the credibility of the witnesses in
13 this case, and you bring your common sense and you
14 bring your ability to analyze how someone appears.
15 And that's their demeanor. That's just a legal term,
16 demeanor, how they appear to you. Okay? Are they
17 credible, believable? Did they answer questions or
18 do they evade answering questions?

19 Now, I'm probably going to get up here and be
20 folksy with you and tell you stories about my mama
21 and daddy. I'm not a particularly folksy guy. So I
22 apologize if I'm lacking a little in the
23 entertainment area. That's just not my style. I
24 don't do that.

25 And it's interesting. I made a list and I've

1 been checking it off as Mr. Meadors closed. One of
2 the first things I noticed about this incident, I
3 knew he was going to do it. This is an example of
4 misleading evidence.

5 I didn't ever hear testimony from the stand,
6 "I'm going to kill you." I heard testimony regarding
7 an argument. Okay? Ms. Trapp, her testimony wasn't
8 that.

9 Now, I heard a couple of things from her.
10 People don't like to work on a Saturday either.
11 Okay? Volunteer to work on Saturday. Now we're
12 getting into, we're trying to put a spin on things.
13 And that's where I'm talking about misleading
14 evidence. Threaten to kill. And the spin then is,
15 it was immediately preceding September 3rd, 2006.
16 Well, when in fact, it was not. All right.

17 I talked with Ms. Crumpton. It was
18 Ms. Crumpton, wasn't it? Yes. At some length.
19 Because she gave a statement during Wendy's internal
20 investigation of this argument. All right. No
21 mention of any threat to kill in her statement. She
22 got real fuzzy about when the statement was given.
23 She couldn't remember this, that, and the other.

24 I cleared it up later when I talked with Mike
25 Godwin who investigated the incident for Wendy's who

1 told us on the stand the complaint initiated
2 August 24th, not just a couple of days before the
3 incident, the killing. August 24th.

4 The complaint was initiated by John Portee. He
5 did the complaining about Ms. Bolton. The incident
6 on the 24th, Mr. Portee I believe reported it on the
7 25th. And the investigation took place sometime in
8 the time period between then and the incident.

9 And, you know, we heard that basically things
10 had resolved themselves before then. We also heard,
11 and the implication is that this is a killing because
12 they had this argument and he gave this threat to
13 kill. There's been no evidence of threat to kill.
14 And there's no evidence that that was a reason for
15 the killing, but the State wants you to believe that.

16 So they pushed the time forward as close to the
17 incident as possible, and I've got to push it back to
18 where it actually was, to where the incident actually
19 happened, because they don't want the truth to come
20 out.

21 And then it's, you know, he volunteered to work
22 on Saturday and people don't do that. Well, it was
23 Moesha Outin that testified -- and I didn't even
24 catch the name. She talked briefly about someone
25 volunteering to come up there at another point

1 because it was their birthday on Saturday. Well,
2 people don't like to work on the weekend, but people
3 work on the weekend all the time.

4 And then it was actually Stephanie Crumpton
5 herself who said she volunteered to come in to work
6 on the day this incident occurred which was a
7 Saturday. So John volunteered to work on Saturday,
8 somehow spooky, like I assume that the killing would
9 have occurred on Saturday, is the indication they
10 want you all to have had he been granted his wish.
11 Well, no. Okay.

12 Jahquetta, a telephone call. We got that. This
13 is a list of things I knew he was going to say that
14 are just plain wrong. Jahquetta Owens, telephone
15 call. He made the call before the police had even
16 discovered it. We heard from the first officer on
17 the scene. He arrived there I believe at 2:07 in the
18 afternoon. Okay. But he made the call. And she
19 said, oh, I don't know what time.

20 That's the case. Yeah. Except we talked with
21 her. Ms. Thomas talked to her. She talked with
22 another person and the two of them went up to Wendy's
23 and the police were there. And when did she talk
24 with that other person? Within 15 minutes of talking
25 with John. Which means it wasn't at 1:00. The

1 police were already there. Everyone was already
2 there. Do you know how we can clear this up? It's
3 easy how to clear this up. It's called phone
4 records.

5 Did you hear any witnesses that didn't get
6 called to testify? There was a person called out to
7 you when you were qualified. Someone from Cingular
8 telephone. Okay. To deal with phone records.
9 John's phone records which can detail precisely when
10 the call happened and which the State knows do not
11 support it occurring prior to --

12 **MR. MEADORS:** Objection. That's wrong. That is
13 wrong.

14 **THE COURT:** Yeah. You can argue they didn't
15 call him, but you can't say what they may or may not
16 have done.

17 **MR. STRICKLER:** Thank you, sir. When did this
18 take place? Well, I think we've got a time of 8:05
19 being clocked in by Ms. Johnson. It took place at
20 some point after that. We have Ms. Jones being
21 unable to get in touch with them. I guess she got in
22 touch with them at what? 8:15 again I think it was,
23 and then called again around 8:40, sometime around
24 8:40 and didn't get an answer. It may have happened
25 in that timeframe. It may have happened later. Not

1 sure. The phone didn't get answered at 8:40. That's
2 what's proven.

3 Now, you get Mr. Oates, the crime scene
4 technician. And here is where the State didn't get
5 the answers they wanted. Latex gloves. Okay. Found
6 their pictures of them. I'm not going to go through
7 here and wade through all the pictures. Latex
8 gloves. There's a couple. I submit they were
9 probably being used when they were prepping the
10 lettuce.

11 Well, their theory being, wearing gloves, there
12 won't be any prints on the gun. Latex gloves. That
13 didn't work out, because Mr. Oates said, yeah, I
14 mean, it makes it hard to -- can interfere but you
15 can get prints even though you're wearing Latex
16 gloves.

17 And it doesn't work out because, you know, the
18 Latex gloves are taken into evidence. And I talked
19 with Mr. -- I talked with Mr. Oates about spatter.
20 Okay. Blowback, if you remember that term. But
21 there are pictures, and they do reflect the pattern,
22 that the spatter was backwards. What was not found
23 on the Latex gloves, what was it? DNA wasn't found
24 on the gloves.

25 Other set of gloves down here somewhere, black

1 gloves recovered from across the street from Ms.
2 Hunter's house. Okay? No blood on that, one. Two,
3 take a look at them and try and see --

4 **COURT REPORTER:** I'm sorry. I can't hear, Your
5 Honor.

6 **MR. STRICKLER:** I'm sorry. I apologize. Now,
7 Heather. I think, I submit to you that Ms. Thomas
8 accurately characterized, you've given three
9 statements or four. Probably a different one when
10 you heard it on the stand. Why?

11 The first statement doesn't put John doing
12 anything. The second doesn't put him admitting to
13 doing anything. The third taken several days later
14 is when she's alleged, she alleges he says, you know,
15 money got from Wendy's, tiring of being poor, tired
16 of being broke. Fine.

17 What did she testify to on the stand? Well,
18 she's talking with the police for, oh, I don't know,
19 six hours with a rotating team of deputies coming
20 through working on it. Well, what happened during
21 the six hours of interrogation? This is on the 3rd.
22 I don't know how long they talked with her on the 6th
23 for. This is on the 3rd. Six hours they're coming
24 through talking some more. What happened?

25 Well, you know what? We don't know. She says

1 she felt intimidated. Well, she's worried about her
2 children. Yeah. Well, how would we know? Oh, I
3 don't know. There's something called a tape
4 recorder. And you just tape the interview. And know
5 whether you just sit down and ask questions or
6 whether there's threats that were made. Play ball or
7 you're going to lose your kids. Play ball or
8 something else will happen.

9 Or, you know, it's not like the Sheriff's
10 Department doesn't know how to make recordings. They
11 evidently record every phone call made from the
12 county jail. So it's hardly beyond their technical
13 capabilities to record the conversations between an
14 investigator and someone that's being not interviewed
15 but interrogated at the police department. So, who
16 knows what was said or what pressure was applied?

17 Mr. Meadors has control over the future. You
18 bet. He's a prosecutor. He's a prosecutor. He can
19 do what he wants to do. Those charges can disappear
20 if he wants them to.

21 **MR. MEADORS:** Your Honor, I'm going to object to
22 that.

23 **THE COURT:** He can go ahead.

24 **MR. STRICKLER:** He can get up at the time she
25 appears before a judge and ask for the maximum

1 penalty if he wants to or ask for the minimum if he
2 wants to. Prosecutors are given very wide discretion
3 in how they pursue a case. And that's the only point
4 I'm trying to make. She's got a lawyer. She knows
5 that.

6 All right. You know, the green bag, Chaz's
7 statement that it was in the -- that he saw John get
8 it from the woods is a problem in the sense that
9 Heather's testimony was that when they got out of the
10 car and came back to the house they went into the
11 house. He didn't go into the woods. Well, I don't
12 know whether he got it from the woods or not.

13 And who -- this is upon Heather and Chaz. They
14 had dropped John off at someone's house that's
15 referred to as MB and gone out I believe and done
16 some errands and then they had come back and picked
17 him up. Then they returned to the house on
18 Hawthorne.

19 MB. I submit you could reasonably infer that it
20 might be Franklin Michael Brown who spent time with
21 John earlier. Some MB spent time with John the
22 afternoon of the 3rd who was on the witness list and
23 who we haven't heard from.

24 Just a few more things. Just again, let me
25 doublecheck and make sure it's on the list. It is.

1 K-9. We heard from Lieutenant Elsey, CSI. And she
2 talked about photographing the tracks of the dogs
3 that ran, that went not over on Hawthorne but ran at
4 Wendy's, from the rear of Wendy's across the parking
5 lot, I guess through a tree line, a creek, across
6 another parking lot, back behind some other
7 businesses. Okay.

8 She took a bunch of pictures, none of which you
9 have, because the State has elected not to go ahead
10 and produce it. Okay. The dogs hit a track and ran
11 that track. She collected evidence there to include
12 oil, what appeared to be oil spots. And they even
13 collected oil from the car that Heather Hunter had
14 rented and elected not to go ahead and share those.
15 Because, you see, if the oil spots were compared and
16 didn't jibe with the oil from Heather Hunter's car,
17 then that means that they're from a different car.

18 I spent a fair amount of time talking with
19 Mr. Amick about DNA in this case. That's because in
20 this age DNA is given preferential treatment.
21 Everyone believes it. Well, here is the truth about
22 the DNA. The two items that they located that they
23 found any DNA associated with John, that being a
24 Wendy's hat and I think one of the cars. I talked
25 with him only about the Wendy's hat.

1 There were 15 different sites, loci, loci that
2 they test at. That's all we were talking about.
3 Okay? Fifteen of them. Three of them they had no
4 results on from the examined item, from the hat
5 itself. They didn't get any result for whatever
6 reasons. Okay?

7 Three of them, the results they got did not
8 match Mr. Portee. And what Mr. Amick did was explain
9 away why that didn't matter that they didn't match.
10 Okay? So what you could say is that they got a
11 definite correlation of nine of the fifteen cites
12 that they looked at and that fifteen of the fifteen
13 have to be in complete agreement in order for it to
14 be the same person. If one of them is not in
15 complete agreement, it's not the same person.

16 Now, he's explained away why they couldn't go
17 ahead and -- well, not why they couldn't get
18 results -- why the results they got at three of the
19 locations that they tested did not agree with John
20 Portee's. Explained that away. And it comes down
21 to, because I say so.

22 Could have been brought in -- I gave the
23 electropheragram to him because that's what I had.
24 And he could go through that and explain to you, he
25 could, why he can arrive at those conclusions. But

1 they elected not to. This is the approach that they
2 elected instead. We'll go ahead and just tell you
3 it's a match because I say it's a match, period.

4 Similarly with Mr. Collins, the microscopic
5 markings on a shell casing, markings on a jacket or
6 jackets from bullets. That's what he compares. He
7 says they're the same. He takes pictures of them.
8 Did someone come in and show you what the pictures
9 looked like, show them to you side-by-side and
10 demonstrate how they were the same? No. I just say
11 they were the same.

12 Well, how do you learn this science? Well, you
13 sit at the feet of someone else for two or three
14 years and you do a lot of comparisons. Well, what --
15 I used the term empirical. Okay? Because I'm kind
16 of a dry, non-entertaining guy. Okay? That means
17 provable, provable, replicatable, demonstrable
18 science. What empirical evidence is there as to how
19 many points of agreement you have to have between a
20 shell casing and the fired bullet that you know what
21 is happening? How many do you have to have to say
22 that they came from the same gun? You know, a test
23 fired shell casing and a shell casing from the scene.

24 Well, there is no evidence on that. That's left
25 to the individual examiner to just decide on his own.

1 So what you have here as far as both the DNA and as
2 far as the ballistics are examples of pure opinion
3 testimony. I say it is. It's not even I say it is,
4 because it's backed up by science in that situation.
5 I say it is because in my opinion it is.

6 Now, the State would have you left with the
7 impression that John was arrested wearing a Wendy's
8 hat. They've not gotten up here and established
9 that, no, the Wendy's hat happened to have been
10 seized from his house. He was wearing a black hat
11 when he was arrested.

12 And, lastly, the phone call. I can't afford to
13 blow a bunch of things up. Let me take a look here.
14 The phone call when they're discussing getting
15 Heather on board, Heather on board. Here's the end
16 of the phone call. You all have the disks with the
17 recordings on them back in the jury room. Here is
18 the end of that call.

19 "But, see, the thing is though, they're going to
20 look real stupid when they figure out I didn't do no
21 shit like that. They're going to look real stupid.
22 You know what I'm saying?"

23 And the other call about the bag. It's
24 important to read things in context. Earlier what's
25 this call about? I'll tell you what it's about.

1 It's about money. Just a little way earlier, "Tell
2 her to send me some money ASAP, Cuz. I'm talking
3 about needing some mother-fucking money bad. I don't
4 know how long I'm going to be down here but they've
5 really got me down, baby."

6 Well, we don't know who he's talking to.
7 Another man. "Yeah, man, they've got me down, and I
8 wish I could have left that mother-fucking bag with
9 you." Right after he's talking with him about the
10 money. I wish I could have left that bag with you.
11 What bag is it? It may be money. It may be drugs.
12 I asked them whether it could have been drugs.

13 Walking down Lakeshore or Lakeside rather.
14 "Yeah. Right then. It's on the other side of town.
15 Once you go up Lakeside you're going to see this
16 little" -- well, if I'm going to describe where I
17 left the green bag, first of all, how about it's in
18 the woods right behind Heather's house? Rather than
19 starting to talk about Lakeside.

20 How about also as they talked with him about the
21 call occurred on the 13th, ten days after the arrest,
22 at which point in time, oh, one would certainly hope
23 at which point in time it's reasonable to infer he's
24 had an opportunity to speak with any number of people
25 up to and including possibly an attorney about this.

1 Now, you've come here and been sworn to well and
2 truly try this case and true deliverance make between
3 the State of South Carolina and John Portee who you
4 shall have in your charge. And once the judge has
5 finished charging you, that's what it will be. It
6 will be in your charge at that point. And true
7 deliverance make between the State of South Carolina
8 and the defendant.

9 You're not to be governed by bias or prejudice.
10 You have no friends to reward. You have no enemies
11 to punish. I submit to you that when you look at the
12 evidence in this case, what you see is evidence
13 that's not been submitted to you, you see evidence
14 that has been twisted in its presentation to you, you
15 see Ms. Hunter who is an incredible witness because
16 you can go ahead and decide if she can't tell the
17 same stories twice what that says about her; I submit
18 to you that when you go back there and look at this
19 evidence objectively and be governed not by passion
20 and prejudice, that you'll return verdicts that speak
21 the truth. I'm going to ask you to return verdicts
22 that speak the truth, those being verdicts of not
23 guilty. Thank you.

24 **THE COURT:** Okay, jurors. We're going to take,
25 you know, a normal 15-minute break. Don't talk about

1 the case quite yet. Just kind of ease out.

2 (Jury out at 11:12 a.m.)

3 **THE COURT:** Okay. We are at ease. Mr. Meadors,
4 Mr. Strickler, we didn't mention, there's one thing
5 on malice this law that I charge them. Neither of
6 you all mentioned it. Implication of malice can
7 arise from the commission of a felony. That's all.

8 **MR. MEADORS:** Yes, sir.

9 **THE COURT:** So don't be shocked. Just think
10 about it.

11 **MR. STRICKLER:** Yes, sir.

12 **THE COURT:** Okay. Not that it would.

13 **MR. MEADORS:** Thank you.

14 (Whereupon, a break is taken)

15 **THE COURT:** Okay. Mr. Meadors, Mr. Strickler,
16 you all got your adrenaline flowing under control?

17 **MR. STRICKLER:** Yes, sir.

18 **MR. MEADORS:** Thank you, sir.

19 **THE COURT:** All right. Only trial lawyers know
20 what I'm talking about. When you argue to the jury,
21 your heart just goes like that. You sit down; you
22 almost pass out. It's all gone. All right. Bring
23 the jury.

24 (Jury in at 11:28 a.m.)

25 **THE BAILIFF:** The jury is seated, Your Honor.

1 **THE COURT:** Okay, jurors. We're coming into the
2 final phase of the trial. At this point I'm going to
3 do what's called charging the jury. That's just
4 instructing you on the law that you will take and
5 apply to the facts as you find the facts to be when
6 you decide whether the State has met its burden of
7 proof on one or more of these indictments.

8 When we started the trial I explained to you
9 these three documents are not evidence. They just
10 contain allegations and that they did allege the
11 commission of three specific crimes, all of which
12 occurred on September the 3rd, 2006.

13 This indictment I'm holding up charges John
14 Henry Portee with committing the crime of armed
15 robbery on that date at the Wendy's restaurant. You
16 all understand what the case is about. I don't have
17 to read it to you. But that's the allegations in
18 that particular indictment. The other two
19 indictments allege the crime of murder, and they
20 allege that the victims were Latora Bolton and
21 Carlaus Johnson. Three charges.

22 The fact that an indictment has issued creates
23 no inference of guilt against Mr. Portee. Mr. Portee
24 is presumed innocent of all charges. There is
25 absolutely no burden on his part to prove that he is

1 not guilty. The State has the entire burden of
2 proof, and that burden of proof is that the State
3 must prove every element that constitutes a crime
4 with which Mr. Portee is charged beyond a reasonable
5 doubt before you jurors could return a verdict of
6 guilty. And it would take the unanimous consent of
7 all 12 jurors to reach a verdict in the case, whether
8 not guilty or guilty, guilty or not guilty.

9 Now, we have seated two alternates. Alternates,
10 you need to pay attention. I recognize that we
11 ordered lunch for you. Don't worry. You're going to
12 get lunch. But when I conclude these remarks I'm
13 going to request that the jurors step out. At that
14 point, just in case I forget to mention it again,
15 assuming the original 12 are still here, I would need
16 for you two alternates to stay in the courtroom.
17 Okay?

18 Now, it will take a unanimous decision of you 12
19 jurors to reach your verdicts in this case. And I
20 say verdicts because you're going to have to reach
21 three verdicts, and each verdict must be unanimous.

22 Mr. Foreman, your vote of course counts no more
23 than anybody's, but somebody has to preside over
24 deliberations and somebody has to sign the verdict
25 forms. It's all on here. The indictments won't come

1 back. If you'd like to see the front of the
2 indictments, we can copy them and send them back to
3 you.

4 But I'll just read one. It alleges the crime of
5 murder, that John Henry Portee did in Richland County
6 on or about September the 3rd, 2006 feloniously,
7 willfully and with malice aforethought kill one
8 Carlaus Johnson by means of a gunshot wound and that
9 the said victim died as a proximate result thereof,
10 all in violation of South Carolina Code of Laws
11 16-3-10. Well, if you want to read it, I'll copy it
12 and send it back. But I'm just summarizing the other
13 two for you, representing to you that the State has
14 the burden of proof beyond a reasonable doubt on all
15 indictments. And the indictments are not evidence.
16 You know, just because somebody is charged doesn't
17 create any inference or presumption that they did
18 something.

19 Now, Mr. Foreman, while the jury deliberates
20 somebody has to preside over the deliberations and
21 act as spokesperson for the jury. If questions occur
22 during deliberations, I can't have any running
23 meaningful conversation with you, but if you could
24 write the questions down with some specificity, I
25 will confer with counsel and see if I can answer the

1 question. If I can, I will. I'll tell you a few
2 things just to forestall questions coming back. If
3 you saw something during the trial and there was no
4 objection to it or you heard something during the
5 trial and it was not excluded, and it's not back
6 there, it was not formally introduced into evidence.

7 You have plenty of evidence. I can tell you
8 that there was a lot of proposed evidence.
9 Everything was pre-marked. Then as things were
10 introduced, the numbers were referred to. But while
11 they were numbered sequentially, they were not
12 produced sequentially. And if you're looking through
13 the exhibits once they come back, if you say we've
14 got a 61 and no 62, for instance, 62 was not
15 introduced in evidence. Some of them, there were a
16 lot of pictures that were marked and all the pictures
17 weren't admitted, various things like that.

18 And, for instance, I'm giving you the law in the
19 abstract. I can't really comment on the evidence
20 unless it's been presented. When I say if you saw
21 something you'd like to see, if a portion of a
22 document was read and the document was not
23 introduced, I can't supply to you the remaining
24 document. You can consider what you heard. If a
25 document was introduced in its totality, you'll have

1 it with you while you deliberate.

2 The bottom line, jurors, you're going to have to
3 decide these three charges based upon the admitted
4 evidence. Admitted evidence consists of testimony
5 that you heard and all exhibits that were introduced.
6 Anything that was formally introduced you will have
7 with you while you're back there with two exceptions.

8 I'm only going to send the gun back if you send
9 back and say you want it. You saw it. If you want
10 it back there, you can have it back there. It's been
11 disarmed and so forth. It's just better not to have
12 the gun back there in my opinion. But if you want to
13 see it, you can have it.

14 The other, some telephone conversations, you
15 heard them. They were introduced into evidence, the
16 recordings. But you don't have any recorder back
17 there. But if you really want to hear them again, we
18 can replay them. But we have to bring you back out.
19 They won't be back there. Anything else though,
20 except for those two, will be with you if the
21 document has been introduced formally into evidence.
22 So I can't supply anything to you. So that's not a
23 question that I'm going to respond to.

24 And, for instance, I just checked them off as
25 the witnesses testified, just something so the judge

1 can keep up with how long people testified and things
2 like that. Obviously everybody who was named as a
3 potential witness did not testify. So don't send
4 back, Mr. Foreman, and say, we would like to hear
5 from whoever you heard as a potential witness. They
6 didn't testify. All right?

7 In addition, don't send back and say -- and I'm
8 just picking out a name -- Investigator Gonzales
9 testified and I would like to ask him one additional
10 question. No. You can't ask any additional
11 questions. You have to decide the case based upon
12 the admitted evidence.

13 Now, jurors, I have told you several times, and
14 the attorneys have gone over it with you several
15 times, that the defendant is presumed innocent.
16 There is no inference of guilt against the defendant
17 because the indictment was issued. No inference of
18 guilt against the defendant because he was
19 incarcerated or arrested. He is presumed innocent.

20 The State has the burden of proof throughout.
21 The burden of proof of a criminal charge is beyond a
22 reasonable doubt. I'm only going to define it for
23 you one time. If you want to know additional charges
24 on it and you come back out, I will tell you
25 virtually the same thing. I'm not a judge who

1 historically reads charges, so a word or two might
2 differ, but it's going to be virtually the same
3 thing.

4 A reasonable doubt, jurors, is the kind of doubt
5 that would cause an ordinary person to hesitate to
6 act. A reasonable doubt is removed if you are after
7 viewing all the evidence firmly convinced that the
8 State has met its burden of proof and convinced you
9 of the defendant's guilt.

10 So, if based on your consideration of all the
11 evidence in the case, this consists of testimony and
12 documents and all inferences you can draw from the
13 totality of the evidence, you are firmly convinced
14 that the defendant is guilty you would find him
15 guilty. On the other hand, even if you think there
16 is a real possibility of him being guilty, if you're
17 not firmly convinced of his guilt, of necessity you
18 would give him the benefit of the doubt and find him
19 not guilty.

20 All right. So, the State has the burden of
21 proof on the issues or the elements that constitute
22 any crime that the defendant is charged with. They
23 have to convince you that each element of the crime
24 was performed by the defendant beyond a reasonable
25 doubt before you could return a verdict of guilty.

1 Now, I explained to you briefly that there are
2 two types of evidence. Some call it direct and
3 indirect, the same thing as direct and
4 circumstantial. As far as the law is concerned,
5 direct evidence and circumstantial evidence stand on
6 the same footing.

7 Direct evidence is where a person testifies to
8 something that he or she has observed through the
9 senses; or what they relate might not be true, but
10 that is direct evidence.

11 Circumstantial evidence means where a fact or
12 facts have been proved to your satisfaction from
13 which you jurors either taking them singly or
14 collectively can infer the existence of an additional
15 fact or facts. In other words, if based on your
16 finding of certain facts you can infer that other
17 facts existed, that would be circumstantial evidence.

18 Now, you jurors and you alone pass upon the
19 credibility of the witnesses who have testified.
20 Except for a few things, jurors, I am just
21 instructing you on the law in the abstract. In other
22 words, the instructions on murder are virtually the
23 same in every case. I have to tell you who is
24 charged but I'm not fact specific on how it occurred.
25 Okay. That's what you jurors have to decide after

1 you have viewed and reviewed all the facts in the
2 case.

3 So to reach your decision you evaluate all the
4 evidence, documents that have been introduced,
5 everything that's been introduced as well as
6 testimony. Now, you jurors have the absolute right
7 to decide which testimony is believable. In other
8 words, you have the right to believe a portion of a
9 witness's testimony or the entire testimony. You're
10 not bound to accept in its entirety the testimony of
11 any particular witness.

12 Here are some things you would look to when you
13 are evaluating testimony. Certainly the opportunity
14 that a witness had to observe what he or she
15 testified to should be considered by you. Since this
16 is a criminal procedure, jurors, all the witnesses
17 who testified were live here. Nobody testified from
18 a deposition. So you can consider the appearance of
19 the witness, the demeanor of a witness. Whether
20 testimony given by a witness is consistent or
21 inconsistent can be considered by you.

22 You would consider any interest or bias that a
23 witness has in the outcome of the proceedings,
24 whether a witness when they're testifying are
25 hesitant or forthright in answering questions is

1 another thing that you can take into account.

2 I explained to you jurors that generally
3 speaking, without getting into all the nuances, any
4 time a person testifies, if they have a prior
5 criminal record, that can be brought out. That does
6 not necessarily mean, of course it doesn't mean at
7 all that you should disregard what an individual
8 testifies to. That's just another factor that you
9 can take into account on whether you give credence to
10 what a particular witness testifies to.

11 In addition, jurors, if a person testifies and
12 has pending charges, you can consider whether those
13 pending charges would have impacted the testimony.
14 Now, again, I'm not fact specific. I just have to
15 mention to you the law concerning various points if
16 they are brought up during the trial. I don't direct
17 the comments considering the believability and
18 credibility to any particular witness. They apply to
19 all of them. The general bottom line, jurors, it's
20 just like what you do every day when you decide
21 whether someone is leveling with you. You know,
22 would I buy this car based on what the salesperson
23 told me and so forth, that kind of thing.

24 Now, during the trial several individuals were
25 qualified as experts. Before any of them were

1 qualified as experts I explained to you that I don't
2 vouch for anybody that testifies. I just allow them
3 to testify. What you decide is believable is up to
4 you. But when a person is qualified as an expert it
5 simply means that through education, work experience,
6 a combination of those factors, an individual has
7 acquired more knowledge in a particular field than
8 you or I have. If they are, however, qualified as an
9 expert, those individuals so qualified are entitled
10 to give opinions within their field of expertise.

11 A lay person, that's someone who is not an
12 expert, is limited in giving opinions in court, in
13 civil or criminal court. You jurors are not bound to
14 accept opinions given by experts, and you don't have
15 to accept any opinion given in its entirety either.
16 You would consider the underlying facts on which an
17 expert bases his or her opinion; and, further, you
18 would consider the education, training, background
19 that the individual has when they testified, as well
20 as their appearance and demeanor and so forth.

21 But before you can accept an opinion given by an
22 expert the opinion has to be given to a reasonable
23 degree of certainty in the field that the person is
24 qualified in. Okay. So an expert, if they're
25 qualified in whatever field, if they start

1 speculating about something outside that field and
2 giving opinions on that, they don't get any more
3 credence than anybody else. Their opinions must be
4 given to a reasonable degree of certainty within
5 their field.

6 And to the extent that the State relies on
7 expert testimony to establish, for instance, the
8 cause of death, the expert must go a little further
9 and say most probably to a reasonable degree of
10 certainty death occurred as a result of whatever; X,
11 Y or Z.

12 Now, jurors, I briefly told you that you can
13 pick and choose testimony that you feel, although I
14 didn't use those exact words, are believable. After
15 you've done that, the relative weight that you
16 attribute to the believable testimony is entirely up
17 to you. You will decide whether the State has met
18 its burden of proof beyond a reasonable doubt based
19 upon the totality of the evidence. Certainly you are
20 entitled to draw reasonable inferences from the
21 totality of the evidence. Inferences of course get
22 back into the area of circumstantial evidence.

23 Now, you don't decide the case obviously on any
24 bias that you might have, any sympathy that you might
25 have with the decedents or with anyone affiliated

1 with Wendy's out there. You have to decide the case
2 based upon objective considerations of all evidence.
3 You can't be swayed by passion, conjecture or
4 anything.

5 Now, three crimes were charged. One other thing
6 that I mentioned to you. When people testify, the
7 defendant of course did not testify. I explained to
8 you there is no burden on his part to testify. He
9 has no burden to prove that he's not guilty. The
10 fact that he did not testify should not be even
11 considered by or discussed by you when you are
12 deliberating. The burden of proof on any charge
13 against the defendant remains with the State of South
14 Carolina and the State must present evidence that
15 convinces you beyond a reasonable doubt that he is
16 guilty before you can find him guilty of anything.
17 He stays presumed innocent.

18 Don't consider whether he testified or not
19 during your deliberations, and certainly don't find
20 him guilty unless the State has convinced you beyond
21 a reasonable doubt unanimously that he committed each
22 of the elements that constitutes the crime with which
23 he is charged.

24 Now, jurors, the first charge that I'm going
25 over with you is armed robbery. I will tell you that

1 the three charges, the armed robbery and the two
2 counts of murder, are each felonies. Okay. They are
3 classified as violent crimes but they're also
4 felonies.

5 Now, armed robbery is the highest form of
6 larceny, which as you would understand it would be
7 stealing. Okay. In order to constitute robbery it's
8 incumbent on the State to establish various things by
9 the greater weight of evidence. They have to
10 demonstrate and convince the jurors beyond a
11 reasonable doubt that there was a taking. Taking
12 means removing property of course. That the taking
13 consisted of personal property. And I will tell you
14 that money is personal property. That the personal
15 property belonged to another person, not the alleged
16 defendant's property.

17 Next they must convince you that the property
18 was carried away, taking personal property and
19 carrying it away. Then they have to establish by the
20 greater weight -- not by the greater weight but by
21 beyond a reasonable doubt that the taking and
22 carrying away of the property was done with the
23 intent to steal, which means that the defendant
24 intended to convert that personal property to his
25 personal use, never to give it back or anything.

1 Stealing is what it would be.

2 Now, that's just what stealing or larceny is,
3 jurors. When you add to it that personal property is
4 taken from someone and carried away with the
5 intention of stealing it, if it's done by force, then
6 it becomes robbery. If it occurs and in addition to
7 force that force is carried out while using a deadly
8 weapon, then it would become armed robbery. And the
9 state has defined a deadly weapon as a gun, pistol,
10 knife, dirk, anything that can do great bodily harm
11 to another person.

12 I can and I need to explain to you jurors that a
13 victim does not have to be alive when a robbery
14 occurs. However, before you can find a defendant
15 guilty of armed robbery, the State must demonstrate
16 to you where a victim or victims have died that the
17 death of the victims -- not the victims -- well,
18 there were victims, the death of the individuals in
19 this particular case and the taking of the property
20 constituted a continuous chain of events so
21 interconnected as to be inseparable.

22 In other words, a person can, you know, just
23 walk up behind you and hit you on the head with a
24 sledgehammer and take your billfold. You're guilty
25 of armed robbery there. Right? Okay. It just has

1 to be part of the continuous thing. The victim can
2 be dead before the property is taken is what it
3 amounts to to constitute the crime of armed robbery.

4 Murder, jurors -- and one other thing, not that
5 you all don't know this. The property taken does not
6 have to belong to the individual. It just has to be
7 not the defendant's property, and the person from
8 whom it's taken had custody or control over the
9 property. It can be an employer's property. It does
10 not have to be an employee's property where a
11 business is robbed.

12 Now, jurors, murder is the unlawful killing of
13 one human being by another human being with malice
14 aforethought, express or implied. That's just the
15 definition of murder, jurors. Or you can say it's
16 the unlawful killing of one human being by another
17 human being with malice aforethought, express,
18 implied or inferred. Because, you know, implied and
19 inferred are kind of synonymous; not quite.

20 Malice must exist, jurors. Malice is a term of
21 art that imparts wickedness. It excludes just cause
22 or excuse. Express malice is where, for instance, a
23 person says they're going to kill somebody and then
24 they just immediately kill somebody. You can
25 understand that.

1 The jury considering the entire case can also
2 conclude by deductive reasoning that under certain
3 circumstances malice might arise even though there
4 was no express or direct evidence of an intent to
5 kill.

6 If a person, for instance, kills someone during
7 the commission of a felony, the implication of malice
8 could arise. That's just evidence in the case. The
9 jury can consider whether malice would arise from
10 that.

11 And in addition, where a deadly weapon is used,
12 it's permissible for a jury to infer malice. If it's
13 proved beyond a reasonable doubt that a person was
14 killed with a deadly weapon or a dangerous
15 instrumentality, the implication of malice does arise
16 and it would permit you to infer malice but it would
17 not require you to infer malice. That would be
18 entirely up to you jurors. In other words, you
19 jurors are free to accept or reject any inferences
20 raised from the commission of a felony or the use of
21 a deadly weapon or whether malice was proved.

22 Now, jurors, malice does not have to exist for
23 any lengthy period of time. It just must predate the
24 killing. Okay. If it's right before the killing,
25 that satisfies the definition of premeditate. That's

1 basically the law of murder, jurors. It's relatively
2 simple law but it's difficult sometimes for jurors to
3 decide whether the State has met its burden of proof
4 beyond a reasonable doubt.

5 Now, jurors, a couple of small things. I don't
6 know if they're small; just law. I just give you the
7 law, you know. I will tell you that mere presence at
8 the scene where a crime has been committed does not
9 prove a person is accused of committing a crime. You
10 can understand that.

11 In addition, where there is evidence of alibi
12 from whatever source, alibi simply means being
13 elsewhere. The State must prove beyond a reasonable
14 doubt that the defendant was present at the scene of
15 the crime, that he actively participated and did the
16 crime and that he was not elsewhere. In other words,
17 the State has got to prove he did it beyond a
18 reasonable doubt before you could find a verdict of
19 guilty.

20 If you have a reasonable doubt after viewing all
21 the evidence as to whether the defendant was present,
22 then you would have to resolve that doubt in favor of
23 the defendant and find him not guilty.

24 Now, jurors, while you deliberate, as I
25 mentioned to you, you will have with you all the

1 documents that have been introduced in evidence. You
2 will have with you this verdict form. There are
3 three verdicts alleged, jurors, for three separate
4 cases, all on one form. Twelve jurors have to agree.
5 Only the foreperson signs.

6 And the order in which the forms of the verdict
7 are typed has no bearing. On each charge, either not
8 guilty or guilty, guilty or not guilty. All right.
9 They are typed on here, not guilty, guilty. We could
10 have just as easily have typed guilty, not guilty.
11 In other words, that has no bearing on it. You
12 jurors have to decide whether the State has met its
13 burden of proof beyond a reasonable doubt on each of
14 the three charges.

15 The defendant and the State are entitled to an
16 independent evaluation by all 12 of you jurors on
17 whether the State has met its burden of proof on each
18 of the charges. You just don't automatically say if
19 you find him guilty of one charge that he's guilty of
20 the other two and vice versa.

21 So, you can either -- say you found him not
22 guilty, Mr. Foreman. You would sign, and you need to
23 circle or check not guilty. If you find him guilty,
24 you either check, circle or underline guilty. Don't
25 put marks on both forms. We won't know which one you

1 mean. We can understand checks, underlining or
2 circles. Okay. Or if there's enough room there, you
3 can write it out if you want to, guilty or not
4 guilty, not guilty or guilty.

5 So beyond that, jurors, I don't think I'll
6 instruct you at this point. If I bring you back out,
7 I intend no emphasis on what I instruct you. It's
8 just that I didn't cover something that the attorneys
9 thought I should have covered or that I should have
10 covered. Or I might have said State instead of
11 defendant or something like that. Sometimes that
12 happens. So except for alternate jurors, if you all
13 would step out. Don't start deliberating though
14 until we tell you. Okay.

15 (Jury out at 12:00 p.m.)

16 **THE COURT:** All right. The State all right?
17 You need anything? The alternates are going to go.

18 **MR. MEADORS:** Okay. Respectfully, when Your
19 Honor was talking about express malice, I thought I
20 heard you say that it had to be right before the
21 killing, and I don't think that's --

22 **THE COURT:** I'm not going to recharge them on
23 that.

24 **MR. MEADORS:** Other than that --

25 **THE COURT:** They can find it. Mr. Strickler.

1 **MR. STRICKLER:** No, sir. Nothing.

2 **THE COURT:** All right. What are we going to do
3 with the alternate jurors? They don't have to --
4 they're not going downstairs. We're not picking
5 another jury and putting them on it. They can go.
6 They're through for the week. I'm the judge. Don't
7 look at me like that. They're through for the week.
8 We've got plenty of other jurors that haven't been on
9 juries this can serve. Unless you all want to be on
10 another jury. Oh, they don't want to be on another
11 jury. I'm surprised. Just take them somewhere until
12 the food comes. Or you all can go without it. But
13 you won't get your check today, I don't guess.
14 Ms. Pendergrass, is she there?

15 **MR. MEADORS:** Your Honor, usually they check in
16 with Ms. Jackie.

17 **THE COURT:** She will come talk to you about
18 whether you're going to go and when you'll get your
19 check and so forth. And if you need a statement
20 saying you've been here this week for your boss or
21 your employer, we can give you one of those today.
22 Ms. Pendergrass, the lady down there, she will get
23 that for you. If you all would, step back into the
24 hallway.

25 **MR. MEADORS:** Your Honor, one other thing.

1 There is a recorder down here.

2 **THE COURT:** I don't send it back.

3 **MR. MEADORS:** I didn't know if you knew that.

4 **THE COURT:** Unless they want it.

5 **MR. MEADORS:** I was just reminding you it's
6 there. Thank you.

7 **THE COURT:** Somebody might have a recording, you
8 know, a disk or something with them they want to
9 play. That's why I don't send these things back.
10 But if they want it, we'll send it back.

11 **MR. MEADORS:** Okay. Can I look at the verdict
12 form?

13 **THE COURT:** Here is the verdict form. And I
14 need all my bailiffs to -- how about get
15 Ms. Pendergrass or somebody. I need them to take the
16 evidence back to the jury room and tell them to start
17 deliberating.

18 **COURT REPORTER:** I'll need to go through it.

19 **THE COURT:** I know. But they don't need to
20 start deliberating.

21 **COURT REPORTER:** Okay.

22 **MR. MEADORS:** Your Honor, they've got Ms.
23 Bolton's name spelled wrong here. We'd like to
24 correct that. It says Belton, not Bolton.

25 **MR. STRICKLER:** Your Honor, I don't want to

1 cause any problem. Send the indictments back. I
2 don't care. It doesn't matter.

3 **THE COURT:** Just change it in longhand. It
4 doesn't matter. I don't have anything to type it
5 with up here.

6 **MR. MEADORS:** I missed yesterday when there was
7 objection to the indictment. So, Ms. McDuffie ...

8 **MR. STRICKLER:** If you want to write in each
9 place "we, the jury, unanimously", that's fine.

10 **THE COURT:** That's all right. They understand
11 that.

12 **MR. MEADORS:** Thank you.

13 **THE COURT:** All right. We are at ease until you
14 all get all the evidence together.

15 **MR. MEADORS:** I think it's ready.

16 **THE COURT:** Well, Ms. Williams wants to hear you
17 all say that's correct on the record, at least.

18 **COURT REPORTER:** If they say that, we can get
19 let it go, Judge.

20 **THE COURT:** We can let it go. If you'll hand
21 them that and tell them they can start deliberating.

22 **MR. MEADORS:** Judge, potentially, for any
23 members of the jury, lunch is ordered?

24 **THE COURT:** Yes, sir.

25 **MR. MEADORS:** So if the folks went to lunch,

1 they'd have time?

2 **THE COURT:** Well, we don't know that.

3 **MR. MEADORS:** I didn't know if you were going to
4 let them eat lunch.

5 **THE COURT:** If any of you all leave, we do need
6 to know where you're going.

7 (Whereupon, a break is taken)

8 (Jury deliberating at 12:12 p.m.)

9 (WHEREUPON, Court's Exhibit No. 3 is marked for
10 identification.)

11 **THE COURT:** Okay. Mr. Meadors, I understand
12 that the jury has reached verdicts on the three
13 matters submitted to them. Is the State ready to
14 receive the verdict?

15 **MR. MEADORS:** The State's ready, Your Honor.

16 **THE COURT:** What about the defense, Mr.
17 Strickler?

18 **MR. STRICKLER:** Yes, sir.

19 **THE COURT:** All right. Spectators, you all have
20 been pretty good. Don't think I am reprimanding you
21 or anything. This is just precautionary. We don't
22 know what the verdict is. If they come back guilty,
23 I don't want a bunch of clapping one way or the
24 other. If they come back not guilty, I don't want a
25 bunch of screaming. You know, the jurors have been

1 back there deliberating. We just have to, everybody,
2 live with whatever the jury decides. All right.
3 Bring them in.

4 (Jury in at 3:00 p.m.)

5 **THE BAILIFF:** All jurors are present, Your
6 Honor.

7 **THE COURT:** Mr. Foreman, has the jury
8 unanimously reached verdicts on the three matters
9 submitted to you?

10 **MR. FOREMAN:** Yes, Your Honor, we have.

11 **THE COURT:** And have you signed the verdict
12 forms?

13 **MR. FOREMAN:** Yes, I have.

14 **THE COURT:** If you would just hand it to
15 Mr. Dessasure. I know you've been back there
16 practicing reading like you see it on TV, but we
17 don't do it that way. All right.

18 **THE CLERK:** The State of South Carolina vs. John
19 Henry Portee, Jr. We, the jury, on indictment
20 2006-GS-40-7437 charging John H. Portee, Jr. with
21 murder in the death of Latora Bolton find the
22 defendant guilty. This is signed the foreperson,
23 January 15th, 2009.

24 We, the jury, on indictment 2006-GS-40-7438
25 charging John H. Portee, Jr. with murder in the death

1 of Carlaus Johnson find the defendant guilty. This
2 is signed the foreperson, January 15th, 2009.

3 We, the jury, on indictment 2006-GS-40-7439
4 charging John H. Portee, Jr. with armed robbery find
5 the defendant guilty. This is signed the foreperson,
6 January 15th, 2009.

7 Mr. Foreman, are these your verdicts and the
8 verdicts of the entire jury?

9 **MR. FOREMAN:** Yes, they are.

10 **THE COURT:** Anything else required of the jury
11 from the State?

12 **MR. MEADORS:** No, sir, Your Honor. Thank you.

13 **THE COURT:** From the defense?

14 **MR. STRICKLER:** The defense requests polling,
15 Your Honor.

16 **THE COURT:** Okay. All right. Ms. Pendergrass
17 is going to ask you all two questions. It's by juror
18 number, not your name. It's just was this your
19 verdict and is this your verdict. And what she's
20 talking about when she read it. She's not talking
21 about when you went back to start deliberating. All
22 right, Ms. Pendergrass.

23 **THE CLERK:** Juror number 23, was this your
24 verdict?

25 **JUROR:** Yes, it was.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes, it is.

3 **THE CLERK:** Juror number 290, was this your
4 verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is it still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Juror number 28, was this your
9 verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Is it still your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Juror number 228, was this your
14 verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Is it still your verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Juror number 211, was this your
19 verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Juror number 66, was this your
24 verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Juror number 231, was this your
4 verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is it still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Juror number 42, was this your
9 verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Is it still your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Juror number 256, was this your
14 verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Is it still your verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Juror number 208, was this your
19 verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Juror number 286, was this your
24 verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Juror number 120, was this your
4 verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is it still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** The jury has been polled, Your
9 Honor.

10 **THE COURT:** Okay, jurors. Here is how things
11 operate. I mentioned to you I'm the longest serving
12 judge. The first couple of years I was on the bench
13 I just, when they found somebody guilty, I just would
14 have them come up here and sentence them. I didn't
15 confer with the juries whether they wanted to watch
16 it or not, you know. And then somebody passes out
17 and all the jurors get all upset because, you know,
18 they don't personally think they got as much time as
19 he got, which is not their concern. I do the
20 sentencing, not the jury.

21 So since then I give the jury a choice. If
22 you'd like to stay in here and watch the sentencing
23 and what they say, the State now will give me what
24 information they feel I should have, and so will the
25 defense before I sentence him. You're certainly

1 willing to watch that. We're talking 10 or 15
2 minutes max probably. Mr. Strickler may make some
3 motions.

4 If you don't want to stay, you can just step
5 back to the jury room. We have arranged for deputies
6 to meet you escort you to your various locales.
7 You'll be through for the week. And Ms. Pendergrass
8 will come in and tell you, you know, when she'll ship
9 you the money. It will be before Christmas and
10 things like that. All right. So if anybody wants to
11 not see it, they can just step to the jury room. Now
12 would be the time. If you want to see it, just hang
13 in there.

14 Okay. Mr. Meadors, Mr. Strickler. Mr.
15 Strickler, I assume you make your various motions,
16 renew them?

17 **MR. STRICKLER:** At this point I am renewing my
18 previously made and stated motions. I would make a
19 motion for a new trial at this point in time, Your
20 Honor, referencing back to the previous motions I
21 made at this time.

22 **THE COURT:** Okay. The motion is denied. All
23 right.

24 **MR. MEADORS:** Can you give me just few minutes
25 with the victim advocate, just for a couple of

1 seconds?

2 **THE COURT:** You can take as much time as you
3 want, Mr. Meadors. We've got the rest of the day, or
4 at least until two minutes to 5.

5 (Pause)

6 **MR. MEADORS:** Thank you, Judge. I think we're
7 ready.

8 **THE COURT:** Okay.

9 **MR. MEADORS:** Judge, first is Katina Johnson
10 Hart, Ms. Carlaus Johnson's daughter. She'd like to
11 address Your Honor.

12 **MS. HART:** Good afternoon, Your Honor. I've
13 waited a long time for this day trying to find out
14 exactly what I wanted to say. So I'm just going to
15 speak from my heart. Words cannot express how the
16 death of my mother has changed my life and my two
17 brothers. What I don't understand is it started from
18 him being told to do something at work that he didn't
19 want to do.

20 I love my mother more than anyone could ever
21 know. And it's been very difficult for me because I
22 can't see her. I can't touch her. And these are the
23 things that I miss. She was my best friend as well
24 as my mom and she would do anything for me, as I
25 would do for her.

1 Every day I wake up I try to keep a positive
2 mind and I try to tell myself, okay, what would my
3 mom want me to do and how she would want me to live
4 my life. And I try to think positive and I try to do
5 the right things and I try to treat others like they
6 would want to be treated.

7 But I am asking you today, Your Honor, I think
8 that Mr. Portee deserves life in prison. I still
9 think he's getting off pretty easy because he's still
10 here. His mother can come visit him. He can talk to
11 his mother and his family members on the phone. I
12 can't do that with my mother. My mother is gone.

13 Every day I wake up I close my eyes and I try to
14 picture her face and I pray to God that I don't lose
15 the picture of her in my mind. So what I'm asking
16 you today is just to have justice for my mother. I
17 am just heartbroken.

18 **THE COURT:** Okay. Thank you.

19 **MS. HART:** Thank you.

20 **MR. MEADORS:** Your Honor, next is Nakita Bolton,
21 Latora's sister.

22 **THE COURT:** Okay. Ms. Bolton.

23 **MS. BOLTON:** Good morning, Your Honor. Katina
24 basically wrapped up everything that I basically want
25 to say. But the only thing I want to do is just read

1 the two letters that my nieces present. The first
2 one is Amaya Bolton. She's ten now. At the time the
3 time my mother lived she was only eight.

4 And her letter states: "Mommy, we really miss
5 you. I have dreams about you. I think about you all
6 the time. Auntie and Uncle Brian are taking care of
7 us. Today is Marty's birthday. I always think about
8 you. Hey, so far I got all A's and B's. I'm doing
9 very well this year."

10 "Not everyone is growing up without changing."
11 This is from her oldest daughter, Miah Nicole.

12 This is from her second daughter, Tyshae, which
13 was six at the time my mother died. "My mother,
14 Latora Bolton, was a good mother. I love her and she
15 loves me, too. I miss her so much. She is safe now.
16 Nothing can hurt her in any way. She's a wonderful
17 mother and I miss her very much. Love, Tyshae. May
18 God bless you."

19 And, I mean, Your Honor, ever since
20 September 3rd my family life has changed. It's
21 nothing nobody can do to bring my sister back. The
22 only thing I want you all to do, I feel he is a
23 threat to society and just give time life in prison
24 without even the possibility or ability of parole.
25 And thank you very much.

1 **THE COURT:** Okay.

2 **MR. MEADORS:** Your Honor, finally is Ms. Lisa
3 Williams who is Carlaus Johnson's sister.

4 **THE COURT:** All right.

5 **MS. WILLIAMS:** Good afternoon, Your Honor. I
6 want to first read a letter from my mom and dad who
7 could not be here today.

8 "My name is Anna Mae Johnson, the mother of the
9 deceased victim, Carlaus Johnson. Due to my physical
10 health condition, I am unable to travel and be in
11 attendance for this hearing. I'm not able to ride
12 any distance or sit for an extended period of time.
13 If it was not for my health, I definitely would be in
14 attendance. However, I do have great interest in
15 this case.

16 "Carlaus not only was my daughter but she was
17 one of my main caretakers. The unexpected murder of
18 my daughter has caused a great, unmeasurable loss."
19 Excuse me. Excuse me. I can do it. I can do it. I
20 can do it.

21 "Due to Carlos's murder, death, I have had to
22 relocate in order to be able to get the care I need I
23 was getting from her. I am currently living with
24 congestive heart failure as well as Lupus. This has
25 really been a strain on my health.

1 "I would respectfully ask that John Henry
2 Portee, Jr. receive the maximum amount of time
3 possible. I understand that he is asking for a trial
4 that could turn into a plea as well. Please have
5 someone notify me of the disposition so I will be the
6 one that lets you all know."

7 But I also want to say from me, I worked
8 Probation & Parole here in Richland County for 12
9 years, and I always felt that people that were on my
10 case load deserved an opportunity and chance like
11 everybody else to get their life back in order. I
12 can't say that today for all of them.

13 She was my only sister. And I don't know if
14 anybody knows what it feels like to have her taken
15 not for health reasons but taken unnecessarily. But
16 I no longer have a sister. I went from being second
17 daughter to the only daughter. And I see that my
18 parents face all the time how we long for her.

19 So when you see my face you see my sister's face
20 because we look very much alike. So I'm just asking
21 you that you would do what you know is necessary in
22 this case and honor the respects of their lives that
23 they lost on that day in September, and that you to
24 the full extent of the law do what's necessary.
25 Thank you.

1 **THE COURT:** Okay. Thank you.

2 **MR. MEADORS:** Judge, I'm not going to name them
3 all. But in the back are other family members and
4 friends --

5 **THE COURT:** Sure.

6 **MR. MEADORS:** -- that have been here throughout
7 this proceeding. And I want to thank them for their
8 patience. Thank you.

9 **THE COURT:** All right, Mr. Meadors. What else
10 do I need to know about it that I don't know?

11 **MR. MEADORS:** I've got a few other things I'd
12 like to say briefly.

13 **THE COURT:** Sure.

14 **MR. MEADORS:** I want to publicly, judge,
15 publicly thank just a few people: Ace Wesley,
16 Ms. Outen, Ms. Nataki, Ms. Babs Lindsay, of course
17 Ms. Joanna McDuffie, and in particular in this case
18 the Richland County Sheriff's Department, Captain
19 Smith who is here, and then particularly the sergeant
20 sitting over here, David McRoberts, who did an
21 outstanding job on this case. You know, sometimes
22 people say that police don't care. They care, Judge.
23 They care. In addition, Judge, Ms. McDuffie has his
24 prior record. Then I have a few brief closing
25 remarks.

1 **THE COURT:** Okay.

2 **MS. MCDUFFIE:** Your Honor, the defendant's prior
3 record is a 1996 possession of crack, two years
4 suspended on one year probation. In 1997, pointing
5 and presenting a firearm. He was not sentenced until
6 the year 2000; five years suspended on 18 months,
7 three years probation. 1998, simple assault,
8 trespassing; 1999, leaving the scene and a probation
9 revocation for six months, and a 2005 possession of
10 marijuana, Your Honor.

11 **THE COURT:** Okay.

12 **MR. MEADORS:** Your Honor, in addition, I want to
13 thank the jury also for their verdict. Judge, in my
14 20 something years, as you said, I've been involved,
15 this is all I've ever done. And it's a pleasure to
16 work with all these people. And, you know, they were
17 just working. They had just opened up. 53 and 29.
18 They talked on the phone literally moments earlier
19 about the future and how they were going to set
20 records. And that's what they were thinking and
21 hoping and dreaming about. And then their lives were
22 taken away as the evidence showed the jury found by
23 John Portee for no reason at all. He just killed
24 them as they sat there, Judge.

25 On behalf of the Sheriff's Department and the

1 Solicitor's Office we'd respectfully, respectfully
2 ask Your Honor to sentence him to life in prison.
3 Thank you.

4 **THE COURT:** And what can I sentence him to, Mr.
5 Meadors?

6 **MR. MEADORS:** Two life in prisons consecutive,
7 plus 30 years.

8 **THE COURT:** Right.

9 **MR. MEADORS:** And we would ask for the toughest
10 sentence Your Honor can give.

11 **THE COURT:** Okay. Mr. Strickler.

12 **MR. STRICKLER:** Thank you, Your Honor. Just
13 briefly, I will say that I have been representing
14 John since the date of his arrest or the day after I
15 guess, and that he has been in his dealings with me,
16 in his dealings with Ms. Thomas and in his dealings
17 with Ms. Pringle who has had substantial contact with
18 him; a pleasure. He is polite. He is not a client
19 that has caused us concern in that regard.

20 I can also tell you that he has maintained to me
21 and to Ms. Thomas and Ms. Pringle consistently
22 since -- and I think I saw him the day after he was
23 arrested; I'd have to look at my file -- since that
24 time his innocence. Now, I'm not arguing with the
25 verdict. I'm just telling you that it is his

1 intentions now, as it has been.

2 Of course I'd ask, I believe Ms. Thomas has a
3 couple of members of his family who would like to
4 address the Court. And I would ask you to exercise
5 whatever mercy you can.

6 **THE COURT:** All right. You have explained to
7 him that my sentencing options are what?

8 **MR. STRICKLER:** Well, Your Honor, murder carries
9 life in prison, not less than 30 years day-for-day.
10 And armed robbery is ten to thirty. Yes, sir. If
11 Your Honor will please hear from his family members.

12 **THE COURT:** Sure.

13 **MR. STRICKLER:** Ms. Thomas, go ahead and
14 introduce them, please.

15 **MS. BRITTNEY PORTEE:** My name is Brittany
16 Portee. I am the defendant's youngest sister. I
17 would like to say I deeply apologize and I do not
18 think that the verdict was fair. Just don't sentence
19 my brother to death 'cause that's my brother and I
20 love him.

21 **MR. PORTEE:** I love you, too. It's all right.

22 **MS. BRITTNEY PORTEE:** I love you.

23 **MR. STRICKLER:** Young lady, you need to address
24 the judge.

25 **MS. KAREN PORTEE:** Judge, I am Karen Portee. I

1 am the defendant's baby sister. I'm so confused with
2 feelings. I'm sorry for these people's family. I
3 really deeply am. And I'm sorry for my family. I
4 mean, brother, I love you no matter what. You're my
5 brother. Whatever it is, I'm going to love you
6 regardless. So whatever the verdict is, all I can do
7 is pray about it and leave it in God's hands.

8 **MR. STRICKLER:** And his mother needs to address
9 the Court. That would be all the family members who
10 will address the Court. I ask to you talk to the
11 judge.

12 **MS. MARY PORTEE:** Good evening, Judge, Your
13 Honor. My name is Mary Portee. I'm the mother of
14 John Henry Portee, Jr. And he is my first born. I
15 love my children. I raised my children to do the
16 right thing. And one thing, Judge, I asked my
17 children, if there's anything you done on this earth
18 that God is not pleased with, don't run from it.
19 Don't run from it. And that he did not do.

20 What I've seen in this courtroom from day one up
21 until this present time, only God has the last
22 say-so. I'm a true believer. I trust in God. And
23 I'm going to keep on holding on and live unchanged
24 because I know, I know that my child didn't do what
25 was said that he's done. I know he didn't do it. I

1 knew it from day one up until this present time,
2 Judge.

3 Judge, Your Honor, I ask that you grant grace
4 over him, mercy. Give him favor. Give him favor,
5 Judge. Give him favor. I love my children. But in
6 spite of it all, I walk by faith and not by sight,
7 leaning on the everlasting Lord.

8 I'm a young mother. I don't have a husband. I
9 only have my children. John did so much for me to
10 help me. He did so much for me to help me. When I
11 lost my daddy and when I lost my mama, I leaned and
12 depend on this boy right here. I leaned and depend
13 on him. He was there. He was there.

14 I worked hard for my children. I've been
15 working all of my life. And whatever my children
16 need, I was there to give it to them. I didn't ask
17 nobody for nothing.

18 **MR. PORTEE:** That's right.

19 **THE COURT:** Okay.

20 **MS. MARY PORTEE:** I didn't ask a soul for
21 nothing.

22 **THE COURT:** Thank you.

23 **MS. MARY PORTEE:** But, Judge, I want to say
24 today to the family, I am sorry. I am so sorry for
25 your loss. I love you all, and may God be with you

1 all. My prayers are with you. My prayers are with
2 you.

3 **THE COURT:** All right. Mr. Strickler, you
4 explained to Mr. Portee that he has the right to
5 allocate I guess.

6 **MR. STRICKLER:** If I may, Your Honor, I have,
7 and I'm continuing to do that. If I may have a
8 moment.

9 (Pause - conferring)

10 **MR. STRICKLER:** Yes, Your Honor. I believe he
11 wishes to address the Court.

12 **THE COURT:** Okay, Mr. Portee.

13 **MR. PORTEE:** Your Honor, you know, I don't know
14 what happened, you know. I'm here. If I felt in my
15 heart I was guilty, I did something, my Mama Alice
16 told me if you did something, confess to it. I'm not
17 confessing. I won't ever confess to something I
18 didn't do.

19 I have been working at Wendy's for a long time.
20 I worked with Tora at Beltline on several occasions,
21 even met her in the parking lot before to help her
22 close that store to make sure that she was all right.
23 I didn't take that stand because I didn't feel as if
24 there was a need to. I didn't feel as if I had to
25 take the stand because all the evidence that was on

1 me, what was on me? But here I stand today.

2 I still thank the Lord. And I'm still here.
3 And I'm glad I'm not there. I'm glad I wasn't there
4 that morning to be dead with those people. I'm
5 deeply apologetic that they died. Latora was my
6 friend. Ms. Johnson, I worked for her on several
7 occasions when her child was sick because. I would
8 assume that her child was kind of handicapped or
9 whatever the case may be, but I worked for her on
10 several occasions. But I would just ask that you
11 have mercy on me, Your Honor. Whatever it is, have
12 mercy on me.

13 **THE COURT:** Okay. Anything else, Mr. Strickler?

14 **MR. STRICKLER:** Only that I have already
15 informed Mr. Portee about the appellate procedure and
16 post conviction relief procedure, Judge.

17 **THE COURT:** Okay. Well, short of him
18 testifying, which is a decision that was well
19 discussed, I don't know of anything else you could
20 have done, Mr. Strickler, having been in the trial
21 all week.

22 And here is the situation. I don't know how
23 many homicides I've seen. One year when I was chief
24 judge almost 20 years ago I kept count. I sentenced
25 84. Now, that's not all murders. That's vehicular

1 homicide, manslaughters. It was just every time
2 somebody died and somebody was responsible for it.
3 That was 84 and that was 20 years ago. So I don't
4 know how many I have sentenced.

5 And, Mr. Portee, I don't second guess juries.
6 You understand. They find you guilty of a heinous
7 crime, you get sentenced for a heinous crime.

8 **MR. PORTEE:** Yes, sir. I understand that.

9 **THE COURT:** If you wanted a nonjury trial, you
10 could have waived the jury and we could have
11 proceeded. Once they speak, then I sentence you
12 assuming that you did exactly what they found you
13 guilty of, because I've got no choice about that.
14 And then I look at your prior record. And assuming
15 you did what they found, which they found that you
16 did; I mean, two people died. Any time two people
17 die, one shot each --

18 **MR. PORTEE:** Excuse me, Your Honor.

19 **THE COURT:** -- massive consequences. No. Life
20 for the two murders, 30 years for the armed robbery.
21 Everything is concurrent though. I don't grand stand
22 and make it consecutive because --

23 **MR. PORTEE:** Yes, sir.

24 **THE COURT:** -- life is life. When I started out
25 I used to give people life. And it was what? Twenty

1 years I think. They would turn them out. But now
2 life is more or less life. That's it.

3 **MR. PORTEE:** So what's the verdict, Your Honor?
4 Life plus 30?

5 **THE COURT:** No. It's life, life, and 30.
6 They're all concurrent.

7 **MR. PORTEE:** Okay.

8 **THE COURT:** I don't add it up on you. I can't
9 add life to life. I mean, you can do it in press
10 reports. You gave them two sentences. Well, you
11 only have one life to live. Yours is going to be
12 permanently incarcerated.

13 **MR. PORTEE:** Yes, sir.

14 **THE COURT:** That's it.

15 **MR. MEADORS:** Thank you, Your Honor.

16 **THE COURT:** Mr. Meadors, Mr. Strickler. Mr.
17 Meadors and Mr. Strickler, I need you all to sign
18 just that you participated in the trial.

19 **MR. MEADORS:** Got you.

20 (Whereupon, the proceedings are concluded)

21

22

23

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 12th, 13th, 14th and 15th days of January, 2009.

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

February 17, 2009

Jenny H. Williams

Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA

2011CP400525

In the Court of Common Pleas

County of RichlandJohn Henry Portee, 263560

Full name and number of Applicant

vs.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

Name of Respondent

RICHLAND COUNTY
 FILED
 2011 AUG-9 AM 11:30
 JENNIFER W. MCBRIDE
 C.C.P. & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Corr. Inst., 990 Wisacky Hwy, Bishopville, SC 29010

2. Name and location of Court which imposed sentence Richland County General

Sessions Court; Columbia, South Carolina

3. The indictment number or numbers upon which and the offenses for which sentence was imposed:

(a) 2006-GS-40-7438 for murder

(b) 2006-GS-40-7439 for armed robbery

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 2006-GS-40-7438 for murder, life; 1/15/09

2012866

Pnbc. CA

Case# 20002904

Box# 48-X

Sheet# 57/01

Case# 20094333

Box# 8-N

ATTORNEY GENERAL'S OFFICE

RECEIVED 8/10/11

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN ENDHAVE COPIES MADEROUTE TOORDER TRANSCRIPTPEN RECORDS CLERK RECORDSOTHER

WKS. 2011/08/10

1 AUGUST 11 - 2011

WORKING ALONG

RECEIVED

IN THE COURT OF COMMONS

5. Check whether a finding guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XX _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court Of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction and sentence affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) A violation of Applicants right to due process of law as _____
- (b) guaranteed by the U.S.C.A. 14th Amendment, and Article 1, _____
- (c) §3 of the South Carolina Constitution. _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) * * * see attached Page 2(a) * * * 2(b) & 2(c) _____
- (b) _____
- (c) _____

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(a)

10.(a) Applicant presented alibi as his defense at trial, and the trial judge committed reversible error by issuing an instruction to the jury on the alibi charge that was both confusing and misleading; see Trial Transcript, p.620, 1.11-19. Applicant states that this erroneous, violative instruction attached to the alibi charge went far beyond the definition of Applicants alibi defense, and as a result established a violation of Applicants rights and entitlements to a fair and impartial trial under the guarantees of due process, as provided by the U.S.C.A. Fourteenth Amendment to the United States Constitution, and also under Article 1, §3 of the Constitution of South Carolina. Applicant states that prejudice can be presumed from the confusing and misleading instruction given to the jury, and has been settled by precedent law in the State of South Carolina in the cases of State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980), Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1988), and State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). As the fatally defective jury instruction violated Applicants right to the due process of law by unfairly prejudicing the result of Applicants trial, it is incumbent upon this Court to reverse the convictions and sentences obtained from the biased, unconstitutional jury instruction and remand for a fair, constitutionally sound trial that comports fully with the mandates of due process of law, made compulsory upon South Carolina by the Fourteenth Amendment to United States Constitution and Article 1, §3 of the South Carolina Constitution.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(b)

Applicant brings the additional due process claim of duress and coercion by States Attorney against subpoenaed Witness Heather Hunter at Applicants trial. In Applicants Trial Transcript, p.314, 1.7 thru p.317, 1.8, Witness Hunter admitted that she gave three (3) successive statements before testifying at Applicants trial, and that from the first statement she felt intimidated and scared; Tr. Tran., p.314, 1.11. Witness Hunter also testified that the States Attorney directing the questioning for the prosecution was the same Court Officer who had levied a charge of MISPRISONMENT FELONY against her, which conviction is punishable by a ten (10) year prison sentence, and which States Attorney " . . . has control over what happens to you in the future?"; see Tr. Tran., p.316, 1.9 thru p.317, 1.4. Witness Hunter testified further that she wrote Applicant a letter in October, 2008, 2 years after the murders were committed, saying, in effect, that what she had given in her second and third statements was untruthful, the subject matter of the statements being the incriminating testimony that Witness Hunter gave in the successive statements that she had heard two loud noises while Applicant was away from the car; Tr. Tran., p.325, 1.13-24. Witness Hunter went on to testify that she had given four (4) formal statements, each statement being different and inconsistent with the previous statements. Witness Hunter continued giving these statements at the "request" of the States Attorney who conveniently held the authority to legally take away Witness Hunters constitutional right to liberty for ten (10) years if she refused to cooperate with the prosecution, and was subsequently convicted of the MISPRISONMENT FELONY charge; Tr. Tran., p.325, 1.25 thru p.326, 1.14. The record of the proceeding exposes the States Attorney, the Deputy Solicitor referenced above, attempting to coerce and lead Witness Hunter at Applicants trial, to which Witness Hunter balked and denied being threatened in any manner by Applicant; Tr. Tran., p.330, 1.25 thru p.331,

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(c)

1.3. Applicant states that the credibility of the testimony of Witness Heather Hunter is susceptible to scrutiny by reason of conflicting and contradictory statements, as well as inconsistent testimony under oath. Applicant states the claim that his convictions and sentences are subject to reversal based on the bias and partiality influence unfairly permitted in Applicants trial. The prejudice resulting from the inconsistent and contradicting testimony of Witness Heather Hunter is evident from a reading of Applicants transcript. The States Attorney / Deputy Solicitor overtly exhibited coercion and duress upon Witness Heather Hunter for the sole purpose of improperly eliciting damaging testimony against Applicant. The instance documented in Tr. Tran., p.330, 1.330 thru p.331, 1.3 stands to establish a further violation of Applicants due process of law guarantee, where the improper conduct of the prosecuting attorney deprived Applicant of a fair and impartial hearing. For this reason Applicants convictions and sentences should be reversed and remanded for a new trial.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? no
- (d) any other petitions, motions or applications in this or any other Court? no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. erroneous jury instruction/charge that violated Applicants
- xx right to due process of law at trial proceeding, which right is
- xiii. guaranteed to Applicant under 14th U.S.C.A and Art. 1, §3 of
- S.C. Constitution.

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- ~~(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____~~
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Reverse the convictions and sentences and remand for new trial

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Joh Porter, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joh Porter

SWORN to and subscribed before me this 4

day of Aug, 2011
Debra Sims (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

RICHLAND COUNTY
 FILED
 2011 AUG -9 AM 11:30
 JENNIFER M. HEBBIE
 C.C.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF

I, Joh Porter, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Joh Porter
 Applicant

SWORN or affirmed to and subscribed before me this

4 day of Aug, 2011
Debra Sims
 Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
PORTEE John H -	)	2011CP4005253
# 00263560,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 9, 2011 and later amended on November 28, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Douglas Strickler, Esquire and Ashley Thomas, Esquire – both of the Richland County Public Defenders Office. On November 5, 2009, following a trial, the Applicant was sentenced by The Honorable

¹

<http://www4.rcgov.us/publicindex/PCaseDetails.aspx?County=40+&Casenum=2011CP4005253&CourtType=G&CaseType=Civil&CourtAgency=40002>

PORTEE John H - State's Return - (2011CP4005253)

Page 1 of 6

J. Ernest Kinard, Jr.. The Applicant had been indicted and/or convicted of the following: Armed Robbery - and Murder (2006GS407437 - 7439). Essentially, on September 3, 2006, the Applicant executed two of his coworkers at the Wendy's on Two Notch road. According to SCDC, the Applicant is serving the following sentence:

Offender Type Adult-straight Sentence Offense Murder Sentence Start Date 09/04/2006
Sentence Length LIFE SENTENCE Admission Date 01/16/2009 Committing County Richland
Location Lee Projected Release Date Not Eligible Projected Parole Eligibility Not Eligible
Supervised Furlough Eligibility Not Eligible Sex Offender Registry No

2

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00263560>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated February 22, 2011.

The application for post conviction relief (PCR) was filed August 9, 2011.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80

L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent

therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

December 6, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PORTEE John H -
00263560,

Applicant,

v.

State of South Carolina,

Respondent.

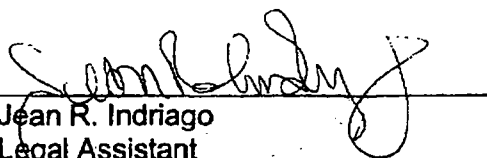
IN THE COURT OF COMMON PLEAS

2011CP4005253

CERTIFICATE OF SERVICE

1. I am an employee of the Respondent in the above-captioned action.
1. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
2. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**PORTEE John H, 263560 - Lee Correctional Institution, 990 Wisacky
Highway, Bishopville, SC 29010**

DATED December 8, 2011.

 Jean R. Indriago
 Legal Assistant

RECEIVED

NOV 2 2011

State of South Carolina
County Of Richland

In The Court of
John (5th)

Common Pleas

Judicial Circuit

OFFICE

John H. Porter, 263560Case No. 2011-CP-40-05253

Applicant/Petitioner,

Vs.

State of South Carolina
Respondent.

Amending to pro se PCR

Do: Salley L. Elliott, Esq.: Deputy Assb. Atty General:
P.O. Box 11549, Columbia, S.C. 29211-1549.

Come now: Applicant John H. Porter #263560.

pro se movant, to amend post Conviction
relief application on this 20th day of
November 2011, pursuant to Rule 71.1(d), SCRPC.

Applicant Porter further submit that he
have exercised an exclusive Constitutional
Right of the U.S. and S.C. Laws as to
have all amended issues that is
set forth, placed as a questions of Laws,
properly presented for the per Court to
give a specific finding of facts and to
give a specific Conclusion of Laws to
every specific issue(s) he have filed
thus far as is incorporated to application.

It is therefore amended respectfully.

November 20, 2011.

xs. John Porter Jr.
John H. Porter
pro se Applicant.

01/07

8.1 Appellate Counsel failed to appeal trial Counsel's Objections as they are preserved for appeal/appellate review is effective assistance of Counsel, as to retrospect to trial Counsel's objections on record, the Appellate Counsel caused Applicant to suffer a deprivation of lost to have the Appellate Court to give a entitled review to all preserved issues by the Court's rules.

9.1 Here in Applicant's Case matter, his 6th Amend. of U.S. Const. was violated because he have a right to effective assistance of Counsel as guaranteed by U.S. Const. 6th Amend, and S.C. Laws, Applicant take positions by the following Law Authorities as Cited: See *Gilchrist v. State*, 364 S.C. 173, 612 SE.2d 705 (2005); *Anderson v. State*, 354 S.C. 431, 581 SE.2d 834 (2003); *Southland v. State*, 337 S.C. 610, 524 SE.2d 833 (1999).

Applicant present issues with merits by the Submittals of the records; TT. pages 14-21, (11s. etc.) of Hearing held on Oct. 20, 2008. Regarding Brady Violations, See also TT. pages: 231, 11s. 4-25; TT. pg. 232, 11s. 1-16; Counsel raised issues about Shackles on Client; TT. pg. 91-93, 11s. Cameras in Courtroom, to the detriment of Mr. Polbee; TT. pg. 77-86, whereas Jack Reno Hear., see adverse ruling on Statements, All issues are preserved pursuant to the Trial Court Rules of Evidence.

#2

District Counsel failed to Object to
faulty instructions given to the jury:

~~2/20~~

Trial Counsel Failures to Object to Trial Court's presumption of innocence instructions to the jury violated Applicant's Const. Rights to a presumption of innocence as is guaranteed by the Federal/State Laws. Counsel is ineffective because he did not compel the State to prove guilt beyond a reasonable doubt, by not having the trial Court to convey to the jury that the Defendant/Applicant's innocence always persists unless the State proves by providing competent evidence of Defendant's guilt beyond a reasonable doubt. The language of Competent evidence is one that the trial Court and trial Counsels know that can not be altered in no ways, here in Applicant's issues, see in Vol. #1, TT. pg 95-104, the Court used altered language about guilt and innocence, guilty beyond reasonable doubt, and see trial Counsel did not object to the erroneous instructions/presentation of trial duties, also see Applicant's jury may have misunderstood the complete language used by the trial Court's given instructions, this did prejudiced the Applicant, not receiving a fair trial guaranteed to him, but see at the Vol. #2, TT. pgs. 603-622, erroneous trial Court's jury instructions as same erroneous given by trial Court and trial Counsel did not object to it, Counsel ineffective as same.

04/07

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w

because it solely violates the mandates of the S.C. Supreme Court it settled in, see: *State v. Bayan Aleksey*, Op. No. 25212, Heard. 9/19/2000-Filed. 11/12/2000, Aff'd: as Cited. *Cage-Victor*, Supra. *provid Estate v. McGuire* 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991); the Applicant stands in the initial authorities as *State v. Paden*, 153 S.C. 459, 154 S.E.2d. 658 (1930); *State v. Donnelly*, 116 S.C. 113, 107 S.E. 149 (1921); While Applicant First Shows trial Counsel is ineffective and Applicant was prejudiced by his failures not to object to the erroneous trial Court instruct., as so advised, Applicant proves accordingly to *Adams v. Aiken*, 41 F.3d 175, 178-79 (4th Cir. 1994) that is said: an unconstitutional reasonable doubt instruction is a "breach of right to a jury trial" by a jury, resulting in a lack of accuracy and the denial of a bedrock procedural element essential to fairness, and as such is in Applicant's case, the structural error he points out did deprive him of a fundamental fair trial. Applicant also submit that the "Harmless error" analyst is not applicable in this issue because of it is a three prong give "3 issues in 1," see *Mantel v. State v. Raffaloff*, 318 S.C. 110, 456 S.E.2d 390 (1995).

As trial Counsel ineffective assistance for not objecting to improper remarks during Closing by Solicitor.

05/07

24

Trial Counsel Failure to Object to Solicitor's improper remarks to jury in closing was an ineffective assistance Charge.

see T.T. pg. 580, U.S. 25, Solicitor's improper remarks: Take it from me (11/16/11)

"The Solicitor's remarks as 'Go back there and feel this. It's them. It's the Victims. Go back there and get that gun and feel malice. You want to feel malice? Feel it. Pass it around.'" (omission).

Trial Counsel Failure to object to the improper remarks made by the Solicitor in closing arguments was impermissible and extremely prejudice against Applicant, these remarks made by the Solicitor were only for purposes to provoke passion and to induce a point of anger towards the Defendant by the jury/jurors. Applicant take positions by authority of *Payne v. Tennessee*, at 501 U.S. 808 (1991), (holding that for Solicitors to invite the jurors to put themselves in the Victim's shoes is improper under State law and is impermissible to be done and go unchallenged by Defendant's Counsel.)

Applicant Submit that when Solicitor remarks added the language "as you feel it"; it's the Victims; Pass it around; and feel malice; it amounted to inviting the jurors to put themselves in the shoes of the Victims; as it violated Applicant's rights to a fair trial by a jury, and Trial Counsel was ineffective when he failed to object to improper remarks made to the jury by the Solicitor.

06/07

PCR Applicant John Portee, pro se Amend his post Conviction Relief application with the herein Submitted issues available by trial transcript, as to verily complying with per 317-2745(a). Applicant also explicitly states to per Records to be accumulated that upon per Counsel being appointed it is compelling upon the potential per Counsel to amend pro se per application with all available issues from the record and brief all issues with Standing, Current and applicable laws to filed issues submitted for reevaluation by an evidentiary hearing processes as to be scheduled. Applicant explicitly States that he does not waive any of his rights pursuant to the per rules and any applicable rules effective to his per rights as exercised in this case matters.

Whereas, A-1 through A-4 is Submitted to be amended to case # 2011-CR-40-05253, as Filed on Aug. 9, 2011, 01:30, Incorp'd. 11/20/2011

per John Portee Jr.



State of South Carolina
County Of Richland

In The Court of Common Pleas
5th Judicial Circuit

John W. Portee

Case No. 2011-CP-40-05253

Applicant/Petitioner,

Vs.

Certificate of Service

State of South Carolina
Respondent.

I hereby certify that I did serve a true copy of Pleading to Amending pro se Filed post Conviction Relief application to the Respondent's Counsel: Salley W. Elliott, Esq. Deputy Asst. Atty. General by depositing the same in the U.S. Mail postage paid, or in the mail room of the undersigned's institution and addressed as the following: Attorney General Office, P.O. Box 11549, Columbia, S.C. 29211-1549, all done on this 20th day of November 2011, as verified to pending case shown above.

November 20, 2011.

S. John Portee Jr.
John W. Portee, pro se
Lee CI/DA-2150
990 Wisacky Hwy.
Bishopville, SC 29010
Applicant, PCR.

2011
NOV 20
2011

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2011-CP-40-5253

John H. Portee, Jr.,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

Transcript of Record

January 16, 2013
 Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge

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

Tristan M. Shaffer, Esquire
 Attorney for the Applicant

Robert D. Corney, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

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1 THE COURT: All right, Mr. Attorney General, you may
2 proceed.

3 MR. CORNEY: Yes, sir. May it please the court, Your
4 Honor? This is the post-conviction relief action of John
5 Portee, 2011-CP-40-5253. Mr. Portee was true-bill indicted
6 at the October 2006 term of the Richland County Grand Jury
7 for armed robbery and two counts of murder.

8 He proceeded to jury trial January 12, 2009, before
9 Judge Kinard. After four days of trial, the jury found him
10 guilty of all three counts as indicted. He was sentenced
11 to thirty imprisonment for armed robbery and life without
12 parole for each of the murders, all to run concurrently.

13 Notice of appeal was filed and an Anders brief was
14 submitted on his behalf by Wanda Carter of the South
15 Carolina Office of Appellate Defense. By order dated
16 February 1, 2011, the South Carolina Court of Appeals
17 dismissed the appeal. The remittiter was issued thereafter
18 February 22, 2011. He filed a timely PCR application
19 August 9, 2011, and is represented here today by Mr.
20 Tristan Shaffer, and I will turn it over to him at this
21 point, Your Honor. Thank you.

22 THE COURT: All right, Mr. Shaffer, I have the
23 application for post-conviction relief, and I have an
24 amendment to that application dated November 20, 2011. Are
25 there any subsequent amendments to the application?

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

4

1 MR. SHAFFER: Not, Your Honor, since I've been
2 appointed.

3 THE COURT: Sir?

4 MR. SHAFFER: No, Your Honor, not since I have been
5 appointed.

6 THE COURT: Well, you have the entire file, don't you?

7 MR. SHAFFER: Yes, sir. I do.

8 THE COURT: Then there are no subsequent applications?

9 MR. SHAFFER: Yes, sir.

10 THE COURT: Or amendments. All right, sir, you may
11 proceed.

12 MR. SHAFFER: Your Honor, applicant calls John Portee.

13 THE COURT: Call your client.

14 MR. SHAFFER: Oh. Yes, Your Honor.

15 THE COURT: Come around, Mr. Portee.

16 JOHN H. PORTEE, JR., BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 THE COURT: All right, be seated. State your full
19 name for the record.

20 WITNESS: John Portee.

21 DIRECT EXAMINATION BY MR. SHAFFER:

22 Q. Mr. Portee, where are you from?

23 A. From Columbia, South Carolina.

24 Q. Okay. How old are you?

25 A. Thirty-three.

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

5

1 Q. Okay. How far did you get in school?

2 A. To the sixth grade.

3 Q. Okay. Now, since 2006, you've been incarcerated,
4 correct?

5 A. Yes, sir.

6 Q. Who was your attorney?

7 A. Douglas Strickler and Ashley Thomas.

8 Q. Okay, and you were arrested for murder. Is that
9 right?

10 A. Yes, sir.

11 Q. Okay. What, at what point -- you were arrested the
12 same day the alleged murder occurred, right?

13 A. Yes, sir.

14 Q. Okay. Briefly just for background, tell us where you
15 were that day.

16 A. Pardon me?

17 Q. Where were you that day?

18 A. Where was I that day?

19 Q. Yes.

20 A. At what point in time?

21 Q. Early that morning.

22 A. Well, I was in Georgia.

23 Q. Take us through your day. What happened?

24 A. Oh. What happened? I went to, to the Wendy's
25 restaurant in question. Went there. Knocked on the door.

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

6

1 No one answered.

2 Q. What time was that?

3 A. I can't remember time. Probably, probably about 8:30,
4 up in that, up, up between that time.

5 THE COURT: Morning or afternoon?

6 WITNESS: Morning. Morning.

7 BY MR. SHAFFER:

8 A. No one came to the door, so I went back to the car. I
9 wait. Heather Hunter was like anybody came to the door? I
10 was like no. I was like but I see a car sitting right
11 there. I was like let me get back out. I'm going to wait
12 five minutes. Let me get back out so I can see if
13 anybody's in there. So, went. Rang the doorbell again.
14 Walked around to the drive-through window. Looked in.
15 Didn't see anybody. Went around to the other side. Looked
16 in and didn't see anybody. So, got in the car and left.

17 Got home. I called my mother, Marian Portee. Called
18 her on the phone and told her no one was at the Wendy's
19 restaurant. She told me. She was like something,
20 something might be wrong. I was like Mom, I don't know.
21 She was like well. She was like did you call the police?
22 I was like no. I didn't call the police. Why would I call
23 the police? She was like ---

24 Q. And I'm sorry to interrupt you. Just for the judge's
25 purposes, you worked at the Wendy's restaurant?

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

7

1 A. Yeah, I worked at the Wendy's restaurant for a while.

2 Q. Okay, and you were scheduled that morning?

3 A. Yes, sir.

4 Q. Okay, and that's why you went to the Wendy's
5 restaurant?

6 A. Yes, sir. That's when I went.

7 Q. Okay. Go ahead with where you were at.

8 A. Okay, and I called my mom. She told me to call the
9 police and see what was going on up there. I was like no.
10 There's no need to call the police because that happens all
11 the time, you know? Somebody, somebody -- they just leave
12 the store.

13 Q. What do you mean by it happens all the time?

14 A. It happens all the time. Like I can -- we can, we can
15 come to the store and won't nobody be there.

16 Q. Okay.

17 A. The manager might not get there until like 9:30, 10:00
18 sometimes.

19 Q. Okay, and were you able to get inside the store by
20 yourself?

21 A. No, sir.

22 Q. So, the manager would have had to been there to ---

23 A. Yes, sir.

24 Q. --- let you in?

25 A. Yes, sir. Someone, someone would had to been in the

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

8

1 store to open it.

2 Q. Okay. So, after you talked to your mom, what did you
3 do after that?

4 A. I explained to her that I was going to Georgia.

5 Q. Okay, and why were you going to Georgia?

6 A. I was going to Georgia to get Heather Hunter's
7 daughter and to visit her godparent, I believe, because
8 they were sick, whatever the case may be. That's where we
9 went.

10 Q. And what time did you leave for Georgia?

11 A. Probably about -- called my mom about 9. Probably
12 about 9:15, about 9:15, about 9:15, between the time 9:15,
13 9:30, sometime in there.

14 Q. Okay, and what time did you arrive in Georgia? What
15 part of Georgia was it?

16 A. It was Augusta.

17 Q. Okay. What time did you arrive there in Georgia?

18 A. I'm not exactly sure because we stopped at a
19 McDonald's on our way there. So, you know, we ate at the
20 McDonald's, and then we proceeded to Georgia. So, I'm not
21 sure what time we arrived there, but I know we got there.

22 Q. About how long were y'all there?

23 A. About 1:30, 2:00.

24 Q. Okay.

25 A. Between that time.

1 Q. And where did you go after you left Georgia?

2 A. We came back to Columbia.

3 Q. Okay. Tell us about what happened when you got back.

4 A. I got back. I dropped Heather and them off at the
5 house. Went to my mom's house. Then I went to the mall
6 because it was Labor Day weekend. Bought me an outfit.
7 Went back to my mom's house. Went to my friend Tyrel's
8 house. Left there. Went back home to Heather's house.
9 Heather dropped me off at MB's, which is a friend of mine
10 -- which was a friend of mine at the time. I'm trying to
11 remember. Stayed there for a little while. Heather came
12 and got me probably about an hour afterwards, probably
13 about an hour after she dropped me there. She came and got
14 me. We went to Hollywood Videos. Got some movies.

15 Q. And Heather was your girlfriend at the time?

16 A. Yes. She's my baby mother.

17 Q. Okay.

18 A. Went Hollywood Videos. Got some movies. Went back to
19 her house, but on our way to her house, I seen my friend
20 Colton was having a cookout. So, you know, we got to the
21 house. I was like Heather, I'm'll go up the street to
22 Colton's house.

23 On my way up the street to Colton's house, I see all
24 these police pass by me, and that was it. They came and
25 got me. Like I was, like I was walking on Lake Side going

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

10

1 towards Colton's house and the police, they came in front
2 of me, and he stopped me. He was like is your name John
3 Portee? I was like yes, sir. He was like, well, they have
4 got some investigators at your house. They need to speak
5 with you, and at that point in time he placed me in
6 handcuffs and put me in the car.

7 And when I got to Hawthorne, Investigator McRoberts,
8 his name is, he hopped in the car. And his first question
9 to me was why did you kill those women, and I was like what
10 are you talking about? He was like you know what I'm
11 talking about. Why did you kill those women up there at
12 the Wendy's restaurant? I say look. I went there that
13 morning. I knocked but no one answered the door, and that
14 was it.

15 He took, he took me, he took me down to the
16 headquarters on Two Notch Road. He took me down there.
17 And one, one of the, one of the deputies told me take my
18 clothes off, and I had on some shoes as well, right? And
19 he was like -- McRoberts came in there. McRoberts got
20 there and he was like you got to take your shoes off
21 because I think I see blood on your shoes. I was like you
22 don't see no blood on my shoes. And after that, you know,
23 they, they, they started trying to ask me some questions
24 after that, and I wouldn't answer their questions. So,
25 they stripped me out, threw me back in the cell by myself.

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

11

1 Had me, had me in handcuffs. Threw me back in the cell by
2 myself.

3 And then next thing you know, I heard them screaming
4 and yelling at Heather Hunter, and I screamed through the
5 door. I was like look. You don't need to talk to them.
6 You need to get an attorney. So, they slammed the door on
7 me and was like you need to be quiet. So, I heard them
8 yelling at her, and she started crying and whatever the
9 case may be, and that's the last thing I ever saw.

10 Q. And you had asked for an attorney yourself during that
11 time period?

12 A. Yes. I asked for an attorney because me, me -- to, to
13 -- prior to me being incarcerated before -- I know and, you
14 know, once they started questioning me, I was like look. I
15 need an attorney.

16 Q. Okay, and when's the first time you met with an
17 attorney?

18 A. I want to say about four or five days afterwards.

19 Q. And who was that?

20 A. Douglas Strickler.

21 Q. Okay, and during your first conversation with him,
22 what did y'all talk about?

23 THE COURT: I didn't hear your question.

24 MR. SHAFFER: I apologize, Your Honor.

25 BY MR. SHAFFER:

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

12

1 Q. During your first conversation, what did you, what did
2 you speak about?

3 A. Just basically like the stuff we're talking about
4 right now on like the course of the day, things that
5 happened during the course of the day. What else have we
6 speak of because that was in 2006? He came. We spoke
7 about the course of the day, my actions, you know what I'm
8 saying, the course of the day. Then he started questioning
9 me about the gun that they had.

10 Q. Okay, and what did you tell him about the gun?

11 A. I told him I didn't know where the gun came from.

12 Q. Okay. Over the next -- how long were you incarcerated
13 before jail -- before your trial? Do you know off the top
14 of your head?

15 A. Like twenty-eight months.

16 Q. Yeah. During that time period, you spoke with Doug
17 several times?

18 A. I spoke with Doug like two or three times. Ashley,
19 Ashley was more like the one who was coming down here to
20 speak with me, her and Fielding Pringle.

21 Q. When did you first speak with Ashley?

22 A. I can't remember. I spoke with Ashley so many times.
23 It was -- I don't know.

24 Q. Okay, and at first they were thinking about pursuing
25 the death penalty?

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir. Yes, sir.

4 Q. Okay, and at what point did you find out that you were
5 not going to be tried for the capital offense?

6 A. 2008, I want to say like June 2008.

7 Q. What were they offering you? Were they offering a
8 deal?

9 A. They was offering me, they say -- Doug came to me. He
10 was like look. If you don't plead to the life sentence,
11 they're going to give you the death penalty, and I was like
12 hey. I'm not pleading to -- I'm not pleading to nothing.
13 That's what I -- that was my exact words to him. I'm not
14 pleading to nothing I didn't do. And Doug was like, well,
15 if you don't plead, they're going to give you a life
16 sentence. So, it was, it was, it was either me plead to
17 the life sentence, or me go to court and get the death
18 penalty at that time.

19 Q. Okay, and did your, did your offer change when they
20 took death off the table?

21 A. Yes. It, it, it, it, it went from, it went from that
22 to like I want to say like twenty-five, thirty years or
23 something like that in between time.

24 Q. Okay. Was that for voluntary, you say?

25 A. What do you mean?

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

14

1 Q. Was that for two counts of voluntary manslaughter?

2 A. No, sir. That was for the murders.

3 Q. Okay, but you said it was either twenty-five or thirty
4 years?

5 A. It was like twenty-five or thirty years because I
6 remember I was sitting like in the front row, and Doug came
7 to me and he was like look. The solicitor's offered you
8 twenty-five, thirty years. He was like man, you need to
9 take it. I was look, Doug. I didn't kill anybody.

10 So, he went back to the solicitor. The solicitor was
11 standing approximately right there in front of that desk,
12 and he went to him and he told him what I said. I sat
13 there and he told him. He whispered to him, and the
14 solicitor looked at me like this, threw his hands up in the
15 air, and called me out. He was like Mr. Portee. That was
16 on October -- what was that? I can't -- what was the
17 hearing, the *Jack v. Denno* [sic] hearing? No, it wasn't
18 the *Jack v. Denno* hearing. It was the...

19 Q. Was it the discovery hearing in front of Judge Childs?

20 A. Yes. Yes, sir. Yes, sir. Yes, sir. That was the
21 hearing.

22 Q. Okay.

23 A. Which probably would have been October the 18th or
24 something. I won't know.

25 Q. What did Doug or Ashley tell you about your, your

1 possible defenses if you went to trial?

2 A. My possible defense?

3 Q. Yes.

4 A. We never had a defense strategy. It was all just me
5 plea, plea, plea, plea, plea, plea, plea.

6 Q. Okay. They never mentioned a possible defense?

7 A. No, sir. No, sir. That's my right hand to God on
8 that Bible. I never discussed a possible defense with
9 Doug, Ashley, or Fielding. It was just -- Ashley never
10 came at me as far as plea, but Fielding asked me one day.
11 She was like, she was like John, look. You need to plead
12 to these, to the twenty-five, thirty years. They're going
13 to give you a life sentence if you go and take and -- you
14 know, you go and they convict you, you're going to get a
15 life sentence.

16 And I asked Fielding. I asked her. I said -- I
17 looked at her and I said what do you believe in, and she
18 said what do you mean? I say what do you believe in? I
19 was like do you believe in your religion? I say would you
20 die for what you believe in? She was like as far as what?
21 Your religion, anything. If you really believe in it,
22 would you die for it, and she was like yeah. I say, well,
23 I didn't kill anybody. I'm going to die for it.

24 Q. Okay, but it's safe to say that the attorneys
25 generally advised you that you would not be successful at

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

16

1 trial?

2 A. Yes. They generally advised me that.

3 Q. Okay. Did you ever tell them -- did you ever ask them
4 something about an alibi defense, did they investigate
5 alibi witnesses?

6 A. Yes, sir.

7 Q. When was that?

8 A. From my understanding, they investigated the alibi
9 witnesses.

10 Q. Okay. When did you initially ask them?

11 A. I didn't ask. The investigator -- I forgot his name.
12 McNeely, that's his name. He came to me, questioned me,
13 and I told him. Told everywhere I went that day, gave him
14 all my alibis. He checked them out. He came back to me,
15 told me everything checked out. That was the last time I
16 heard from that man.

17 THE COURT: Who is that?

18 WITNESS: Investigator McNeely.

19 THE COURT: McNeely.

20 WITNESS: He's with the Public Defender's Office.

21 BY MR. SHAFFER:

22 Q. Now during your trial, none of those witnesses were
23 called?

24 A. No, sir.

25 Q. Okay. Was your -- did you have a cell phone at the

1 time?

2 A. Yes, sir.

3 Q. Was that cell phone -- do you know if they ever
4 obtained the records from that cell phone?

5 A. Yes, sir.

6 Q. Were those records presented at your trial?

7 A. Excuse me? What did you say?

8 Q. Were the records presented at your trial for your cell
9 phone?

10 A. No, sir.

11 Q. Okay.

12 A. Nothing, nothing was presented on my behalf, nothing
13 at all.

14 Q. Okay, and the cell phone, would it, would it show that
15 you did go to Georgia?

16 A. Yes, sir.

17 Q. Okay. You took your cell phone to Georgia with you?

18 A. Yes, sir.

19 Q. During your trial, did you speak with Mr. Strickler or
20 Ms. Thomas about the possibility of you testifying?

21 A. I spoke with them.

22 Q. And what did y'all speak about?

23 A. It, it, it wasn't -- it wouldn't be, wouldn't be great
24 for me to testify because the solicitor can cross me up on
25 examination, and I have nothing to lie about. That's what

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

18

1 I told him. I have nothing to lie about. Well, you know,
2 John, I don't think it's right. It, it wasn't more like
3 Ashley. It was just all Doug basically.

4 Q. What did he say about cross-examination?

5 A. Oh, it wouldn't be good for me. The solicitor would
6 cross me up on, on possible lies and whatever. I told
7 Doug. I strictly told Doug to his face. I said Doug,
8 there's no reason for me to lie.

9 Q. But, but you did not testify, right?

10 A. No, sir, I didn't testify.

11 Q. Why didn't you testify?

12 A. Because that Wednesday when my -- when they was --
13 when they broke for that day and all the witnesses was
14 called and whatever and we was supposed to be doing closing
15 arguments the next day, I remember going down to the
16 holding cell, and Doug came to me. They called me in the
17 little, in a little -- in the little conference room. He
18 came to me. He said how you doing, Mr. Portee? I was like
19 I'm all right. He was like man, we're looking good. We're
20 looking good. He was like look.

21 MR. CORNEY: Objection, Your Honor. I've let him go a
22 whole lot into hearsay up until this point. I'm going to
23 object to hearsay and just ask that he only testify as to
24 his understanding of these conversations and not what
25 someone else said.

1 THE COURT: Well, I'm going to allow it. Overruled.
2 Go ahead.

3 BY MR. SHAFFER:

4 A. He came to me. He was everything, everything is
5 looking good, buddy. Let me close. I got it; we got them,
6 John. There's no need for you to testify. We got it; we
7 got it, man.

8 I was like Doug, like look. That tape they put up
9 against me, I really want to argue with it because it was
10 more like incriminating on my behalf, and I wanted to
11 clarify what that tape was about, and Doug was like well
12 look. Let me close. I got a good closing argument. We're
13 going to win this case, and I was, I was -- we was going to
14 win the case the way he was acting. He was bumping fists
15 with me like (witness indicates) and...

16 Q. You said bumped fists?

17 A. Yeah, he bumped fists with me, acting like -- I looked
18 him in his eyes. He looked me in my eyes.

19 THE COURT: What? What tape are you talking about?

20 WITNESS: It was the tape played in the courtroom, and
21 it was very incriminating.

22 MR. SHAFFER: It was a jail call, Your Honor, I
23 believe.

24 WITNESS: Yes, sir. No -- yes, it was a jail phone
25 call to one of my friends I was with that day, and I needed

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

20

1 some money, and I was asking him to go and get my bag, to
2 go and get the bag that I had.

3 THE COURT: Okay.

4 WITNESS: And it was just more like incriminating
5 because the bag that they was talking about that they tried
6 to bring up at trial was the bag that had the gun in it.
7 And the whole time I was like no. That, that's not it
8 because the bag, the bag that I was telling him to go get
9 was drugs.

10 THE COURT: Okay.

11 WITNESS: To be honest with you.

12 BY MR. SHAFFER:

13 Q. And you were asking -- and you would have testified
14 that the bag you were telling him to go to get was ---

15 A. I even gave him the guy's name, Tyrel Ghosting. I
16 gave it to him, Doug. This, this here is like six months
17 before I even went to trial. I gave Doug the guy's name
18 and told him that the guy was in the county jail. I told
19 Doug. I said the guy's in the county jail; you can speak
20 with him about it. Name is Tyrel Ghosting. He stays two
21 houses down from my momma.

22 Q. The phone call and the bag were two of the primary,
23 primary pieces of evidence they used to convict you,
24 correct?

25 A. Pardon me? Say that again?

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

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1 Q. Well, would you say it's fair to say that those were
2 important piece of evidence in the state's case?

3 A. The, the bag?

4 Q. Yeah.

5 A. And what else?

6 Q. And the phone call and the recording of you saying get
7 the bag.

8 A. See, I, I didn't know that that -- that they was going
9 to play that phone call in particular until Fielding came
10 down and told me, and that's when I started telling about
11 -- well, I would say it's more like the bag and Heather.
12 It wasn't, it wasn't more like that because I could have --
13 it was more like the bag situation and that gun being in
14 the bag and nobody never seen me with this gun. I never
15 had this gun. The gun don't have my fingerprints. It
16 don't even have a magazine.

17 Q. Well, we'll, we'll get to that in a second. You, you
18 got convicted, correct?

19 A. Yes, sir.

20 Q. Okay, and then you appealed your conviction?

21 A. Yes, sir.

22 Q. And you then filed a post-conviction relief
23 application we're here for today, right?

24 A. Yes, sir.

25 Q. Okay. Now, now with the post-conviction relief

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

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1 application, you had mentioned, you had mentioned the gun
2 not being analyzed. In that, what, what exactly do you
3 mean? What, what were you wanting to have done with the
4 gun?

5 A. Say it again?

6 Q. What did you want to happen with the gun, or what did
7 you want them to do with ---

8 A. I wanted them to investigate; I wanted them to
9 investigate. I wanted them to thoroughly investigate. I
10 am, I am entitled to a thorough investigation. Been
11 charged with two murders. I wanted them to -- I told Doug.
12 I said look. I don't know where that gun came from. No
13 one saw me with the gun. I never got a GSR kit done on me.
14 No one, no, no one during trial ever placed the gun in my
15 possession. I told Doug. I said look. Where did this gun
16 come from?

17 Q. Now, let me stop you there. At trial, is it correct
18 to say that they, they said that the gun that they found in
19 the bag was the link to the shooting?

20 A. Yes, sir. That's what they said.

21 Q. Okay. Now, related to the investigation concerning
22 that, were you -- did you want Doug to challenge that, or
23 what did you, what did you want him to do? To investigate
24 whether or not that's correct?

25 A. Oh, the gun, the gun, the gun was like key evidence in

1 my case, you know? I wanted them to, to hire their own
2 independent investigator and, you know, test it, test the
3 gun for DNA, fingerprints, sweat, skin. It doesn't matter.
4 I, I wanted it done.

5 Q. And that's one of your allegations here today?

6 A. Yes, sir.

7 Q. Okay. You also in your PCR application, you mention
8 your alibi witness?

9 A. Yes, sir.

10 Q. Okay, and your records. Now, what did you want him to
11 do related to that?

12 A. Talking with my phone records?

13 Q. Yeah.

14 A. Oh, my phone records, my phone records was like --
15 they got me in Georgia, you know what I mean? I just, I
16 just wanted them to investigate basically.

17 MR. SHAFFER: Court's indulgence.

18 (A PAUSE.)

19 Q. Now, Mr. Portee, since this is your day and your only
20 chance at a post-conviction relief hearing, are there
21 anything -- is there anything that I have not covered that
22 you would like me to bring up?

23 A. Oh, talking about as far as the gun?

24 Q. No, related to the, the allegations you have in
25 post-conviction.

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24

1 A. Oh.

2 Q. Is there any insight that you personally can give
3 related to any of those allegations that you made? I'll
4 question Doug about them in a few minutes.

5 A. Okay. As far as ineffective assistance of counsel?

6 Q. Yes.

7 A. Heather Hunter, she was more like, she was, she was
8 real detrimental [sic] to my case.

9 THE COURT: She was what?

10 WITNESS: She was real detrimental to my case.

11 THE COURT: Detrimental?

12 WITNESS: Yes, sir.

13 THE COURT: Detrimental.

14 WITNESS: Detrimental.

15 BY MR. SHAFFER:

16 A. They needed her. She was, she was threatened. She
17 took the stand, said she was threatened, intimidated,
18 coerced, and she was allowed to take the stand against me.
19 And, and, you know, she wrote like five, six statements
20 against me, you know what I mean? Her, her, her first two
21 statements having me doing anything, and after that, you
22 know, we was just -- it was just as far as, you know -- if,
23 if you're not interviewing but interrogating somebody, you
24 would just -- why wouldn't you put a camera or, or, or a
25 tape recorder in there so, so you can know at least what's

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1 going on? And she was allowed to take the stand on me and
2 give that, and just to give that incriminating testimony.

3 THE COURT: Who is she?

4 WITNESS: Heather Hunter. She was, she was more like
5 my baby mother, but she was a co-defendant in my case.

6 BY MR. SHAFFER:

7 A. She was allowed to take the stand after, after all of
8 that. The gun, which Doug actually cross-examined Dave
9 Collins, and the gun -- David, David Collins during the
10 course of examination, there was -- one of the bullets
11 split in half, and he also stated that, he would say that
12 -- actually, I'm going to tell exactly what he said. I'm
13 going to tell you exactly what he said.

14 (A PAUSE.)

15 A. Excuse me. I'm sorry. On the trial transcript page
16 467, 8 through 10, the investigator states: It was one
17 intact bullet, but during the course of my examination, it
18 also separated into two items.

19 Also see trial transcript page 470, 13 through 20
20 where he also states:

21 None of the parts of the firearm ever came into
22 contact with the core of the bullet which is
23 encased in the jacket material. Therefore, there
24 were no markings there that I could use to
25 identify whether it came from that gun or not.

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1 Also see trial transcript page 437, 21 through 25;
2 438, 1 through 16th: In summary. This was, this dealing
3 with the DNA. He said: In summary, the items that were
4 tested was, was negative for the presence of blood.

5 However, it was DNA present on these items that was
6 not associated with blood. So, my question today is if
7 those items that was tested wasn't associated with blood
8 but DNA was present but it wasn't blood, then whose DNA was
9 it? That's, that's my whole argument today. If it's DNA
10 on this weapon and it's not mine and it's not associated
11 with blood, then whose DNA is it?

12 THE COURT: Well, Mr. Portee.

13 WITNESS: Yes, sir.

14 THE COURT: You know, we can't retry the case.

15 WITNESS: Yes, sir. I understand that, sir, but I'm
16 just trying to get my point across.

17 THE COURT: Well, I appreciate that.

18 WITNESS: Yes, sir.

19 THE COURT: If you can relate that to your claim of
20 ineffective assistance of counsel?

21 WITNESS: Okay, okay.

22 THE COURT: You see what I'm saying?

23 WITNESS: Yes, sir. Yes, sir.

24 THE COURT: We're on the record now. You want to make
25 a record.

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

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1 WITNESS: Yes, sir. Yes, sir.

2 BY MR. SHAFFER:

3 A. My trial counsel performance was deficient because
4 trial counsel -- ineffective assistance for failing to
5 investigate. Trial counsel failure to investigate and
6 aggressively re-examine the ballistics and forensics DNA
7 analysis was ineffective assistance of counsel. See trial
8 transcript page 467.

9 MR. CORNEY: Your Honor.

10 A. 8 through 10, investigator states ---

11 MR. CORNEY: Objection, Your Honor. Excuse me.
12 Objection. I don't want him reading off prepared testimony
13 off the stand. If he's got an allegation, he wants answer
14 questions ---

15 MR. SHAFFER: I will -- I can ask him a question
16 related to that, Your Honor.

17 WITNESS: Yes, sir.

18 THE COURT: Well, you sort of asked him an open-ended
19 question: what else do you want to say.

20 WITNESS: Yes Your Honor, and that ---

21 THE COURT: And that opens the door.

22 MR. SHAFFER: Yes, Your Honor. I, I understand. I, I
23 apologize. I didn't mean to ask, but I'll narrow it or
24 I'll...

25 THE COURT: All right. Go ahead.

J. PORTEE - DIRECT EXAMINATION BY MR. SHAFFER

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1 BY MR. SHAFFER:

2 Q. Mr. Portee, related to the DNA and the gun, and you
3 said you wanted him to investigate the DNA. You wanted him
4 to find out whose DNA it was?

5 A. Yes, sir.

6 Q. Okay. Tell me this. During the closing argument, Mr.
7 Meadors, he, he showed some bullets to the jury?

8 A. Yes, sir.

9 Q. Okay, and during our conversation, you have expressed
10 some concern over that?

11 A. Yes, sir.

12 Q. What is your concern over that?

13 A. My concern was during, during his closing arguments,
14 he presented two full bullets in his hand to the jury. He
15 was like each bullet out the victims, and he presented
16 those bullets, and he was like -- my argument on that would
17 be if he had two full bullets in his hand, but during the
18 course of the investigator's examination one of his bullets
19 split in half and the other one was so fragmentated [sic]
20 that it wasn't even the bullet, it was just fragments, then
21 where did these two full bullets come from?

22 Q. Okay. My final point of inquiry, you had also
23 requested that I pursue a claim related to *Belcher*,
24 correct?

25 A. Yes, sir.

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. Okay, because the judge charged in your -- that you
2 can infer malice from the use of a deadly weapon?

3 A. Yes, sir.

4 Q. Okay, and you wanted me to preserve that argument here
5 today?

6 A. Yes, sir.

7 Q. Okay.

8 MR. SHAFFER: Your Honor, I don't believe I have any
9 further questions at this time.

10 WITNESS: I'd like, I'd like -- something else I need
11 to say, Your Honor.

12 THE COURT: Well, let me let the Attorney General
13 cross-examine you, and then I'll -- if you don't say it
14 during that, then I'll -- bring it back up, and I'll talk
15 to you.

16 WITNESS: All right. All right. All right.

17 MR. SHAFFER: Thank you.

18 THE COURT: I'm going to let you have your say.

19 CROSS-EXAMINATION BY MR. CORNEY:

20 Q. Mr. Portee.

21 A. Yes, sir.

22 Q. It's your testimony today that you were in Georgia
23 roughly what time? What time did you leave to go to
24 Georgia? You said you went to work at, I believe you
25 said ---

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 A. I probably left and went to Georgia probably about
2 9:15 to 9:30, between that time.

3 Q. All right. Your testimony on direct was that at 9:15
4 or 9:30. That, that's what you said, 9:15 or 9:30 you left
5 for Georgia after seeing your mother or speaking with your
6 mother?

7 A. No, after speaking with my mother.

8 Q. Now, there was testimony presented at trial that
9 Carlaus Johnson, who was one of the victims in this case,
10 correct?

11 A. Yes, sir.

12 Q. And she was a manager or assistant manager at the
13 Wendy's restaurant?

14 A. No, sir. She was an employee.

15 Q. An employee at the restaurant, and she was shot and
16 killed at the Wendy's restaurant, correct? She was one of
17 the victims?

18 A. Yes, sir.

19 Q. Okay, and there was testimony presented at trial and
20 evidence that she had clocked in. There was a receipt
21 recovered from the scene that she had clocked in work at
22 8:05 a.m., correct?

23 A. I would assume so.

24 Q. Okay. Stephanie Crumpton, she was another one of
25 these employee?

1 A. Yes, sir.

2 Q. Okay, and she said, her testimony at trial is that she
3 went to the restaurant 10 a.m. and at that time, nobody
4 answered the door when she knocked, and the faucet was --
5 she looked through the window and the faucet was
6 overflowing the sink onto the floor, correct?

7 A. Yes, sir.

8 Q. Okay. Kelly Jones was also an employee at the Wendy's
9 but at a, at a different location on Beltline, correct?

10 A. Yes, sir.

11 Q. And she testified at trial as well?

12 A. Yes, sir. She did.

13 Q. Okay, and her testimony was that she called the
14 restaurant at 8:15 that morning and spoke with Latorah, who
15 was also an employee, one of the victims in this case that
16 was at Wendy's that morning?

17 A. Yes, sir.

18 Q. Okay. So, at 8:15 she spoke with them. She said she
19 called back, and her testimony had between 8:40 and 8:43,
20 and the phone was not answered at that point in time,
21 correct?

22 A. Yes, sir.

23 Q. And she said that phone just rang off the hook.
24 Nobody ever answers.

25 A. Yes, sir.

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. Okay. So, somewhere between 8:15 and 8:40, 8:43 in
2 the morning that day, testimony was presented that they had
3 answered the phones, and then sometime between that time
4 the phone wasn't being the answered anymore, correct?

5 A. I would assume.

6 Q. Okay. Counsel asked to have a alibi charge to the
7 jury as part of the -- as part of your case, didn't he?

8 A. I don't know.

9 Q. You don't recall whether Mr. Strickler asked that the
10 jury be charged on alibi?

11 A. That's already stated.

12 Q. Okay, and you have a copy of the transcript up there
13 with you?

14 A. No, sir.

15 Q. You don't?

16 MR. CORNEY: Just for the court's direction, I'll
17 point to page 544 where he requests an alibi charge.

18 Q. But the court said it wasn't going to charge an alibi
19 charge. Do you recall that?

20 A. Yes, sir. I recall that.

21 Q. Okay, but in the jury charge, the judge did charge the
22 jury that the state essentially had the burden of proof
23 proving you were there and if you had an alibi, you might
24 have been somewhere else, correct?

25 A. Yes, sir.

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. Okay. Heather Hunter testified at trial, and that was
2 your girlfriend, correct?

3 A. Yes, sir.

4 Q. Okay, and Ms. Hunter testified about your trip to
5 Georgia that morning, didn't she?

6 A. Yes, sir.

7 Q. Okay, and she testified pretty similarly to what you
8 said. You would have gotten up and left to go to Georgia
9 later on that morning after she had driven you to work at
10 about 8:00?

11 A. I can't answer that.

12 Q. That's not what the testimony reflects?

13 A. She, she, she didn't, she didn't...

14 Q. I'm just asking if that's what was testified to at
15 trial.

16 A. She testified to a lot of things; she wrote a lot of
17 statements.

18 Q. Okay.

19 A. Who's to say which one was true? I can't -- I'm not
20 going to answer that because her, her testimony wasn't
21 truthful. It wasn't, it wasn't, it wasn't willingly. So,
22 I'm not going to sit here and say that, no. No, I don't,
23 I don't, I don't think it's right.

24 Q. Okay, but you'd agree that was up to the jury to
25 decide whether they thought it was truthful or not, right?

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 A. Yes, sir.

2 Q. Okay, and her testimony that she presented, whether
3 the jury believed it or not, was that she'd driven you to
4 work at 8:00 that morning, right, a couple minutes after
5 8:00?

6 A. I would assume so.

7 Q. Okay, that you had gone around to the door, knocked on
8 the door. She never saw whether you went inside or not
9 because she could -- didn't have a view of the door,
10 correct?

11 A. Yes, sir.

12 Q. Okay, that she heard two loud noises and right after
13 that, you came walking back outside right?

14 A. I never went inside, sir.

15 Q. That was her testimony at trial?

16 A. I would assume so.

17 Q. Okay. She testified you went home. Some time after
18 that, you went to Augusta to go see her godparents, I think
19 you said?

20 A. Yes, sir.

21 Q. Okay.

22 A. And their daughter.

23 Q. So, there was testimony before the court that sometime
24 after she drove you to work at 8:00, you guys did, in fact,
25 go to Augusta, Georgia, that morning, correct?

1 A. Yes, sir.

2 Q. Okay. Chaz Hunter was a friend of -- actually it's
3 her son who testified at trial as well, correct?

4 A. Yes, sir.

5 Q. And he also testified that you'd gone to Augusta that
6 day, correct?

7 A. Yes, sir.

8 Q. And that was also sometime in the late morning, you
9 know. He said he had slept in somewhat, and it was later
10 in that morning when you went to Augusta, correct?

11 A. I can't recollect what he said, but I know what time,
12 I know what time we probably took off because after I
13 called on the phone, that's when we went to Georgia.

14 Q. And I don't know that I'm going to say this correctly,
15 but Jaquetta Owens, am I saying that correctly?

16 A. Jaquetta.

17 Q. Okay. She was a fellow employee of yours?

18 A. Yes, sir.

19 Q. She said you called her about 1:00 that day, correct?

20 A. I'm not sure.

21 Q. Her trial testimony is that you called her about 1:00
22 and said that you were -- you'd gone to Georgia that
23 morning to go see the family members of your, of your
24 baby's mother, correct?

25 A. Well, if you're looking at it, then that's what she

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 said.

2 Q. Okay, and she testified that you didn't, you didn't go
3 to work. That you had said you didn't go to work that
4 morning but, in fact, had tried to call in.

5 A. No. Yeah, that, that's what she said.

6 Q. That's what she said. Okay, that's all I'm asking
7 you: just what her testimony at trial was.

8 A. Yeah. That's what, that's what she said.

9 Q. She said you, you called her at 1:00 and said I never
10 went to work that morning, never showed up at that
11 building. I just was going to call in, but the phone kept
12 ringing, correct?

13 A. Yeah, if that's what she said.

14 Q. All right.

15 A. I would assume so if that's what she said.

16 Q. All right, there was testimony presented throughout
17 the trial that you often carried this green bag, correct, a
18 green ---

19 A. Yes, sir.

20 Q. --- Nike bag? Okay, and Officer Gonzales testified
21 that that day after the incident, he drove out to your
22 house to come see you, correct?

23 A. Yes, sir. I would, I would assume that's what he
24 testified to.

25 Q. Okay, and just for the record, you were one of three

1 employees scheduled to work that morning, weren't you?

2 A. Yes, sir.

3 Q. Correct? The other two were the victims in this case?

4 A. Yes, sir.

5 Q. Okay, and then just you?

6 A. Yes, sir.

7 Q. You were the only one there that morning that wasn't
8 part of this incident?

9 A. I don't, I don't know who was there.

10 Q. Okay. Officer Gonzales goes to your house that
11 afternoon after the shooting to come talk to you about it,
12 and his testimony was that he saw you at your house as he
13 pulled up, correct?

14 A. If that's his testimony.

15 Q. All right, and his testimony was he saw you take off
16 running through the woods at that point, correct?

17 A. That's his testimony.

18 Q. Okay. Officer Lucas thereafter testified that he
19 brought his K-9 by the name Iman in to search behind the
20 woods and your house where Officer Gonzales said he saw you
21 running through, correct?

22 A. That's, that's his testimony.

23 Q. Okay, and Iman, that K-9 unit, found a green book bag
24 there in the woods, right?

25 A. Yes, sir.

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. About 90 feet behind the back of your house?

2 A. Yes, sir.

3 Q. 30 feet behind what the woodland ---

4 A. Yes, yes.

5 Q. --- where the woodline started?

6 A. I would assume so.

7 Q. All right, and there was a .45 caliber handgun found
8 in there?

9 A. Yes, sir.

10 Q. And that's the gun we're referring to that the
11 ballistics expert came in to trial and testified it
12 matched?

13 A. That's, that's the gun we're referring to.

14 Q. Ballistics expert came in and testified that was the
15 murder weapon?

16 A. That's, that's what he testified.

17 Q. You, you recall what else was found in that bag?

18 A. Pardon?

19 Q. Do you recall what else was found in that green bag
20 with the .45 caliber handgun?

21 A. That's, that's my argument. My, my everything.

22 Q. Your everything was ---

23 A. My everything. My, my, my, my, my check stubs, my, my
24 Fort Jackson ID. What else? My Movado watch, my Kenneth
25 Cole cologne, if I'm not mistaken. Just my property.

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 Q. Polaroid picture with you in it?

2 A. Yes. My property.

3 Q. Photo identification of you?

4 A. Yes, sir.

5 Q. Social Security statements?

6 A. Yes, sir.

7 Q. Your name on them, right?

8 A. Yes, sir.

9 Q. Pay stubs with your name on them?

10 A. Yes, sir.

11 Q. There were some things referred to at trial that were
12 called Southern Gentlemen cards, and I don't know ---

13 A. I'm not ---

14 Q. --- what that referred to.

15 A. Yes, sir. Yes.

16 Q. Do you recall that?

17 A. Yes, yes.

18 Q. Those were DNA tested?

19 A. Yes. Every, everything that was DNA tested that was,
20 that was mine came up with my DNA.

21 Q. Southern Gentlemen cards came back matching your DNA?

22 A. Yes, sir. Everything that was in that bag that was
23 mine, and I put emphasis on that, was -- had my DNA on in.

24 Q. And the same bag that .45 caliber handgun was in that
25 had been identified as the murder weapon?

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 A. Yes, sir. The same bag that the .45 caliber handgun
2 that was in that didn't have my DNA on it, yes, sir.

3 Q. And the same green bag that there was testimony you
4 had with you, brought with you to -- brought to work with
5 you all ---

6 A. The same green bag that I carried around with me
7 almost every day.

8 Q. And the same green bag the Officer Gonzales testified
9 he saw you holding when you took off in the woods?

10 A. He said he saw me holding it?

11 Q. He said he saw you holding the bag when you took off
12 in the woods, right?

13 A. Can you, can you state that for the record where he
14 said that he saw me holding the green bag?

15 Q. I can absolutely state that for the record.

16 MR. CORNEY: Give me -- court's indulgence for just a
17 minute, Your Honor. I'll quote you. This testimony starts
18 at page 368, and if I may get a copy of the transcript,
19 I'll point you to the exact line.

20 (A PAUSE.)

21 MR. CORNEY: All right, if I may approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. CORNEY:

25 Q. Page 398, and I'm just going to refresh your memory

1 with this.

2 A. Yes. Please, sir.

3 Q. You don't mind me getting close to you for just a
4 minute?

5 A. No, sir. I don't mind.

6 Q. Right over here in his testimony. Just start right
7 here.

8 A. I was able to observe a black male with a orange
9 shirt, some blue jeans, and carrying, holding a bag.

10 Q. All right, that's, that's ---

11 A. Looks like a bag.

12 Q. That's all I need you to testify to. So, his
13 testimony was drove up to your house.

14 A. He saw me with a bag.

15 Q. Saw a bag.

16 A. You said a green bag. It could have been, it could
17 have been a orange bag or a purple bag or a ---

18 Q. Absolutely.

19 A. He didn't say it was a green bag.

20 Q. Absolutely, but there was testimony throughout trial
21 that you had a green bag on you a lot of times when you
22 went to work, correct?

23 A. That was -- yeah. Yes, yes, yes, yes.

24 Q. All right. You said you went to a cookout when you
25 got back to your house, and that's where you were walking

J. PORTEE - CROSS-EXAMINATION BY MR. CORNEY

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1 to when you were ---

2 A. That's where I was walking to.

3 Q. You typically walk through the woods behind your house
4 to ---

5 A. No, sir.

6 Q. --- get to that house?

7 A. No, sir. I was walking up the street.

8 Q. All right. So, Officer Gonzales saw somebody else
9 take off from your house when he showed up through the
10 woodline ---

11 A. I wouldn't know what Officer Gonzales saw.

12 Q. All right.

13 A. That's what he said he saw.

14 Q. But you don't generally walk through the woods behind
15 your house to ---

16 A. No, sir.

17 Q. --- get to that house?

18 A. No, sir.

19 Q. Okay.

20 A. Because his house is like, you can go up the road.
21 You don't have to go through the woods.

22 Q. Mr. Portee, you'd agree it looks pretty bad, doesn't
23 it, a murder weapon in the bag full of your things, your
24 name was on them, official government documents, your DNA
25 on them? Pretty, pretty bad evidence against you to be

1 introduced at trial, isn't it?

2 A. Yes, yes, yes. That, that's pretty bad evidence, and
3 I, and I've stated that before.

4 Q. All right, and you'd agree that based on the testimony
5 presented, it's most -- I mean, it would be reasonable for
6 the jury to infer that this murder occurred between 8:15
7 and 8:43, the time that -- or 8:05 and 8:43 at the time
8 that was, I believe that was Kelly Jones called, spoke with
9 witnesses or spoke with the victims, I apologize, and then
10 when she called back, the phone wasn't being answered
11 anymore.

12 A. We can assume that.

13 Q. Okay.

14 A. We, we, we can assume that ---

15 Q. And it's your testimony today you went to Georgia
16 between 9:15 and 9:30, correct?

17 A. Yes.

18 MR. CORNEY: That's all the questions I have. Thank
19 you, Your Honor.

20 THE COURT: Mr. Shaffer?

21 REDIRECT EXAMINATION BY MR. SHAFFER:

22 Q. Mr. Portee, right before Mr. Corney started asking you
23 questions, you had mentioned that you had something else to
24 say. What was that?

25 A. I, I, I, I wanted to mention about the, the coroner,

J. PORTEE -REDIRECT EXAMINATION BY MR. SHAFFER

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1 the coroner's report. What was the time of death?

2 Q. What, what, according to the coroner's report, was the
3 time of death?

4 A. He didn't, he didn't really actually state a time of
5 death. There wasn't a time of death in the coroner's
6 report. So, we can assume that they -- we can assume. We
7 can assume all day long.

8 Q. So ---

9 A. But there's no coroner's report stating a time of
10 death.

11 Q. Now, you testified just a second ago answering Mr.
12 Corney's question that the -- it's reasonable to assume
13 that it happened before 8:40. You just testified to that,
14 right?

15 A. Yes, sir.

16 Q. But it's also reasonable to assume it happened
17 afterwards, right?

18 A. We can, we can assume.

19 Q. Because essentially we know that it was before --
20 about 3:00 when the police got there, right?

21 A. Yes, sir.

22 Q. Okay. Whenever you said it's reasonable to assume it
23 happened between 8 and 8:40, you're not saying beyond a
24 reasonable doubt they proved that it happened between ---

25 A. They, they never ---

1 Q. --- then, are you?

2 A. They never proved the elements that I or, or anybody
3 -- you can't, you can't -- you, you -- we can assume all
4 day long. We can assume that they, they died at such and
5 such time. We can assume, but there's -- it's just out
6 there, it's just out there in the ballpark of what happened
7 that day. It's out there in the ballpark, and you have,
8 you have other employees that come up there. I'm talking
9 about 10:00, 11:00, 12:00. No one never called the police,
10 but it's just all of a sudden that just because that I
11 didn't call the police and, and, and I was supposed to work
12 that, that I did something. But if everybody would assume
13 that, we can assume that, we can assume all day long once
14 again that -- it's just, it's just -- we can assume.

15 And also, also the money, the money that was presented
16 during my trial was my money that I got from working at
17 Wendy's. And also I gave my mother some money to pay her
18 light bill, which she gave back to me that Friday which I
19 still had in my pocket. So, the investigator took my money
20 out my pocket.

21 Now, if you can look at the, at the pictures during
22 trial, there's blood spatter all over the office. And
23 Doug's argument was that blood spatter was on the money.
24 So, how come my money that he took out my pocket and
25 everybody said that this money came from the robbery, and

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1 how come, how come the money never, never did Luminol or
2 just -- they just never did nothing to, to my money. And
3 they was like this the money that came from the robbery and
4 charged me with armed robbery.

5 Q. Okay. Well, getting back to Mr. Corney's testimony,
6 and I, I'll go into some of this stuff with Doug in a
7 minute. But he asked you about something Heather had
8 testified to. Is that -- that, that's accurate, right? He
9 just asked you about that, right?

10 A. Mr. Corney?

11 Q. Yeah.

12 A. Yes, sir.

13 Q. And you said Heather testified to a lot of things.
14 What do you mean by that?

15 A. She testified, she said she was intimidated. She said
16 she was threatened. She testified that she didn't see me
17 go in, and then she testified and said that she heard two
18 gunshots. She wrote several statements. The first two or
19 three, the first one, two, or three didn't have me doing
20 anything. It's just that her testimony, it was just...

21 Q. And you said when you were arrested, you had heard her
22 getting intimidated?

23 A. Yes, sir, but when, when I was at, I was at
24 headquarters, I heard them screaming and yelling at her,
25 and she was like I don't know what's going on. I don't

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1 know anything and, and I was like don't you say nothing to
2 them because you need a lawyer. And they heard me
3 screaming, and they closed the door on me. Next thing you
4 know, probably about 2 or 3:00 in the morning, they was,
5 they was bringing me to Richland County Detention Center.

6 Q. Now, you also testified about the bag with Mr. Corney,
7 and you said your DNA was on everything that was in the
8 bag?

9 A. Yes, sir, because that's my bag.

10 Q. It's yours. Well, did you -- is the gun yours?

11 A. No, sir. If they, if they ---

12 Q. And you, you told Mr. Strickler you had no idea how
13 that gun got in that bag, right?

14 A. I told him that. I told him that from, from the
15 fourth day that they came down to Richland County and he
16 asked me. He asked me all those questions, and he asked me
17 where the gun came from. I told him that I do not know.

18 Q. Okay.

19 A. And also I would like to state for the record Officer
20 Gonzales, he was also one of the officers on the crime
21 scene which asked me, brought to my attention he didn't log
22 into the crime scene. So, therefore, the crime scene was
23 contaminated. He didn't log onto the crime scene. The
24 same officer that didn't log into the crime scene just all
25 of a sudden happened to be the same officer who found the

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1 gun in my bag. I would like to clarify that.

2 Q. Okay, and that, that wasn't brought up at trial, I
3 guess?

4 A. No, no, sir, but Ashley did bring it up in trial. She
5 did bring it up that Gonzales, that, that he didn't log in,
6 into the crime scene.

7 Q. Well, was it argued that he was the same -- that
8 he ---

9 A. No, he didn't -- no, they didn't argue that.

10 MR. SHAFFER: No further questions.

11 THE COURT: All right, you may come down.

12 MR. CORNEY: Your Honor, if I may ask a few questions?

13 THE COURT: All right. All right. Go ahead.

14 MR. CORNEY: Just recross. I'm sorry. I apologize.

15 THE COURT: Recross.

16 RECROSS-EXAMINATION BY MR. CORNEY:

17 Q. Mr. Portee, the firearms expert or fingerprint expert,
18 excuse me, that came in and testified, Anna Elsey, she
19 testified she wasn't able to lift any fingerprints off the
20 gun, correct? Wasn't that her testimony?

21 A. I don't know.

22 Q. She swabbed it for DNA, tried to lift prints off it.
23 She couldn't get any prints that would be able to be
24 matched to anything.

25 A. I'm, I'm not talking about Ann Easley [sic]. You

1 talking Anna Easily?

2 Q. The one that testified at trial, the fingerprint
3 expert from ---

4 A. I was speaking of Gray Amick.

5 Q. Pardon?

6 A. I was speaking of Gray Amick.

7 Q. Okay, but I'm saying ---

8 A. I don't know, I don't know what Anna testified to.

9 Q. Okay, and if the transcript reflects that she
10 testified she did try to pick up fingerprints off the gun
11 and did try to swab it for DNA, and neither one came back
12 with anything, you, you wouldn't dispute that, would you?

13 A. If that's what you're reading, I, I can't dispute it,
14 but I can dispute Gray Amick.

15 Q. The testimony at trial was there was about \$1600
16 missing from the safe. Is that correct?

17 A. That's, that's, that what they say.

18 Q. How much money was found on you and taken out of your
19 pocket you were talking about?

20 A. Approximately a little over 200.

21 Q. So, where in the testimony presented at trial did they
22 ever say that \$200 was the same, was from the safe? I
23 mean, you said a minute ago everybody said that.

24 A. No.

25 Q. Where is that in the trial?

J. PORTEE - RECROSS-EXAMINATION BY MR. CORNEY

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1 A. He held, the solicitor, held the money up in my trial
2 and said this what they get. This what the victims get,
3 \$200, \$200. He was walking around like Jed Clampett with a
4 pocket full of money. That's what he said.

5 Q. All right. Well, my point is there was \$1400 of other
6 money out there. I mean, how would anyone infer that that
7 \$200 that was taken out of your pocket had to be from this
8 robbery where there's \$1400 missing?

9 A. That's -- you asked me.

10 Q. Okay.

11 A. You just asked me. You just asked the question; I'm
12 answering you.

13 Q. So, there's no testimony in there that \$200 was ever
14 from this crime scene?

15 A. Yes, there was because he, he said Mr. Portee walking
16 around, killed two individuals, just walking around with
17 money. It's, it's, it's, it's, it's in Mr. Meadors's,
18 it's, it's in his closing arguments.

19 Q. Thank you.

20 A. He's walking around like he's Jed Clampett with a
21 pocketful of money. That's exactly what he said.

22 Q. Okay. Thank you, Mr. Portee. There is -- you didn't
23 have keys to the Wendy's restaurant, did you?

24 A. No, sir.

25 Q. You couldn't get in without knocking on the door,

1 having the manager look through that window on the back
2 door, see you, and open the door, correct?

3 A. But there was, there's known to been people in the
4 restaurant.

5 Q. I'm, I'm just asking you a question. That was how you
6 got ---

7 A. No, I can't -- no, no one can get in, not unless they
8 let them in.

9 Q. And the only way you get in is by knocking on that
10 back door, having somebody look through that window, see
11 you, and open the door for you?

12 A. Some, sometimes they don't even look through the
13 window. They just open the door.

14 Q. Okay. Now, you talked about Heather Hunter giving
15 different inconsistent statements throughout the course of
16 this investigation, correct?

17 A. Uh-huh.

18 Q. Wasn't that something that Doug Strickler asked her
19 about on cross-examination?

20 A. As far as what?

21 Q. Talking about that she had given statements before
22 that differed from ones she gave later?

23 A. Yeah.

24 Q. And I think you also testified that the jury could
25 have assumed. Before when I asked you, you said that the

J. PORTEE - RECROSS-EXAMINATION BY MR. CORNEY

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1 jury could have assumed this murder happened between the
2 8:15 and 8:45 time period that we were talking about,
3 correct?

4 A. We're talking murder. We don't make assumptions. We
5 don't make it. We don't make assumptions when you talk
6 about murder, sir.

7 Q. Okay, and you said that. You said that earlier, but
8 then Mr. Shaffer just asked you a minute ago. You said it
9 was just as reasonable to infer that this murder happened
10 after, after 9:00, correct?

11 A. It, it, it, it could have happened. It could have
12 happened because there was no, there was no -- and I
13 repeat. There was no, no -- how could I put this? There
14 was no time of death.

15 Q. All right, and if the jury believed you -- believed
16 this testimony from Ms. Hunter and from Chaz Hunter that
17 you'd gone to Georgia that morning, you'd gone to Augusta
18 about 9:15, 9:30, clearly they believed this murder
19 happened before that time because they convicted you of it,
20 correct? They couldn't ---

21 A. Could they believe that?

22 Q. --- have convicted you if they believed you were in
23 Georgia, could they?

24 A. Because the elements wasn't brought up. It wasn't
25 brought up that -- the time of death. There was no time of

1 death.

2 Q. All right.

3 A. If, if, if my counsel would have brought up the time
4 of death -- there was no time of death. We can, we can
5 assume all day long, but my thing is you have to prove
6 beyond a reasonable doubt.

7 Q. I'm not talking about ---

8 A. Beyond a reasonable doubt.

9 Q. Mr. Portee, Mr. Portee.

10 A. There's reasonable doubt.

11 Q. I'm not talking about assuming. I'm talking about the
12 jury clearly believed this happened and that you were there
13 when it happened. That's why they convinced you, correct?

14 A. Oh, they believed it. They believed it because the
15 elements wasn't, wasn't, wasn't brought out the way it was
16 supposed to been brought out.

17 Q. Okay. So, they, they didn't believe that either: (A)
18 they didn't believe that you were in Georgia at the time
19 you said you were; or (B) the death happened before you
20 left for Georgia. One of the two. I mean, they convicted
21 you. They, they found one or the other, right?

22 A. And I don't, and I don't, and I don't know how.

23 MR. CORNEY: Okay. That's all the questions I have.
24 Thank you, Judge.

25 THE COURT: All right, sir, you may come down.

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1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Next witness, Mr. Shaffer.

3 MR. SHAFFER: Your Honor, at this time the applicant
4 rests. I, I believe the state would be calling the next
5 witness.

6 THE COURT: I'm sorry?

7 MR. SHAFFER: The applicant rests. I believe the
8 state will be calling trial counsel.

9 THE COURT: All right.

10 MR. CORNEY: Thank you, Your Honor. At this time, the
11 state will call Douglas Strickler to the stand, please.

12 DOUGLAS S. STRICKLER, BEING DULY
13 SWORN, TESTIFIES AS FOLLOWS:

14 THE COURT: Have a seat in the witness box. State
15 your full name for the record.

16 WITNESS: Douglas Stephen Strickler.

17 MR. CORNEY: Please the court, Your Honor?

18 THE COURT: Yes. You may proceed.

19 DIRECT EXAMINATION BY MR. CORNEY:

20 Q. Mr. Strickler, good morning to you.

21 A. Good morning.

22 Q. Thank you for being here. I know you're getting
23 pulled in a lot of directions. I appreciate your patience.

24 A. Not a problem.

25 Q. Do you recall Mr. Portee's case?

1 A. I recall it, yes.

2 Q. Okay, and do you recall about what time you became
3 involved in this case, when you were -- when your office
4 took over representation?

5 A. First notes in my file are from -- let me make sure
6 I'm correct here -- September 6, 2006.

7 Q. And at this point in time, you're the chief public
8 defender for the Fifth Judicial Circuit, correct?

9 A. That's correct.

10 Q. And you are the ---

11 A. At this point in time, yes, sir.

12 Q. And at that time, you ---

13 A. At that point in time ---

14 Q. --- represented Mr. Portee?

15 A. At that point in time, I was the public, chief public
16 defender for Richland County.

17 Q. And you had co-counsel on this case?

18 A. Yes.

19 Q. And that was Ashley Thomas?

20 A. That's correct. I also had Ms. Pringle working with
21 me in some parts in the case.

22 Q. All right. Do you recall meeting with Mr. Portee to
23 discuss the case with him?

24 A. Yes.

25 Q. All right, and you were able to review the indictments

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1 and the charges he was facing?

2 A. Yes.

3 Q. Any idea ballpark the number of times you met with Mr.
4 Portee?

5 A. Not, not fewer than thirteen times.

6 Q. And he was at the Department of Corrections at the
7 time you met with him?

8 A. Was at the, he was at the Alvin S. Glenn Detention
9 Center.

10 Q. Excuse me, the detention center for Richland.

11 A. Excuse me.

12 Q. When you met with Mr. Portee, were you able to review
13 the realistic potential jail time he was facing on these
14 charges?

15 A. Yes, I was.

16 Q. At that point in time, the state had some intentions
17 of seeking the death penalty, or what's your recollection
18 as to that?

19 A. State talked about seeking the death penalty for quite
20 some time.

21 WITNESS: Beg the court's indulgence, Your Honor.

22 (A PAUSE.)

23 A. If I remember correctly, Mr. Meadors was still
24 discussing the possibility of this being a capital case as
25 late as the summer of 2008. I've got some ---

D. STRICKLER - DIRECT EXAMINATION BY MR. CORNEY

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1 Q. All right, are we -- I apologize. Go ahead.

2 A. I've got some notes to that effect somewhere; I can't
3 locate them right this instant.

4 Q. Were you able to kind of review the specifics of kind
5 of death penalty cases, how they work, with Mr. Portee so
6 he knew that they had to serve notice, those types of
7 things?

8 A. Yes, I did. I specifically, have specific notes
9 reflecting the fact that I went through that in rather
10 great detail.

11 Q. Okay. Based on those discussions, based on those
12 discussions, is it your belief that Mr. Portee understood
13 for them to pursue capital murder or a death penalty, he
14 would have to be served notice well in advance of trial?

15 A. Yes.

16 Q. At the time that this case was called to trial, was he
17 aware, based on your discussions, that this wouldn't be a
18 death penalty case?

19 A. Yes, he was.

20 Q. Okay. No confusion about that from your recollection?

21 A. No.

22 Q. Do you feel that he ever had any issues participating
23 in your discussions or comprehending what you were
24 discussing with him?

25 A. No, I don't.

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1 Q. I want to review very briefly the, the discovery. Do
2 you recall receiving the discovery file from the state?

3 A. Received the, we received discovery from the state on
4 a number of different occasions.

5 Q. Is that pretty typical ---

6 A. Up to and including January 7, 2009.

7 Q. And that's pretty typical for the discovery to kind of
8 trickle in as the investigation is ongoing?

9 A. Unfortunately so, yes. It's not necessarily because
10 the investigation is ongoing.

11 Q. Yes, sir, and ---

12 A. Just because that's when they get it to us.

13 Q. Do you recall any piece of evidence in that discovery
14 file that gave you concern, things that were noteworthy,
15 and I'll direct you, counsel. Counsel, do you recall there
16 being this green book bag that's been testified to today?

17 A. Yes. I, I remember that.

18 Q. Okay, and inside that book bag was a .45 caliber
19 handgun. Is that your recollection?

20 A. Right, which was identified by ballistics expert as
21 the weapon involved in the murder.

22 Q. Did you ever consider getting a second opinion on
23 that, or was there any need to get a second opinion on
24 that?

25 A. I didn't think so.

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1 Q. And there were no fingerprints on the handgun?

2 A. No.

3 Q. No DNA on the handgun?

4 A. That's my recollection, correct.

5 Q. So, at that point in time -- I just want to make sure
6 I'm clear -- it was your opinion that a second, second
7 opinion to get it retested was not necessary?

8 A. Correct.

9 Q. Were you able to review that discovery file with Mr.
10 Portee?

11 A. Yes.

12 Q. And would you say, would it be fair to say that the,
13 that green book bag contained all these things with his
14 name on it, along with that murder weapon, was a pretty
15 detrimental piece of evidence?

16 A. That was a good piece of evidence, correct.

17 Q. There was also some -- his girlfriend, Heather
18 Hunter's statements, were those part of the discovery file?

19 A. Yes.

20 Q. And she had, in fact, given a couple of statements
21 throughout the course of the investigation, correct?

22 A. I think so.

23 Q. All right. Was that something you planned on bringing
24 up at trial?

25 A. Yes.

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1 Q. And do you recall cross-examining her on those
2 inconsistencies?

3 A. No.

4 Q. And the trial, the trial transcript will speak for
5 itself in that regard.

6 A. Yes, sir.

7 Q. Did you discuss this timing with him about his, his
8 allegation that he was in Georgia at Augusta at this time?

9 A. Yes.

10 Q. Okay, and were you able to investigate that?

11 A. Yes, we did.

12 Q. What was the conclusion you drew from that and how
13 that would work for an alibi for the trial?

14 A. Well, given the timeframe for the offense, it didn't
15 work as an alibi for the case. Given that Mr. Portee
16 indicated to me that he was at the crime scene at about
17 8:05 in the morning, which is exactly the time, exactly the
18 timeframe the state produced evidence that the incident
19 must have occurred, his presence in Georgia later in the
20 day was really irrelevant as far as the defense. Had I
21 thought his presence in Georgia would have established an
22 alibi in the case, I would have had to file notice of
23 alibi. I didn't have an alibi defense.

24 Q. Okay, and part of your investigation into that, did
25 that include his cell phone records and where he was making

D. STRICKLER - DIRECT EXAMINATION BY MR. CORNEY

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1 phone calls from?

2 A. Right. State had those. We obtained them also.

3 Q. Okay. So, it's your testimony he didn't have an
4 alibi, at least not a perfect alibi. There was a
5 possibility he could have done both?

6 A. He did not have a perfect alibi. The cell phone
7 records did not support what he indicated to me they would
8 support. So.

9 THE COURT: So, just for my understanding, you had no
10 corroboration of his claim of alibi?

11 WITNESS: I had no corroboration that he was someplace
12 other than the incident location at the time the incident
13 had taken place. I had corroboration that he was elsewhere
14 later in the day, but not ---

15 THE COURT: You raised this to Judge Kinard.

16 WITNESS: I'm sorry, sir?

17 THE COURT: You raised this to Judge Kinard at your
18 jury ---

19 WITNESS: I don't remember.

20 THE COURT: --- instruction stage of the pleading.

21 WITNESS: I don't remember whether I did or not,
22 Judge.

23 THE COURT: You did.

24 WITNESS: Okay.

25 BY MR. CORNEY:

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1 Q. And along those lines, just to follow up, and I don't
2 know whether you'll recall this, and -- but do you recall
3 the jury, the jury being charged somewhere along the lines
4 of the state must prove that he was actually there? That
5 was kind of the, I guess the meat in the middle type
6 situation the court decided to charge. Do you recall that?

7 A. Don't recall. Maybe ---

8 Q. The transcript reflects that.

9 A. --- the transcript will reflect that.

10 Q. Okay. You've heard Mr. Portee's testimony here today,
11 correct?

12 A. I have.

13 Q. Did you hear -- and you heard his testimony about
14 meeting him down in the utility holding cell below the
15 courthouse?

16 A. Yes.

17 Q. Okay, and is that your recollection of how the
18 conversation went? That there was no need for him to
19 testify because you have it under control, and that -- you
20 know, the extent of what he testified to?

21 A. That, that conversation would not have gone in that
22 fashion. I've never -- I can't think of the case in which
23 I have ever told a defendant that the situation was that
24 rosy for them, I don't care what -- the evidence submitted
25 in the case. A trial is a crap shoot.

1 Q. Do you recall having discussions with him about his
2 right to testify?

3 A. Yes.

4 Q. And through those discussions, do you think you were
5 able to make it clear to him it was ultimately his decision
6 whether he wanted to take the stand?

7 A. There's no question in my mind that I made it clear
8 it's his decision. There's no question in my mind that I
9 also gave him, as I feel I'm required to, my advice as to
10 whether I thought he should testify or not.

11 Q. And that advice was to not take the witness stand,
12 correct?

13 A. That's correct.

14 Q. And if you could elaborate a little bit on what your
15 thoughts were in advising him not to take the stand?

16 A. I regarded, I felt that Mr. Portee's testimony and
17 certainly his presentation during the course of his
18 testimony would not only not be beneficial to him, but
19 would adversely impact his chances at trial.

20 Q. And the testimony about going to Augusta that day,
21 that had already been brought out through state's witness
22 Heather Hunter and Chaz Hunter?

23 A. I think it had, yes.

24 Q. Okay, and to the extent that his testimony that was
25 going to be presented, is it fair to say at that point

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1 really the only beneficial thing he could have testified to
2 is potentially he'd been in Augusta at the time?

3 A. He could have reinforced that fact, correct.

4 Q. And do you recall the testimony of Officer Gonzales
5 about when he approached the house and saw Mr. Portee?

6 A. Yes.

7 Q. Did you have any concerns with how they recovered
8 this, this bag in the woods behind the house, or did you
9 see grounds to move to suppress it all?

10 A. I had no testimony to present regarding suppressing it
11 other than Mr. Portee's contention that the gun was a
12 plant. I certainly had no proof of that, though.

13 Q. At the close of the trial.

14 MR. CORNEY: And this is on page 645 for the court's
15 attention.

16 Q. Do you recall Judge Kinard pretty much telling you he
17 didn't think there was anything else you could have done at
18 trial for Mr. Portee?

19 A. I -- look at the transcript. I don't remember that.

20 Q. Okay.

21 THE COURT: Where is that?

22 MR. CORNEY: That's on page 645, and that's on line 17
23 through 21 where Judge Kinard essentially says he doesn't
24 think Mr. Strickler could have done anything else for him,
25 and how this evidence just too, too hard to overcome.

D. STRICKLER - DIRECT EXAMINATION BY MR. CORNEY

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1 BY MR. CORNEY:

2 Q. As far as the solicitor's closing argument, that's
3 been something that was raised by Mr. Portee. This, I
4 guess, the bullets in his hand and showing money to the, to
5 the jury, you didn't make objections to those. What's your
6 general stand when it comes to objecting to closing
7 arguments? What practice do you undertake in that regard?

8 A. I object when I think I should. I'm not sure whether
9 I should have objected to that or not. Perhaps I should
10 have.

11 Q. If you thought it was objectionable in the moment, you
12 would have objected?

13 A. I would have objected. I don't like to object during
14 another attorney's closing argument. Certainly if they're
15 involved in burden shifting. If they're, if they're
16 engaged in objectionable behavior, I have objected before
17 during the closing arguments. I'm not sure I shouldn't
18 have objected to that.

19 Q. All right. Are you -- and you're familiar with the
20 *Belcher* case that came out from the Court of Appeals,
21 correct, as, as to permissible inference of malice? Are
22 you familiar with that or ---

23 A. Yes.

24 Q. Okay, and that case wasn't decided at the time of Mr.
25 Portee's trial, was it?

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1 A. Don't remember.

2 MR. CORNEY: Beg the court's indulgence for just one
3 minute, Your Honor.

4 (A PAUSE.)

5 Q. Mr. Strickler, I think you heard Mr. Portee's
6 testimony before that he believes an argument should have
7 been made as to why there wasn't blood spatter on the money
8 recovered from him.

9 A. I remember.

10 Q. What's your recollect in that regard?

11 A. I have no recollection. Sorry.

12 Q. Okay. Any reason you think that that should have been
13 an argument you raised, or any reason you didn't raise it?

14 A. I'm -- my -- I don't have any recollection of the
15 money that was recovered from him was ever actually linked
16 to the crime. Might be wrong. The record will speak to
17 that. I'm certainly familiar with arguing that there
18 should be blood on money recovered from a homicide crime
19 scene. I've done so on a number of occasions in the past.

20 Q. Did Mr., Mr. Portee ever talk to you about this theory
21 that he was walking to the cookout at the time he was
22 arrested, and he had never run through the woods behind his
23 house?

24 A. He discussed with me the fact that he didn't run
25 through the woods. I can't remember exactly why he said,

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1 said that.

2 MR. CORNEY: Beg court's indulgence just one minute,
3 Your Honor, I apologize.

4 Q. Mr. Strickler, you remember there being a plea offer
5 for twenty-five to thirty years? I think Mr. Portee
6 mentioned that earlier.

7 A. Absolutely not.

8 Q. Do you recall ---

9 A. It's not that I don't remember. That was no plea
10 offer for twenty-five or for thirty years. I have notes at
11 some point in time that Mr. Meadors offered to take a plea.
12 This is when we still had a capital death penalty threat,
13 and he offered a plea to two consecutive life sentences in
14 the case, which I conveyed to Mr. Portee which he rejected.
15 But there was never an offer, plea offer for anything other
16 than life in prison.

17 Q. And his testimony was that Fielding Pringle was only
18 the one that relayed that to him. If that had come in, if
19 that offer had come in, you'd be aware of it today?

20 A. Oh, yes.

21 Q. This wouldn't have been something that Ms. Pringle
22 would have been aware of and brought to him and you would
23 have never known about?

24 A. Correct.

25 Q. Tyrel Ghosting, that was someone that Mr. Portee

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1 testified to that he had wanted you to investigate that he
2 was in possession of this bag that was talked about on the
3 phone recording. Do you recall that?

4 A. I've looked through my notes. That name was never
5 supplied to me.

6 Q. So, from everything in your file, that was something
7 Mr. Portee never mentioned to you?

8 A. Correct.

9 MR. CORNEY: I believe that's all the questions I
10 have. Thank you very much.

11 THE COURT: Cross-examination.

12 MR. SHAFFER: Your Honor, may we approach one second?

13 THE COURT: Certainly.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: We need to take a short break. Mr.
16 Strickler, you can step down. We'll reconvene about twenty
17 minutes to 12.

18 (OFF THE RECORD.)

19 THE COURT: All right, sir, Mr. Shaffer.

20 MR. SHAFFER: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. SHAFFER:

22 Q. Mr. Strickler, just briefly. You'd given a number to
23 Mr. Corney that you had seen my client no fewer than
24 thirteen times, thirteen, times?

25 A. Correct.

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 Q. Okay. Is that -- what is that based on? Is that
2 based on database, or is that...

3 A. Based on the database, based on my notes.

4 Q. Okay, and so, so that would be you personally and not
5 Ashley or anything on the database?

6 A. Correct.

7 Q. Okay, and your testimony was they never, they never
8 gave an offer at any point?

9 A. Other than two consecutive life sentences.

10 Q. Okay.

11 A. Correct.

12 Q. Did they ever tell him he could plea straight up or
13 anything like that in front of...

14 A. No.

15 Q. Okay. Now briefly, you, you mentioned the handgun as
16 well, and you did not get a expert to examine the handgun
17 independently of...

18 A. I did not.

19 Q. Okay, and so you were relying on the expert from the
20 state?

21 A. Correct.

22 Q. Okay. Did Mr. Portee ever tell you where the gun came
23 from to your recollection?

24 A. No.

25 Q. Do you know if you ever asked?

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 A. We discussed it. He, he denied any knowledge of the
2 handgun.

3 Q. Okay.

4 A. I don't remember whether it was -- that was in
5 response to a question on my part or just raised on his
6 part. I can't remember.

7 Q. Now, did you ---

8 A. Excuse me, if I could. I mentioned something during
9 my direct. I just saw it here. On June 11, 2008, Mr.
10 Meadors was still indicating that the family in this case
11 was leaning towards wanting the death penalty. So, at that
12 point in time the death penalty was still on the table, or
13 the potential for the death penalty was still on the table.
14 I'm sorry, sir.

15 Q. Okay. You had stated that there's no, no
16 corroboration saying that he was not present at the scene?

17 A. I had no corroboration that he was someplace other
18 than the scene in the timeframe that the incident took
19 place.

20 Q. The entire timeframe or part of the timeframe?

21 A. Well, my opinion, the incident took place between 8:00
22 and I forget, 8:40. I think there's some unanswered phone
23 calls about that point. That's how, you know, when you
24 don't have a time of death, if you talk with a coroner they
25 will say well, you can't establish times of death with the

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 degree of accuracy you see on TV.

2 Usually you determine the time of death by
3 establishing when the person was last seen and when the
4 body was found, and you say the time of death was sometime
5 in between those times. And if you establish the fact that
6 people were at location and attempts were made to contact
7 people at the location, and phones get picked up at
8 businesses and the phone's not picked up at the business at
9 a particular time, chances are good that people who are at
10 the location who answer the phones are not able to answer
11 the phone. And any reasonable person, including the twelve
12 people on the jury, will believe that they're dead at that
13 point in time.

14 Q. Did you ask him any questions, the coroner or the
15 medical examiner, did you ask him any questions about the
16 time of death?

17 A. I don't remember.

18 Q. Okay.

19 A. If I didn't, it would be because I know what his
20 answer's going to be.

21 Q. Okay, and you believe that his answer would have been
22 that you can't establish time of death?

23 A. I'm confident of that.

24 Q. Okay.

25 A. Yes. That's based on examining thirty or forty

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 medical examiners or coroners or pathologists on exactly
2 that issue.

3 Q. Do you know if that came out at trial?

4 A. I have no idea. No, sir.

5 Q. Would you argue with me if I had told you that it
6 would -- it did come out at trial -- I mean, that it did
7 not come out at trial, that?

8 A. I take no issue with you at all. I don't remember
9 last week, much less four-some years ago, okay? If there's
10 a transcript, then you need to rely on the transcript that
11 came out at trial.

12 Q. And did, did you argue it in front of the jury?

13 A. I don't know. I'm not trying to be coy. I really
14 don't remember last week too good.

15 Q. Okay. What was your trial strategy going into the
16 trial? What were you going to argue?

17 A. Attack the state's case.

18 Q. Okay.

19 A. We didn't have an alibi. In fact, my notes from...

20 WITNESS: Beg the court's indulgence, Your Honor.

21 (A PAUSE.)

22 A. Yeah, my notes from my conference with Mr. Portee on
23 January 11th right before the trial started indicated I
24 discussed that with him at that point in time. Defense was
25 going to be challenge the state's investigation in the

1 case.

2 Q. Okay.

3 A. Also indicates I asked him how we were going to
4 establish the gun was planted, and Mr. Portee indicated he
5 couldn't help me in that regard.

6 Q. He couldn't help you in that regard?

7 A. Couldn't help me as far as establishing how the gun
8 happened to be planted in his bag. Had no one independent
9 to him that could help me either, so. He also indicated
10 that he had no answer as to why the people at the cookout
11 claimed to have seen him with a gun, why they would say
12 such a lie about him.

13 Q. Did you have cell phone records available?

14 A. Yes.

15 Q. For Mr. Portee?

16 A. Yes.

17 Q. Did you have -- did you or your investigators ever
18 speak to any witnesses that could place him in Georgia any
19 time that morning?

20 A. No, because he wasn't in Georgia that morning. He was
21 at the scene at 8:05 to 8:10 in the morning according to
22 his own testimony. He then left there, went to -- I'm
23 going to say his girlfriend's house. Spent some time
24 there. Probably didn't leave town until about 11:00.

25 Q. Okay, and that afternoon then?

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 A. I had Mr. McNeely looking, investigating aspects of
2 the case. I can't remember whether he talked to people in
3 Georgia or not.

4 Q. Okay.

5 A. I think maybe he did.

6 Q. Okay. Do you have the cell phone records handy?

7 A. Yeah, I have a couple of sets of cell phone records
8 actually.

9 Q. If you could, I know that's part of your personal
10 file, so I'm not going to admit it into evidence.

11 MR. SHAFFER: But if the court will allow him to read
12 off what times he, he made calls in Columbia and which
13 times he made calls in Georgia for that day?

14 THE COURT: Any objection?

15 MR. CORNEY: I don't have any objection to him talking
16 about what investigation he undertook as a part of that.
17 Those are, those records are hearsay. I mean, I know
18 they're part of this file, but they're all hearsay for the
19 truth of the matter, and there's certainly not somebody
20 here to interpret them for us from notes.

21 THE COURT: I understand. I'll allow him to testify
22 as to his understanding of those records.

23 BY MR. SHAFFER:

24 Q. Based on those records, could you tell me what is your
25 understanding of when he left Columbia, when the last call

D. STRICKLER - CROSS-EXAMINATION BY MR. SHAFFER

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1 made from Columbia that day was?

2 (A PAUSE.)

3 A. Well, this is Ms. Hunter's cell phone record.

4 MR. SHAFFER: Your Honor, I, I believe this is my
5 fault. I, I had pulled records for Mr. Strickler this
6 morning. I think I gave him -- I might have pulled the
7 wrong ones.

8 WITNESS: If I could step down a moment, Your Honor?

9 THE COURT: Go ahead.

10 MR. SHAFFER: Your Honor, I apologize. I, I told him
11 I was going to ask him about the records, so I have them
12 handy.

13 THE COURT: Well, let's move on. Come on. What do
14 you want to ask him?

15 MR. SHAFFER: We might be able to get this with the
16 last witness. Basically I was going to ask him the
17 timeframe for when he believed -- when the cell phone
18 records showed that he was in Georgia.

19 THE COURT: Can you do that without the records?

20 WITNESS: I mean, I ---

21 THE COURT: Or do you have those records here?

22 WITNESS: I think the records are in my file, Your
23 Honor.

24 THE COURT: Can we stipulate what they say?

25 MR. SHAFFER: Your Honor.

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1 MR. CORNEY: I've never seen then, Your Honor, so I
2 can't say; I don't think I'm in a position to do that. I'd
3 love to do that to move it along. I've never seen them.

4 MR. SHAFFER: If we're, if we're asking -- we're going
5 to be getting -- if the state's planning on presenting the
6 other witness, I can ask her about it.

7 MR. CORNEY: I plan on introducing her -- I mean,
8 calling her briefly, Your Honor.

9 MR. SHAFFER: Okay. I'll just ask her about that
10 then, Your Honor.

11 THE COURT: Then, Ms. Thomas, I suggest you find them.

12 BY MR. SHAFFER:

13 Q. Now, previously you testified that you might have some
14 trouble remembering exactly what was said during the trial.

15 A. I didn't say I might have some trouble. I'm sure I
16 will have trouble.

17 Q. And it is -- but you agree that more than likely
18 whatever is in the transcript occurred during the trial?

19 A. I take no issue with anything in the transcript.

20 Q. Okay.

21 A. That's why we have those things.

22 Q. And you wouldn't take any issue that there's, there
23 are issues in the -- I mean, that, that the transcript's
24 complete? That it covered all of your objections?

25 A. I have never looked at the transcript. I have no

A. THOMAS - DIRECT EXAMINATION BY MR. CORNEY

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1 doubt that it covers everything.

2 Q. Okay.

3 A. Court reporters in this state do an excellent job.

4 MR. SHAFFER: Court's indulgence.

5 (A PAUSE.)

6 MR. SHAFFER: No further questions, Your Honor.

7 THE COURT: You have anything further?

8 MR. CORNEY: Beg the court's indulgence one moment,
9 Your Honor.

10 (A PAUSE.)

11 MR. CORNEY: No further questions for this witness.

12 THE COURT: All right, sir, you may come down. Thank
13 you very much.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: Next witness for the state.

16 MR. CORNEY: Yes, sir, Your Honor. Just briefly I
17 would call Ashley Thomas to the stand, please.

18 ASHLEY THOMAS, BEING DULY SWORN,
19 TESTIFIES AS FOLLOWS:

20 THE COURT: Be seated in the witness box. State your
21 full name for the record

22 WITNESS: Ashley Thomas.

23 MR. CORNEY: May it please the court, Your Honor?

24 DIRECT EXAMINATION BY MR. CORNEY:

25 Q. Ms. Thomas, thank you for being here today. I'll be

A. THOMAS - DIRECT EXAMINATION BY MR. CORNEY.

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1 very brief. Do you recall Mr. Portee's case?

2 A. I do.

3 Q. And you've heard Mr. Strickler's testimony here this
4 morning?

5 A. I have.

6 Q. And along those lines, is it your recollection of this
7 potential alibi being in Georgia, is it accurate or do you
8 agree with Mr. Strickler's testimony in that regard?

9 A. Yes. I think the way he portrayed it was, was
10 substantially the way it occurred. I don't believe there
11 was -- the alibi evidence was not perfect.

12 Q. There was some possibility he could have both been in
13 Augusta, Georgia, and committed this murder?

14 A. Correct.

15 Q. Based on the timeline of the cell phone records and
16 everything else?

17 A. Based on that timeline, yes.

18 Q. Is it also your recollection as Mr. Strickler
19 testified to earlier that the only plea offer extended was
20 for two consecutive life sentences, and this twenty-five to
21 thirty plea offer, that never happened, never offered?

22 A. I don't recall a twenty-five to thirty plea offer. As
23 far as other plea offers, I don't have any recollections
24 specifically as to those.

25 Q. When the state is potentially seeking a death penalty

A. THOMAS - DIRECT EXAMINATION BY MR. CORNEY

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1 on a case, in your experience at the time you were
2 practicing criminal defense work, would it have been
3 typical for the state to withhold plea offers?

4 A. Generally the determination for death penalty cases
5 comes at some point over an extensive period of time. So,
6 they usually do try to investigate the case and evaluate it
7 before determining whether or not to proceed to death
8 penalty.

9 Q. Okay, and Mr. Strickler testified before. We asked
10 about getting a second opinion on this handgun that was
11 recovered from this green bag. What's your recollection of
12 that?

13 A. I have very little recollection as to a second
14 opinion, whether we sought one or discussed it. I do know
15 that Mr. Portee and I discussed some issues that he had
16 with that handgun. But I don't recall, and I apologize.
17 It may have happened; it may not have happened. I don't
18 recall him requesting a second opinion as to the forensics
19 on that weapon.

20 Q. And what were your discussions with Mr. Portee in that
21 regard as it goes to the handgun? What did, what did he
22 tell you about it? What investigation did you undertake as
23 a result of that?

24 A. Mr. Portee denied having any ownership of that gun.
25 Was not sure how it got into his bag. And I believe in our

A. THOMAS - DIRECT EXAMINATION BY MR. CORNEY

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1 discussions, he believed that it was, it was planted or
2 somehow placed there to make it look as though he was at
3 the Wendy's and, and the person who committed these
4 murders.

5 Unfortunately, there wasn't a whole lot in the record
6 to indicate that the gun would have been planted. I do
7 remember I cross-examined Investigator Gonzales, and in
8 briefly reviewing the transcript, during his direct
9 testimony with Ms. McDuffie I believe -- I don't believe it
10 was ever brought up that he had been at the Wendy's earlier
11 that day, but other discovery indicated that he had been at
12 the Wendy's. It just was not listed either on the crime
13 log -- I'm not sure exactly. I haven't reviewed the crime
14 log, but there was an issue as to why he wasn't mentioning
15 that he was at the Wendy's earlier that day.

16 I think that was my first question to him when I was
17 cross-examining him is bringing up the fact that he was at
18 the Wendy's, and that he was also left alone with the bag
19 in the, in the woodline when the K-9 officer left, and Mr.
20 Gonzales was alone in the woods with the bag.

21 Q. Okay, and that K-9 officer also testified that he was
22 the one that actually opened the bag and saw the .45
23 caliber in there initially?

24 A. I can't remember if it was him or Investigator
25 Gonzales.

A. THOMAS - DIRECT EXAMINATION BY MR. CORNEY

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1 Q. Okay, and the testimony ---

2 A. Okay.

3 Q. --- if correct will speak for itself in that regard.

4 A. Okay.

5 Q. Did you, in your recollection, did you see any, did
6 you see any grounds you could have moved to suppress that,
7 the green bag that was found? That was what was obviously
8 the most incriminating evidence against Mr. Portee.

9 A. At the time I don't recall grounds to suppress that,
10 and I'm sure if there were, we would have pursued that.

11 MR. CORNEY: Beg the court's indulgence just a moment,
12 Your Honor.

13 (A PAUSE.)

14 Q. Do you recall Heather Hunter, Mr. Portee's girlfriend,
15 testifying at trial?

16 A. I do.

17 Q. And she was facing misprision felony charge at that
18 time?

19 A. I believe that's correct, yes.

20 Q. And she was represented by counsel on that charge when
21 she took the stand?

22 A. Yes. I believe he was present in the courtroom during
23 her testimony.

24 Q. And that was David Tarr that she was represented by?

25 A. Yes, sir.

A. THOMAS - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 Q. Okay.

2 MR. CORNEY: Beg the court's indulgence just one more
3 minute. I apologize.

4 Q. Do you recall having discussions with Mr. Portee and
5 Mr. Strickler about his right to testify at trial?

6 A. The only specific thing I remember is him being
7 advised when the state rested their case that he had a
8 right to testify, and he was being advised by the judge at
9 that point.

10 Q. You have any recollection of Mr. Strickler ever
11 telling him not to testify, and the case was in hand and he
12 had it under control, anything along those lines?

13 A. I don't think I was present for that conversation.

14 MR. CORNEY: That's all the questions I have, Your
15 Honor. Thank you very much.

16 CROSS-EXAMINATION BY MR. SHAFFER:

17 Q. Good morning, Ms. Thomas.

18 A. Good morning.

19 Q. Can you tell us briefly? You, you've looked over some
20 phone records related to this, correct?

21 A. I haven't had a chance to look over them. I found the
22 phone records.

23 Q. Okay. If you could take just a moment to look over
24 those and let us know your impression for -- well, first of
25 all, I guess laying the foundation. Do you remember the

1 phone records in this case?

2 A. I remember there were phone records.

3 Q. Okay. Do you remember what they say?

4 A. No.

5 Q. Okay. If you could take a moment just to review them?

6 A. Sure, and I hope I have the right phone records here.

7 This is Cingular phone number, looks like 803-346 or

8 348-3342, and the first one listed is dated 9/23 at 9:38

9 a.m., and it was an outgoing call.

10 Q. And where was that made at?

11 A. What was the phone number for the outgoing call?

12 Q. Yeah. Yeah.

13 A. 929-3166.

14 Q. But it was made -- it indicates it was made in
15 Columbia. Is that correct?

16 A. Yes. I'm sorry, yes.

17 Q. Okay. What -- if you go through that morning, what is
18 the last phone call that indicates it was made in Columbia
19 that -- of that morning?

20 A. Perhaps I'm reading this wrong, but it says calls to,
21 and all the calls to seem to be Columbia.

22 MR. CORNEY: And, Your Honor, just for purposes of the
23 record, actually I renew my objection to that based on
24 hearsay and her ability to, you know, look into what those
25 mean.

A. THOMAS - CROSS-EXAMINATION BY MR. SHAFFER

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1 THE COURT: Well ---

2 MR. CORNEY: I just want, just for the record, just
3 wanted to note that. I understand.

4 THE COURT: Overruled. We're not retrying the case
5 here.

6 BY MR. SHAFFER:

7 Q. Ms. Thomas, if you could, based on your little, little
8 refreshment and your memory of the case, could you tell us
9 -- and at some point it indicates that, his cell phone
10 records indicate that morning that he went to -- that
11 morning or midday he went to Georgia. Is that correct?

12 A. No. Based on I'm looking at, and it may not actually
13 be the correct record. There's some phone numbers that
14 were called that were not 803 phone numbers. But as far as
15 the location ---

16 Q. That record doesn't have them?

17 A. It does not say anything other than Columbia, South
18 Carolina.

19 Q. Okay.

20 A. But those are calls to, so it doesn't say where
21 they're originating from.

22 MR. SHAFFER: Your Honor, if I, if I may, and this is
23 a little out of the ordinary. Those are all the questions
24 I had really planned on asking her. I didn't quite get
25 what I needed to. There is a document in, in that file

1 that indicates the location of the phone calls made and the
2 times that they were made for Mr. Portee's phone.

3 THE COURT: So what?

4 MR. SHAFFER: Your Honor, if I may?

5 THE COURT: What's the relevance for this hearing?

6 MR. SHAFFER: Your Honor, it'll -- it goes to my
7 ineffective assistance of counsel claim for failure to
8 argue alibi because -- I, I do understand that part of the
9 alibi, while it is an imperfect alibi, my, my claim, the
10 primary claim is that there's -- if, if we know something
11 happened between 8 in the morning and 2:00 in the
12 afternoon, and for half that time the guy who they allege
13 did it wasn't in town, makes it less likely that he
14 actually did it because they can't pin down a specific time
15 of death. And I understand that, that it is reasonable
16 that, you know, a jury could have inferred that it happened
17 in the morning. But it's also reasonable that it could
18 have inferred -- they could have inferred that it happened
19 in the afternoon while he was in Georgia, Your Honor.

20 So, for the purposes of this hearing, I need the phone
21 records to establish or at least some testimony on the
22 phone records to establish that they -- that at some point
23 he was actually in Georgia, and that -- if the phone
24 records would have indicated that, Your Honor. I
25 apologize. I know it's not a perfect alibi, but it is an

1 alibi for at least part of the time period that it could
2 have occurred in.

3 (A PAUSE.)

4 THE COURT: Strickler page 544 asks the court: It's a
5 request to charge the defense of alibi. The alibi in this
6 case has been.

7 And the court cut him off. He says:

8 Well, specifically I can't charge Mr. Strickler's
9 request to charge as presented since you say the
10 defendant claims that he has not -- that he was
11 not at the scene. He's not testified, so I have
12 to prove.

13 This is the court.

14 So, I have to prove that the -- I'm not going to
15 charge alibi as such. I'm just going to say the
16 state has the burden of proving that he was
17 present and did the crime and was not elsewhere.
18 If there's evidence in the case that he was
19 elsewhere, he couldn't have been there, could he?

20 Mr. Strickler again is cut off, and the court says:

21 I'll paraphrase that. I'll say the evidence
22 presented could raise the issue of alibi. I
23 can't comment on what he claims. Alibi means to
24 me he's just elsewhere. So, the state has got to
25 prove the rest of it, and that's all I'm going to

1 say.

2 Mr. Strickler says:

3 I understand that, Your Honor. I especially need
4 that point clarified with the jury because from
5 the state's own witnesses came testimony that my
6 client said I've got an alibi.

7 So, what, what's your point?

8 MR. SHAFFER: Your Honor, while alibi was charged and
9 there was some indication that he went to Georgia ---

10 THE COURT: Well, it wasn't charged.

11 MR. SHAFFER: I think that the strongest evidence that
12 could have been presented that he went to Georgia is the
13 fact that there's cell phone records. I mean, I know that
14 one of the people who mentioned that he went to Georgia
15 also gave about four or five different statements related
16 to those events. I don't believe she's very credible.

17 The fact the alibi was the law that he had to be
18 present in order to commit the crime was charged doesn't
19 negate the duty of the trial attorney to, to present it as
20 a possible defense if it's the best possible option. And,
21 and our assertion here today, applicant's assertion here
22 today is that that was the best possible defense for him
23 is that he did have an alibi for at least part of the time
24 he ---

25 THE COURT: Well, he would have had to testify to

1 that, wouldn't he?

2 MR. SHAFFER: Your Honor, I don't believe so. I think
3 that they could have presented evidence from the cell phone
4 records that indicated that during part of that time
5 period, he wasn't there.

6 THE COURT: So, those records are not in evidence?

7 MR. SHAFFER: No, Your Honor, they're not. They
8 never, they never got into evidence. I believe that they
9 could have, in conjunction with presenting those records,
10 gone -- more heavily attacked on the fact or attacked more
11 heavily the medical examiner's position that -- or -- I,
12 I'm sorry. He actually never put forth a position on that
13 during the trial, but they could have, could have presented
14 that evidence.

15 And even if Mr. Strickler is right, which I'm sure he
16 is, the medical examiner would have said, well, I didn't
17 know the time of death. I can base it off of when, when
18 they were last seen. Even if that was correct, I believe
19 that there is still an argument that could be made that
20 this happened while he was in Georgia and not while he was
21 in, while he was in South Carolina, Your Honor.

22 THE COURT: All right, what are you asking me to do?

23 MR. SHAFFER: Your Honor, I would like to take or let,
24 let you call another case and maybe supplement afterwards
25 if that the state's okay with it, supplement a copy of that

1 record.

2 THE COURT: State's position?

3 MR. CORNEY: Your Honor, it's the state's position
4 this is not necessary. In the Court of Appeals, the *State*
5 *v. Walker*, Jess Walker decided February 2012, it's from a
6 PCR case that I had the pleasure of arguing in front of the
7 Court of Appeals. They, in that opinion, they set forth
8 that an imperfect alibi or an alibi that leaves open the
9 possibility that the defendant could have both committed
10 the crime and then been somewhere else is no alibi at all,
11 and that won't be grounds for ineffective assistance of
12 counsel because it has to be an airtight alibi for that to
13 be proven, for that to be -- to prove resulting prejudice
14 in a PCR action.

15 My -- the testimony I've elicited from Mr. Strickler,
16 from Ms. Thomas, and from defendant himself was that there
17 is a possibility he could have done both. So, I think it's
18 unnecessary at this point in time, based on the case law,
19 to even do that.

20 Mr. Shaffer himself is saying there's a possibility
21 he could have done both: he could have both committed the
22 crime and later been in Georgia. *State v. Walker*
23 specifically says where it leaves the door open, that it's
24 a physical possibility that the defendant could have been
25 both, that's no alibi at all. So, I don't think it's

1 necessary at this point in time to say that.

2 THE COURT: All right, but I would have to find that.

3 MR. CORNEY: Yes, sir, Your Honor, and it was -- I
4 don't have a case cite, but it's *Walker v. State*.

5 THE COURT: I understand. I understand.

6 MR. CORNEY: Thank you very much.

7 THE COURT: My point ---

8 MR. SHAFFER: And, Your Honor, what ---

9 THE COURT: Just wait a minute.

10 MR. SHAFFER: I apologize, Your Honor.

11 THE COURT: If you want to look at those records, go
12 ahead. Whether I agree to supplement the record with them
13 or not, I'll take it up when you -- after you review the
14 documents and tell me what you think you found. Fair
15 enough?

16 MR. SHAFFER: Your Honor, if, if -- not to be
17 difficult, Your Honor, but is there any way that I could
18 ask the witness to actually review, to go through the file?
19 This is exactly what I did not want to happen, but to go
20 through the file and to actually pull those records because
21 I assure you that they're in those two bankers boxes, or at
22 least they were as of Thursday of last week, and that's ---

23 THE COURT: Well, if you found them before, you can
24 find them again.

25 MR. SHAFFER: Yes, Your Honor. Could I ---

1 THE COURT: I'm going to -- what?

2 MR. SHAFFER: I apologize, Your Honor.

3 THE COURT: I'm going to dismiss the witnesses. If
4 you want to try to supplement the record with what you
5 find, I may let you do it. I may not.

6 MR. SHAFFER: Thank you, Your Honor.

7 THE COURT: Find what you can. If you want your
8 client to stay here, we'll allow him to stay.

9 MR. SHAFFER: Thank you, Your Honor. I'll review the,
10 review the file.

11 THE COURT: As far as the testimony goes, testimony is
12 concluded.

13 MR. SHAFFER: Thank you, Your Honor.

14 THE COURT: Come down, Ms. Thomas.

15 WITNESS: Thank you, Your Honor.

16 (THE WITNESS EXITS THE STAND.)

17 MR. CORNEY: The state doesn't have any further
18 witnesses, Your Honor.

19 THE COURT: All right.

20 MR. CORNEY: The state rests. Thank you very much.

21 THE COURT: All right, let's move on to the next case.

22 MR. CORNEY: Thank you, Judge.

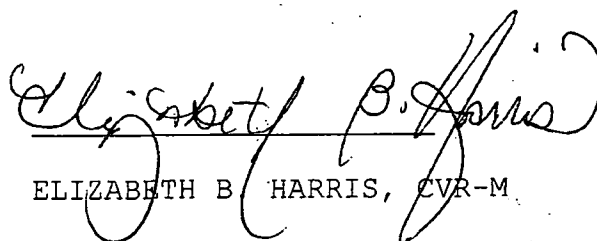
23 (CELL PHONE RECORDS MARKED INTO EVIDENCE AS COURT'S
24 EXHIBIT NUMBER 1 AFTER THE HEARING CONCLUDES.)

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF JANUARY, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 31ST, 2013

24 Applicants
1-16-13

Call Duration (In Seconds)

000061

Call Type	Service Type	Call Date/Time	Call Location	City Called	State	Calling Number	Number Called	Call Duration
MT	LOCAL M2M	9/3/2008 17:53	SC, USA	COLUMBIA	SC	18033483342	18033972778	62
MO	TOLL FREE	9/3/2008 17:31	SC, USA	-	-	18033972778	18882867848	768
MO	TOLL FREE	9/3/2008 17:28	SC, USA	-	-	18033972778	18882867848	77
MO	TOLL FREE	9/3/2008 17:28	SC, USA	-	-	18033972778	18882867848	13
MO	LOCAL M2M	9/3/2008 17:26	SC, USA	COLUMBIA	SC	18033972778	18033483342	53
MO	LOCAL	9/3/2008 17:15	SC, USA	-	GA	18033972778	17067934411	61
MT	LOCAL M2M	9/3/2008 16:49	SC, USA	COLUMBIA	SC	18033483342	18033972778	6
MT	LOCAL	9/3/2008 12:48	GA, USA	COLUMBIA	SC	17062843704	18033972778	60
MO	LOCAL	9/3/2008 12:30	GA, USA	-	GA	18033972778	17067934411	100
MO	LOCAL	9/3/2008 12:27	GA, USA	-	GA	18033972778	17067934411	33
MO	LOCAL	9/3/2008 12:15	GA, USA	-	GA	18033972778	17067934411	239
MO	LOCAL	9/3/2008 12:12	GA, USA	-	GA	18033972778	17067934411	44
MO	LOCAL	9/3/2008 12:12	GA, USA	-	GA	18033972778	17067963441	14
MO	LOCAL	9/3/2008 11:38	GA, USA	-	GA	18033972778	17067904022	76
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MO	LOCAL	9/3/2008 11:27	GA, USA	-	GA	18033972778	17067963441	19
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Portee, #263560;

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-05253

ORDER OF DISMISSAL

DEBORAH M. McBRIDE
C.C.P. & G.S.

2013 MAR - 8 PM 3:18

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed August 9, 2011. An evidentiary hearing into the matter was convened on Wednesday, January 16, 2013, at the Richland County Courthouse before this Court. Applicant was present at the hearing with counsel, Tristan Shaffer, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

~~At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's~~
former trial attorneys, Douglas Strickler, Esquire, and Ashley Thomas, Esquire (hereafter collectively referred to as "counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the relevant documents from Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the October 2006 term of the Richland County Grand Jury for Armed Robbery and two (2) counts of Murder (2006-GS-40-07437 though -

07439). He was represented by the Chief Public Defender for Richland County, Douglas Strickler, Esquire, and former Assistant Public Defender Ashley Thomas, Esquire, on the charges. On January 12, 2009, Applicant proceeded to jury trial before the Honorable J. Ernest Kinard, Jr., where he was found guilty of all charges as indicted after four (4) days. Applicant was sentenced to life imprisonment without parole for each Murder and thirty (30) years imprisonment for Armed Robbery, all to run concurrently.

A notice of Appeal was filed and an Anders¹ brief was submitted on Applicant's behalf by Wanda Carter of the South Carolina Office of Indigent Defense. By order dated February 1, 2011, the South Carolina Court of Appeals granted appellate counsel's request to be relieved and dismissed the appeal. The remittitur was issued February 22, 2011.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Failure to argue/present evidence that alibi as Applicant may have been in Georgia at time of incident;
- b. Failure to argue the money recovered from Applicant should have been covered in blood;
- c. Erroneous advice to Applicant not to testify at trial;
- d. Failure to object to burden shifting argument by solicitor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

¹ Anders v. California, 386 U.S. 738 (1967).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

~~Courts use a two-pronged test in evaluating allegations of ineffective assistance of~~
counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Present Argument on Alibi

Applicant first alleges counsel was ineffective for failing to present an alibi defense at trial based upon the possibility that Applicant could have been in Georgia at the time the robbery/murders occurred.

As a brief background, the current convictions challenged stem from the September 3, 2006, robbery and murder of two Wendy's fast food restaurant employees at the Two Notch Road Wendy's location. The two victims were shot in the head inside the manager's office, where sixteen-hundred dollars (\$1600) was missing from the open safe. Applicant was an employee of that Wendy's location and was scheduled to be the third employee working that morning with the victims. He was made a prime suspect almost immediately and was ultimately arrested for the murders later that same day.

At the PCR hearing, Applicant testified he reported to Wendy's on September 3, 2006, at about 8:30 a.m. for his shift as scheduled. He stated he knocked on the back door as usual to be ~~let in by one of the other employees, but received no answer at the door. After looking into one~~ of the victim's cars parked in front of the building, Applicant said, he waited for a little while before leaving to go home. When he arrived home, Applicant testified he told his mother about his inability to get in at work, but did not call the police to report the strange occurrence despite his mother telling him to do so. Applicant stated it "happened all the time" that he would arrive at work and nobody would answer the door. He noted he did not have a key to the restaurant door and could not get into the building in the morning before the restaurant opened without a manager or someone inside opening the back door for him.

Applicant said from there, he and his baby's mother drove to Augusta, Georgia, because one of her godparents who lived there was sick. He testified he wasn't sure when they arrived in

Augusta because they stopped at a McDonald's to eat on the way, but thought they left Columbia around 9:00 or 9:15 a.m. Applicant went on to say they stayed in Augusta until roughly 1:30 or 2:00 p.m. before leaving to drive back to Columbia, and when they arrived home he spent time at a friend's house and his mother's house. Applicant said he was walking to a nearby cookout when the police stopped him on the side of the road later that day and detained him.

Applicant said he discussed this entire sequence of events with counsel during their pretrial meetings and alleges counsel should have argued at trial that, because there was no specific time of death reported on the victims, Applicant could have been in Augusta, Georgia, at the time of the robbery/murders. Applicant said counsel investigated the potential of developing an alibi defense and said he told counsel's private investigator ("McNeily") to look into it. Applicant said McNeily told him "everything checked out" with that alleged alibi and that was the last Applicant heard about it. Applicant stated there were cell phone records showing he was in Georgia on the day in question, but said they were never used at trial by counsel.

~~On cross-examination, Applicant conceded the evidence introduced at trial reflected at~~ least one of the victims (Carlaus Johnson) clocked into work at 8:05 a.m. that morning based on her clock-in receipt found near the computer. He also agreed Stephanie Crumpton, a fellow Wendy's employee, testified that when she arrived at the restaurant for her shift at 10:00 a.m., nobody answered the back door and the kitchen faucet was running, overflowing the sink onto the floor. Applicant likewise conceded Kelly Jones, a Wendy's employee at another Columbia location, testified at trial she spoke with Johnson and the second victim (Latora Bolton) on the Wendy's phone line at 8:15 a.m. that morning, but when she called the restaurant again at 8:43 a.m. the phone rang continuously with no answer. With that timeline in place, Applicant readily agreed it would have been logical for the jury to infer the murders probably occurred between

8:15 a.m. and 8:43 a.m. despite the absence of a specific "time of death" on the autopsy reports.

He again noted he did not leave Columbia for Augusta until 9:00 or 9:15 a.m.

Doug Strickler, Esquire, (hereafter "Strickler") testified he recalled his representation of Applicant on these charges and said he took over representation of Applicant in September of 2006. He stated both Ashley Thomas, Esquire, and Fielding Pringle, Esquire, assisted in the representation of Applicant. When asked about the alleged alibi of Applicant having been in Augusta, Georgia, Strickler stated he investigated the timeline and evidence thoroughly, ultimately concluding the trip to Augusta would not work as an alibi at trial. Strickler went on to say Applicant admitted to being at the Wendy's at about 8:05 a.m. that morning and, thus, there was no real discrepancy that he had been there very close to or when the crimes occurred. Strickler said Applicant's presence in Georgia was irrelevant to his ability to be at the scene when the incident occurred based on the timeframe, and said Applicant was unable to offer anything to corroborate he was somewhere else when the robbery most likely occurred.

~~On cross-examination, Strickler plainly stated the evidence was pretty clear the murder~~ occurred sometime between 8:00 and 8:43 a.m. and, based on his extensive experience in cross-examining expert pathologists², he believed the coroner would have stated the same timeframe had he been asked to estimate a time of death. Strickler went on to say "any reasonable person, including the twelve jurors in the box", would believe based on the evidence that the victims were killed sometime prior to Jones's 8:43 a.m. phone call that went unanswered. Regarding the phone records, Strickler said he did obtain them and they did nothing to show Applicant was in Augusta any time before roughly 11:00 a.m., well after the crimes had occurred.

² Counsel noted he has examined roughly 30 expert coroners in past trials and stated their estimation on times of death are often influenced greatly by the facts/evidence present, such as the phone calls in this case.

After a thorough review of the record and the testimony presented at the PCR hearing, this Court finds this allegation to be without merit. First, this Court finds counsel's testimony to be **credible** regarding his investigation into and the details of the timeline, while conversely finding Applicant's testimony about his conduct on the day in question to be **not credible**. Counsel credibly testified he conducted a thorough investigation of Applicant's alleged alibi, ultimately concluding it was insufficient to prove Applicant's whereabouts at the time of the crimes. At trial, testimony was elicited from Applicant's girlfriend (Heather Hunter), her son (Chaz Hunter), and several other witnesses indicating Applicant had in fact gone to Augusta, Georgia, on the date in question. Counsel requested the trial court give a jury instruction on the law of alibi based upon that testimony. The trial court refused to do so, instead opting to charge that where there is "evidence of alibi" presented, the state has the burden of proving the accused was at the scene of the crime and, if there is any reasonable doubt he was present, the jury should find him not guilty. "[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." Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995). The evidence presented at trial and the PCR hearing is clear in showing no true alibi existed for Applicant based upon the timeline presented. Applicant has failed entirely to establish how counsel's performance was objectively unreasonable in this regard.

Further, Applicant has failed to prove resulting prejudice based upon this alleged deficiency. The testimony presented at trial by several witnesses, as well as the credible testimony of Strickler at the PCR hearing, reflect a very consistent and reliable inference the robbery/murders occurred sometime between 8:15 a.m. and 8:43 a.m. on September 3, 2006. The

cell phone records produced at the PCR hearing by Applicant do nothing to support an alleged alibi defense as they merely reflect Applicant was in Georgia later in the morning around 11:00 a.m., well after the victim's bodies had been found at the restaurant. Even if taken as true, Applicant's contention that he left for Georgia sometime between 9:00 and 9:15 a.m. does not provide an alibi for the timeframe in which the murders likely occurred. Evidence which makes it "less likely" the accused is the guilty party, but leaves open the physical possibility of guilt, does not meet the legal definition of alibi sufficient for a showing of prejudice on post-conviction relief. See Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012). The evidence and/or arguments Applicant contends counsel failed to obtain and/or present at best makes it "less likely" Applicant is not the guilty party; however, they do not affirmatively account for Applicant's presence elsewhere and fail to convince this Court there is any "reasonable probability" the outcome at trial would have been different had they been presented at trial. Accordingly, this allegation is denied.³

Erroneous Advice Not to Testify

Applicant also contends counsel was ineffective in advising him not to take the witness stand in his defense to present his rendition of the day in question. Applicant testified he spoke with Strickler about testifying and was told it was not a good idea for him to take the stand as the state would have the opportunity to conduct a thorough cross-examination of him, and it "would not be good" for the defense. Applicant noted he told counsel he would not lie on the stand, but said he ultimately chose not to testify because Strickler told him during the course of the trial it was under control and they didn't need Applicant's testimony.

³ Additionally, as set forth below, Applicant cannot prove resulting prejudice as he was facing overwhelming evidence of guilt at trial. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (reasonable probability of different result does not exist where there is overwhelming evidence of guilt).

Strickler thereafter testified he discussed the ability to testify with Applicant and made sure Applicant was aware it was ultimately his decision alone whether to testify or not. Counsel said he did tell Applicant he did not believe it was a good idea for him to testify as the testimony and cross-examination would likely be detrimental to the case. Strickler stated he never had a conversation with Applicant in which he said Applicant's testimony "wasn't necessary" because the case "was under control", and noted he would *never* tell a client the case was "under control" no matter how weak the state's evidence was. Applicant's second-chair counsel, Ashley Thomas ("Thomas") testified she recalled the trial judge advising Applicant of his right to testify at trial on the record, but was not present for the alleged holding cell conversation alluded to by Applicant and Strickler.

This Court finds counsel's testimony to be ~~credible~~ regarding the above-mentioned conversations, while conversely finding Applicant's testimony in that regard to be ~~not credible~~. Accordingly, this Court finds counsel was not deficient in his performance as he adequately advised Applicant of his right to testify and his professional opinion whether to testify, but ultimately made Applicant well aware it was Applicant's decision alone whether to take the stand. The record, likewise, reflects Applicant was advised of his right to testify, after which he made an intelligent and voluntary decision not to do so. Applicant has failed to prove counsel was deficient. Further, having had the opportunity to see Applicant testify and pass upon his credibility, this Court finds Applicant was not prejudiced by his failure to take the stand as he is a wholly incredible witness who offered no credible testimony that would have helped the defense. Accordingly, this allegation is denied.

Failure to Object to Improper Burden Shifting In Closing Argument

Applicant contends counsel was ineffective for failing to object to what he characterizes as "improper burden shifting" in the solicitor's closing argument. Specifically, Applicant testified counsel should have objected to the solicitor's argument about "feeling malice" by holding the gun, as well the solicitor's display of two intact bullets to the jury which the solicitor said were recovered from the victims.

Strickler testified he generally does not like to object to statements made by the solicitor in closing argument, but if improper statements are made he will do so. After reviewing the statements complained of in the record, Strickler stated he did not object because the statements were not improper or otherwise objectionable.

"So-long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law...[and] may argue with reference to any matter which the jurors properly may consider in arriving at their verdict". State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975). This Court finds the

statements set forth by the solicitor were not objectionable, but rather reasonable arguments made on the evidence presented at trial and the law as it stood at the time. Further, counsel undertook a reasonable trial strategy in opting not to object to a statement he did not feel was particularly objectionable or detrimental to Applicant's case. See Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Finally, in light of the entirety of the record before this Court, Applicant has failed to prove that had counsel objected to the statement and it been stricken from consideration, there is a reasonable probability the outcome of the trial would have been different. Therefore, Applicant's request for relief on this ground is denied.

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Failure to Object to Jury Charge on Permissible Inference of Malice

Applicant contends counsel was ineffective for failing to object to the trial judge's jury instruction on the permissible inference of malice from the use of a deadly weapon. This Court finds this contention to be erroneous and improperly raised in the current action.

The case of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), was decided by the South Carolina Supreme Court on October 12, 2009, roughly nine full months after Applicant was convicted of the current charges. Belcher "represents a clear break from our modern precedent" approving of the jury charge on inference of malice from use of a deadly weapon, expressly overruling some twenty-six (26) cases decided over the course of more than 100 years, ranging in date from 1894 to 2006. Id. at 612, 685 S.E.2d at 810. The charge given in Applicant's case was, at the time of his trial, the sanctioned charge on the law. Because the Belcher decision posed a clear break from long-established precedent and was not decided until after Applicant's conviction, counsel was not objectively unreasonable in failing to pose an objection to the charge given. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)).

Further, Belcher's removal of the permissible inference of malice only applies in cases where there is evidence "presented that would reduce, mitigate, excuse or justify a homicide"; Applicant alleged he did not commit the killings and there is no evidence in the record reducing, mitigating, excusing or justifying the homicides. Therefore, Belcher is inapplicable and the permissible inference of malice was properly charged.



Finally, the South Carolina Supreme Court expressly noted in the opinion that the "ruling, however, will not apply to convictions challenged on post-conviction relief." *Id.* at 613, 685 S.E.2d at 810. Accordingly, this issue is also a not proper ground for relief through this PCR action. It is therefore denied and dismissed.

Failure to Investigate Potential Witness

While not specifically pled in the PCR application, Applicant testified he believed counsel was ineffective for failing to locate and interview Terrell Ghoston (sic). Applicant contends Ghoston could have testified at trial that he was in possession of a bag of drugs that was the actual subject of Applicant's conversations from jail with his baby's mother, Heather Hunter. In those recorded phone calls, Applicant repeatedly referred to a "bag" which the state argued at trial was the green bag recovered by law enforcement containing the murder weapon. Applicant alleged he told counsel about Ghoston, who was incarcerated at the time, but said counsel failed to locate and/or speak with Ghoston prior to trial to validate the "bag" Applicant was talking about in the calls was actually an unrelated bag of drugs.

Counsel testified the name Terrell Ghoston was never mentioned to him at any time by Applicant during the course of his representation. He went on to say there was absolutely nothing in his file to indicate Applicant ever told him about this witness or any alleged relationship Ghoston may have to the case. Therefore, counsel said, he never undertook an investigation to locate or speak with Ghoston.

This Court finds counsel's testimony to be **more credible** than that of Applicant's in this regard. In Strickland v. Washington, the Court specifically opined:

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the

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defendant. In particular, what investigation decisions are reasonable depends critically on such information."

Id. at 691, 104 S.Ct. at 2066. The credible evidence reflects Applicant *never* discussed or mentioned this alleged witness to counsel. Therefore, counsel's failure to locate or interview Ghoston was not "objectively unreasonable". This Court finds counsel's performance not deficient in this regard.

Further, Applicant failed to produce Ghoston's testimony at the PCR hearing and, therefore, failed to prove resulting prejudice as well. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.")

Accordingly, this allegation is denied and dismissed.

Overwhelming Evidence of Guilt

As a final note, this Court finds Applicant cannot prove resulting prejudice on any alleged deficiency set forth above as he was facing overwhelming evidence of guilt at trial. "In light of the overwhelming evidence of Petitioner's guilt...we find no reasonable probability the result of the trial would have been different had counsel's performance not been deficient". Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991); see also Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (reasonable probability of different result does not exist where there is overwhelming evidence of guilt).

At trial, Officer William Gonzales ("Gonzales") testified he drove to Applicant's house on the night of the incident where he observed a black male standing on the left side of the house holding a bag. As he approached, Gonzales said, the man made eye contact with him then took

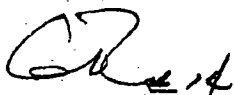
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off running towards the back of the house, through the ensuing tree line. Officer William McRoberts, who was with Gonzales at the time, identified that man at trial as Applicant.

Gonzales testified he called Officer David Lucas to come to the house with a K-9 unit to search the woods where the man had run.

While searching, the K-9 unit located a green Nike bag roughly thirty (30) feet into the woods, about 90 feet behind Applicant's house. The bag contained a .45 caliber handgun and numerous other personal effects. The handgun was later matched by ballistics as the murder weapon used at the Wendy's earlier that day. With the gun in the bag was a photo identification card of Applicant's, Applicant's social security statements, Applicant's paystubs, a Polaroid picture with Applicant contained in it, and several "Southern Gentleman" cards which later tested positive in containing Applicant's DNA. Throughout the course of the trial, there was also testimony from at least three (3) of the state's witnesses to corroborate Applicant had a green bag he often carried with him or that he was otherwise seen carrying such a bag that day. At the PCR hearing, Strickler credibly testified he saw no grounds upon which he could make an argument to suppress the bag or the evidence obtained therefrom.

In light of this evidence and the remaining testimony and/or physical evidence presented at trial, it is clear Applicant was facing overwhelming evidence of guilt at trial. Therefore, in addition to the individual analyses set forth above denying each individual allegation raised, this Court can find no "reasonable probability" that but-for any one of counsel's alleged deficiencies, the outcome at trial would have been different. Therefore, Applicant cannot satisfy his burden under Strickland v. Washington and this application must be denied with prejudice.



CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. ~~Therefore, any and all remaining allegations are denied and dismissed.~~

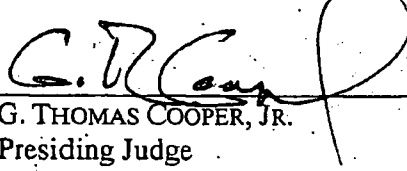
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

CL 15

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of March, 2013.


G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

State of South Carolina
County of Richland

John Porter, #263560

Applicant

v.

State of South Carolina

Respondent

In The Court Of Common Pleas
5th Judicial Circuit
2011-CP-40-05253

787

Motion "Rule" 59(E)

RICHLAND COUNTY
2013 MAR 27 PM 1:53
JEANETTE L. BROWN
Clerk, C.P. & C.D.

Procedural History

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the October 2006 term of the Richland County Grand Jury for Armed Robbery and two(2) counts of Murder (2006-SS-40-07437 through 07439). He was represented by the Chief Public Defender for Richland County, Douglas Strickler, Esq, and former Assistant Public Defender Ashley Thomas, Esq, on the charges. On January 12, 2009, Applicant proceeded to jury trial before the Honorable J. Ernest Kinard, Jr., where he was found guilty of all charges as indicted after four(4) days. Applicant was sentenced to life imprisonment without parole for each Murder and thirty(30) years imprisonment for Armed Robbery, all to run concurrently.

A notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf by Wanida Carter of the South Carolina Office of Indigent Defense. By order dated February 1, 2011, the South Carolina Court of Appeals granted appellate counsel's request to be relieved and dismissed the appeal. The remittitur was issued February 22, 2011. Applicant Application for Post-Conviction Relief (PCR) was filed August 9, 2011 and later amended on November 28, 2011. An evidentiary hearing into the matter was convened on January 16, 2013, at Richland

88 County Courthouse before this Court. Applicant was present at hearing with counsel, Tristram Chaffer, Esq. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office. Applicant raised the following grounds for relief:

- 1) Ineffective Assistance of Counsel - failed to object to the confusing and misleading "alibi" charge.
- 2) Ineffective Assistance of Counsel - failed to object to witness and prosecutive conduct. "Improper Intimidation"
- 3) Ineffective Assistance of Counsel - failed to object to faulty instructions given to the jury.
- 4) Ineffective Assistance of Appeal Counsel - failed to argue counsel objections as they are preserved for appeal/appellate review.
- 5) Ineffective Assistance of Counsel - failed to object to improper remarks during closing by solicitor.
- 6) Ineffective Assistance of Counsel - failed to investigate and aggressively re-examine the ballistics and forensic "DNA" analysis.
- 7) Ineffective Assistance of Counsel - failed to cross-examine the medical expert as to "The Time of Death".
- 8) Ineffective Assistance of Counsel - failed to argue/present evidence that alibi as Applicant may have been in Georgia at time of incident/death..
- 9) Ineffective Assistance of Counsel - failed to raise issue of crime scene contamination. "Fruit of the poisonous tree"
- 10) Ineffective Assistance of Counsel - failed to argue money recovered from Applicant wasn't ill gotten gain, and was usable or relevant as evidence at trial. No link to crime.
- 11) Ineffective Assistance of Counsel - Erroneous advice to Applicant not to testify at trial.
- 12) Ineffective Assistance of Counsel - failed to object to burden shifting argument by solicitor..
13. Ineffective Assistance of Counsel - failure to investigate potential witness.

MOREOVER, Applicant received Respondent "Order Of Dismissal" March twenty first (21) 2013 with several issues neglected to be ruled upon and the Honorable G. Thomas Cooper Jr. (Presiding Judge) of the Fifth Judicial Circuit signing off on this Motion Of Dismissal on March eighth (8) 2013. Applicant request a ruling on all issues in (PER) Application before a final ruling, also as well as additional issues raised at hearing (PER)...

APPLICANT ARGUMENT

The Respondent, motion to Dismiss should be Dismissed for the following REASONS:

- 1) The second exception that the South Carolina Supreme Court Carved out to "correct unfairness" was a finding that PCR Counsel was ineffective in failing to file a Rule 59(e) SCRP motion when order failed to address all the issues raised at hearing, in *Prutt v State*, 423 S.E.2d 127 (1992). The Court in *Prutt* remanded for a new (PCR) hearing because the PCR order failed to address issues raised in PCR Application and about which evidence was presented during the PCR hearing.
- 2) Even if his Application is successive the unique combination of facts in this case, entitles him, Relief granted below. See *Case v State* 277 S.C. 474, 289, S.C. 2d 392 (1991) the dissent states: Successive PCR Application could not have been raised in a previous Application for Post-Conviction Relief (PCR) on the grounds that his first complete PCR Application was insufficient due to ineffective PCR Counsel. *Id* at 448, 409 S.E. 2d at 393. We held: LTJ the contention that Prior PCR Counsel was ineffective is not "per se" a sufficient reason allowing for successive PCR Application under § 17-27-90: *Id* at 451, 409 S.E. 2d 394."

THEREFORE, even though a "Per Se claim of ineffective assistance of Post-Conviction Relief Counsel is not a sufficient reason or if the Applicant can present "Ample facts" showing he was denied due process of law in the first proceeding due to Omissions of Counsel may be "Sufficient REASONS."

Applicant therefore alleges a property and liberty interest in Rule 71.1 (d), SCRP of its mandated entitlements and due Process Protection of those entitlements - guaranteed by S.C. Const Art I

§ 3 and the fourteenth (14th) Amendment of the United States Constitution⁷⁹¹
Rule 71.1 (d) SCRCP mandates that PCR counsel investigate and raise all
available grounds for relief, and being PCR counsel fail to do so,
Petitioner was denied due process of law. "see Rule 41.1(d) SCRCP. Counsel
is to ensure that all available grounds for relief are included in PCR
application. J Edwards v State OP. NO 99-MO-083 (filed March 22, 1999)

Therefore, Petitioner is entitled to again raise any available grounds
of ineffective assistance of trial and direct appeal counsel, by through
and under claims of ineffective PCR, PCR - appeal counsel and denial
of due process of law.

SWORN TO AND SUBSCRIBED BEFORE ME

this 21 day of March, 2013

Eugene Keefe
Notary Public

Respectfully;

S/ John Portee Jr
John M Portee Jr.

My commission Expires Apr. 4, 2016

State of South Carolina
County of Richland

John H. Portee Jr.
Applicant/Petitioner

Vs.

State of South Carolina
Respondent

In The Court of Common Pleas
5th Judicial Circuit

Case No. 2011-CP-40-05253

Certificate of Service

I hereby Certify that I did served a true Copy of pro-se
"Motion (Rule) 59(E)" in Response to Respondent "Order
of Dismissal" filed March 8, 2013 to the Clerk of Court
Jeanette W. McBride by depositing the same in the U.S.
Mail postage paid, OR in the mailroom of the under-
signed's institution and addressed as the following:
Clerk Of Court Office, P.O Box 2766, Columbia S.C. 29202
2766, All done on this 25th day of MARCH 2013, AS
Certified to pending case shown above

MARCH 25, 2013

Respectfully;

SI John Portee Jr.

John H. Portee, pro-se

BRCT/SALUDA-229

4460 Broad River Road.

Columbia, South Carolina

29210

Applicant Rule 59(E)

2013 MAR 27 PM 1:53

JEANETTE W. MCBRIDE
CLERK OF COURT
C.C.P. & C.S.

RICHLAND COUNTY
CLERK OF COURT

DEAR
Madam Clerk;

I pray everything is well with you. Enclosed please file with your office this "Motion (Rule) 59(E)". However, at your earliest convenience please fwd as mentioned to the following individuals:

- 1) TRISTAN SHAFER, Esquire
- 2) Sally W. Elliott, Esquire. Deputy Asst. Atty. General
- 3) The Honorable S. Thomas Cooper, Jr

Furthermore, once you have filed and fwd'd this material, could you please send me back any and all material (Motions, PCR) Transcript, Etc). that's relevant to my Post-Conviction Relief hearing on JANUARY 16, 2013; Including this "motion (Rule) 59(E)" and "Certificate of Service". Showing the dates and time you filed with your office.. All pursuant to "Rule 243 (B)". SCRP

Thank you for your time and consideration..

P.S. Please note that I'm no longer at LEE C.I.. It took almost 2wks to receive that order you mailed..

Sincerely yours;

S/John Porter Jr

WITNESSES

(S) WILLIAM MCROBERTS RCSD

ARREST WARRANT NUMBER

1978795

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury

VERDICT

Person of Petit Jury

DOCKET NO. 2006-GS-40-7439

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2006

52

**THE STATE
vs.**

JOHN HENRY PORTEE

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
OCT 20 2006

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 18, 2006 the Grand Jurors of Richland County present upon their oath:

MURDER

That JOHN HENRY PORTEE did in Richland County on or about September 3, 2006, feloniously, willfully and with malice aforethought, kill one Carlaus Johnson means of by means of a firearm and that the said victim died as a proximate result thereof. All in violation of §16-3-10, 20, *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 WARREN B. GIESE
 WARREN B. GIESE, SOLICITOR - RICH COUNTY
 SOUTH CAROLINA

ARREST WARRANT

I-978794

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD#0609026603

against

John Henry Portee

SSN:

e: M Race: B Height: 5 9 Weight: 163

Age: 30 DL #:

Agency ORI #:

Issuing Agency: Richland County Sheriff Department

Issuing Officer: William McRoberts

ss: Murder

se Code: 0116

Ordinance Sec: 16-03-0010, 0020

warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

The accused

be arrested and brought before me to be
with according to the law.

(L.S.)

Signature of Judge

RETURN

by of this arrest warrant was delivered to
Affiant

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant William McRoberts

being duly sworn deposes and says that defendant John Henry Portee

did within this county and state on 09/03/2006

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland Bond Court)

in the following particulars:

DESCRIPTION OF OFFENSE:

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:

That on 09/03/06 while at 7355 Two Notch Rd (Wendys) in the Dentsville Magisterial District of Richland County, one John Henry Portee did commit the crime of Murder in that he did willfully, unlawfully, and feloniously with malice and aforethought, while armed with a deadly weapon, shoot the victim, Carlaus Johnson, causing her death. The defendant worked for the victim and had made previous threats to do her grave bodily harm. The defendant was working with the victim at the time of the murder and he was in possession of the murder weapon at the time of his arrest. The same weapon has been positively matched to the shell casings left at the murder scene by the perpetrator. The defendant fled from law enforcement when he saw the marked patrol cars approaching. Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address

Columbia, SC 29223-

Affiant's Telephone

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 9/3/2006

defendant John Henry Portee

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

as set forth below:

DESCRIPTION OF OFFENSE:

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 09/04/2006

Signature of Issuing Judge
Mildred W McDuffie

Judge Code: 5017

Judge's Address

Columbia, SC 29209-

Judge's Telephone

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 218CERTIFIED TRUE COPY
FILED
2006 SEP 11
RICHLAND COUNTY
SOUTH CAROLINA

7962

ARREST WARRANT

I-978795

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD#0808028603

against

John Henry Portee

SSN:

M Race: B Height: 5 9 Weight:

Date: SC DL #:

: 04000

Issuing Agency: Richland County Sheriff Department

Issuing Officer: William McRoberts

Case: Armed Robbery

Case Code: 0139

Ordinance Sec: 16-11-0330(A)

Warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
with according to the law.

(L.S.)

Signature of Judge

RETURN

Copy of this arrest warrant was delivered to
agent

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant William McRoberts

being duly sworn deposes and says that defendant John Henry Portee

did within this county and state on 09/03/2006

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland Bond Court

In the following particulars:

DESCRIPTION OF OFFENSE:

Armed Robbery

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:

That on 09/03/06 while at Rd (Wendys) in the Dentsville Magisterial District of Richland County, one John Henry Portee did commit the crime of Armed Robbery in that he did, while armed with a deadly weapon, rob the victim of an unknown amount of U.S. Currency. The defendant worked for the victim at the time of the robbery. During the robbery, the defendant fired the handgun, causing the death of two employees within the business. The defendant was in possession of the murder weapon at the time of his arrest. The same weapon has been positively matched to the shell casings left at the murder scene by the perpetrator. The defendant fled from law enforcement when he saw the marked patrol cars approaching. Affiant and others are witness to prove the same

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address

Columbia, SC 29223-

Affiant's Telephone

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 9/3/2006

defendant John Henry Portee

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE:

Armed Robbery

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 09/04/2006

Signature of Issuing Judge
Mildred W McDuffie

Judge Code: 5017

Judge's Address

Columbia, SC 29209-

Judge's Telephone

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCA 916

ORIGINAL
CERTIFIED TRUE COPY
OF ORIGINAL
FILED
2008 SEP 11
RICHLAND COUNTY
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2011-CP-40-5253

John Portee # 263560,

Petitioner,

v.

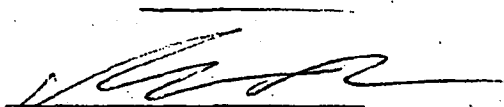
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Applicant appeals the order dismissing his post conviction relief action filed by the Honorable G. Thomas Cooper on March 11, 2013 Applicant received notice of this on order on March 13, 2013.

April 5, 2013


Tristan M. Shaffer
Post Office Box 176
Chapin, South Carolina 29036
(803) 575-0384
Attorney for Petitioner

Other Counsel of Record:
Robert Corney
South Carolina Attorney General's Office
1000 Assembly Street Room 519
Columbia, South Carolina 29201
Attorney for Respondent
(803) 734-3970

FILED
2013 APR -9 AM 11:19
JEANETTE W. McBRIDE
C.C.P. & C.S.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2011-CP-40-5253

John Portee # 263560,

Petitioner,

v.

The State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at 1000 Assembly Street Columbia Room 519, South Carolina 29201, on April 8, 2013

April 5, 2013


Tristan M. Shaffer
Post Office Box 176
Chapin, South Carolina 29036
(803) 575-0384
Attorney for Petitioner

Other Counsel of Record:
Robert Corney
South Carolina Attorney General's Office
1000 Assembly Street Room 519
Columbia, South Carolina 29201
Attorney for Respondent
(803) 734-3970

FILED
2013 APR -9 AM 11:19
CLARENCE W. MOSBRIE
C.C.P. & G.S.

Tristan M. Shaffer

Attorney at Law
Post Office Box 176
Chapin, South Carolina 29036
Telephone: (803) 575-0384
Facsimile: (803) 403-9965

April 8, 2013

Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

RE: John Portee #263560 v. State

Clerk of Court :

Please file the attached Notice of Appeal in the above referenced case.

Thank you for your help in this matter.

Sincerely,



Tristan M. Shaffer

CC:

Robert Corney
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201