

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Marion County

Honorable George M. McFaddin, Circuit Court Judge

SHAHEED HAYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001270

APPENDIX

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JAMIE WILLIAMS - CROSS BY MR. DEBERRY

- 1 A: Yeah.
- 2 Q: How did Shaheed get there?
- 3 A: They picked him up.
- 4 Q: Y'all picked him up after they picked you up?
- 5 A: Yeah.
- 6 Q: Where did y'all pick him up?
- 7 A: Somewhere around Latta. I don't know no address or
- 8 nothing like that, man. I ain't good with roads.
- 9 Q: What kind of car were y'all in?
- 10 A: A Cadillac.
- 11 Q: Was it a white one?
- 12 A: Yeah.
- 13 Q: All right. Do you remember when you started shooting at
- 14 the house about where you were?
- 15 A: I don't recall shooting at the house, man, but I know
- 16 where I was in the car.
- 17 Q: So now you're saying you didn't shoot?
- 18 A: I did shoot, but I ain't aimed at no house.
- 19 Q: What did you shoot at?
- 20 A: I was nervous, man. I just shoot.
- 21 Q: This is State's Exhibit 37. You didn't shoot at the
- 22 house?
- 23 A: This house right there?
- 24 Q: Yeah.
- 25 A: No, I was just shooting.

JAMIE WILLIAMS - CROSS BY MR. DEBERRY

1 Q: All right. And your testimony is that y'all came from
2 Latta, turned around, and were heading back to Latta when you
3 started shooting?

4 A: Man, all I know is I was over the window and he was
5 hanging out the window.

6 Q: All right. Thank you very much.

7 THE COURT: Mr. Bailey, cross examination.

8 MR. BAILEY: Thank you, Your Honor. The Court's
9 indulgence for one second.

10 CROSS EXAMINATION

11 BY MR. BAILEY:

12 Q: Good afternoon, Mr. Williams.

13 A: How are you doing?

14 Q: You're dressed very nice today.

15 A: Thank you.

16 Q: You got those clothes last week?

17 A: Yeah.

18 Q: You were ready to go to trial last week, weren't you?

19 A: If that's what it took, yeah.

20 Q: You were -- last week -- as of last week, you were ready
21 to sit here at this table, weren't you?

22 A: If that's what it took, yeah.

23 Q: Okay. Did you get brought over from the jail today
24 wearing shackles?

25 A: Yeah.

26

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: They took the shackles off of you when you got here
2 today?

3 A: Yeah.

4 Q: Okay. You wore -- do you wear a jumpsuit in the jail?

5 A: Yeah.

6 Q: You don't get to dress like that over at the jail, do
7 you?

8 A: No.

9 Q: Okay. Did you review any of your statements prior to you
10 coming into court here today?

11 A: No.

12 Q: Over the last two-and-a-half years, have you reviewed any
13 of your statements?

14 A: No.

15 Q: Since meeting with law enforcement last week, have you
16 met with them prior to today?

17 A: Prior to today? No.

18 Q: You were born in April 1995?

19 A: Yeah.

20 Q: Does that make you about 19 years old today?

21 A: Yeah.

22 Q: Are you married?

23 A: No.

24 Q: Got a girlfriend?

25 A: Yeah.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 Q: You do?
- 2 A: Yeah.
- 3 Q: How long y'all been together?
- 4 A: About two -- three years.
- 5 Q: Two or three years?
- 6 A: Yeah.
- 7 Q: Before you got locked up in this case?
- 8 A: So-so. Yeah.
- 9 Q: Okay. Are y'all engaged to get married?
- 10 A: No. I don't know about that.
- 11 Q: Okay. Y'all got any children?
- 12 A: No, but I mean I consider him mine though.
- 13 Q: Okay. She has children of her own?
- 14 A: Yeah.
- 15 Q: Okay. How many children does she have?
- 16 A: One.
- 17 Q: One child?
- 18 A: Yeah.
- 19 Q: And you have no biological children of your own?
- 20 A: No.
- 21 Q: Prior to you getting arrested, who were you living with?
- 22 A: My mama.
- 23 Q: It was just you and your mama?
- 24 A: And my dad.
- 25 Q: Your mama and your daddy and that's it? Nobody else I

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 the house?

2 A: Uh-uh.

3 Q: Okay.

4 THE COURT: Is that a no? We need a verbal yes or no for
5 the record. Okay, Mr. Williams?

6 THE WITNESS: Yeah. Yes, sir.

7 Q: Do you have any brothers?

8 A: Yes. I got an older brother.

9 Q: You have one older brother?

10 A: Yeah.

11 Q: Where's he stay at?

12 A: Well, I don't know where he located right now.

13 Q: Okay. You got any sisters?

14 A: Yeah.

15 Q: Older? Younger?

16 A: Two younger and one older.

17 Q: Okay. They didn't live with you?

18 A: No.

19 Q: Who does -- who do your two younger sisters live with?

20 A: Their mama.

21 Q: Okay.

22 MR. CLEMENTS: Your Honor, I'm curious as to the
23 relevance of this line of questioning.

24 THE COURT: I understand it's cross, but get to your
25 point, please, sir.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 MR. BAILEY: Well, Your Honor, I'm attacking his -- his
2 bias. I mean that -- that's the purpose --

3 THE COURT: Go ahead.

4 MR. BAILEY: -- of the questions.

5 THE COURT: Go ahead.

6 BY MR. BAILEY:

7 Q: You got other relatives in Dillon County?

8 A: Yes, sir.

9 Q: Okay. There's people on the outside of jail who love
10 you, don't they?

11 A: Yeah.

12 Q: They don't want to see you go to prison, do they?

13 A: No.

14 Q: Was that a no?

15 A: That was a no.

16 Q: Okay. And you love those people on the outside. You
17 mama and your daddy, you love those people?

18 A: Pretty much, yeah.

19 Q: You don't want to go to prison and be away from them, do
20 you?

21 A: I mean no, but --

22 Q: But?

23 A: I mean I don't know what's going to happen, man.

24 Q: Okay. Now, you've been in jail since you got arrested;
25 correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: Correct.

2 Q: And that was about April the 30th, 2012?

3 A: I got locked up May 1st, 2012.

4 Q: May 1st?

5 A: Yeah.

6 Q: Okay. How do you like living out at the jail for the
7 last two-and-a-half years?

8 A: I mean it's jail.

9 Q: Yeah. Well, let's -- let's talk about what life is like
10 in the jail. Okay? What is your standard issue of clothing
11 in jail?

12 A: An orange jumpsuit, man, and some little patio shoes.

13 Q: Okay. Limited number of jumpsuits you get?

14 A: About three a week.

15 Q: Three a week? How about boxers? Do you get a limited
16 amount of those too?

17 A: Three.

18 MR. CLEMENTS: Your Honor, I'll object on the grounds of
19 relevance on this. I don't see how that even goes to bias.

20 THE COURT: Objection sustained. Go ahead.

21 BY MR. BAILEY:

22 Q: How many people live in a cell with you out at the jail?

23 A: One person.

24 Q: Okay.

25 MR. CLEMENTS: Objection on relevance.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Can y'all approach a minute, please?

2 (Whereupon, a bench conference is held in the presence of
3 the jury but out of the hearing of the jury as follows.)

4 THE COURT: I understand what you're doing, but -- and
5 that is is that it ain't a pleasant place to be. All right.

6 MR. BAILEY: But, Judge, here's the problem. We've got
7 twelve jurors over there who have probably never seen the
8 inside of a jail. They need to under -- they need to
9 understand what it's like to live out there every day and what
10 he's facing. 608 allows me to cross examine him.

11 THE COURT: It doesn't allow you to go wherever you want.
12 All right?

13 MR. BAILEY: If I want to attack his bias or his
14 prejudice --

15 THE COURT: Hold on a minute. I'm going to --

16 (Whereupon, the bench conference ends.)

17 THE COURT: Please step to the jury room for just a
18 minute. I'll get you back out here in just a minute, please.
19 Don't discuss the case. While we're stepping down, I've got a
20 juror that's got to make a phone call. Hold on just a minute.
21 While everybody else steps in the jury room, I need -- Mitch,
22 if you could take her out, please, and let her make her
23 telephone call.

24 MR. CLEMENTS: Your Honor, may I get the witness some
25 water?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Yeah.

2 (Whereupon, the jury exits the courtroom at 5:36 p.m.)

3 MR. WILL GROVE: Your Honor? Your Honor, may I approach
4 the witness?

5 THE COURT: For what?

6 MR. WILL GROVE: I'm here on behalf of Mr. Anderson.
7 He's indicated that he has some questions for me. I have no
8 idea what it is at this point.

9 THE COURT: You can't discuss -- he can't discuss his
10 testimony with you.

11 THE WITNESS: I just wanted some water.

12 MR. CLEMENTS: I've got some water.

13 MR. WILL GROVE: I think it was just the water.

14 THE COURT: Okay.

15 MR. CLEMENTS: May I approach, Your Honor?

16 THE COURT: Yes, sir. All right. Make sure that -- did
17 Mitch take that -- or somebody take that juror out?

18 THE CLERK: Yes, sir, they did.

19 THE COURT: Lock that door. I don't want them coming
20 back in here while I address this issue on the record, please.

21 DETECTIVE MARTIN BELL: Your Honor, may I approach?

22 THE COURT: Yes.

23 (Whereupon, a bench conference is held between the
24 detective and the Court as follows.)

25 DETECTIVE MARTIN BELL: It was just brought to my

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 attention that one of the defendant's mamas is out there with
2 a cell phone recording what's going on here in the courtroom.
3 I haven't seen it. It was just told to me just now. I
4 figured -- I had told Ed and Ed sent me to your attention.

5 THE COURT: One of the defendant's family?

6 DETECTIVE MARTIN BELL: Mm-hmm.

7 (Whereupon, the bench conference ends.)

8 THE COURT: Can the lawyers approach for a minute,
9 please?

10 (Whereupon, a bench conference is held as follows.)

11 THE COURT: Who told you that?

12 DETECTIVE MARTIN BELL: Ed's victims' advocate told me,
13 but she heard it from another person, Derrick. One of the
14 witnesses seen it. Me and Mike seen it out a while ago.

15 MR. BAILEY: What?

16 THE COURT: One of the defendant's family members is out
17 there with a cell phone.

18 DETECTIVE MARTIN BELL: The mother of one of them. Now,
19 which one I don't know.

20 MR. DEBERRY: How are you going to handle it?

21 THE COURT: I mean if that's cell phones, I'm going to
22 have them confiscated. You have a problem with that?

23 MR. CLEMENTS: No.

24 (Whereupon, the bench conference on the record ends and a
25 bench conference is held off the record.)

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: All right. Is the juror -- is that juror
2 back out there yet? Is that juror back out there yet?

3 THE BAILIFF: We're checking now. Yes.

4 THE COURT: Bring -- bring her on through, please.

5 (Whereupon, the juror is escorted to the jury room.)

6 THE COURT: All right. It's been brought to my attention
7 that somebody out in the audience has a cell phone recording
8 -- video recording and/or audio recording what's going on in
9 this courtroom right now with this co-defendant on this
10 witness stand. I want Mr. Bell -- Investigator Bell or
11 somebody else, I want any cell phones held by any people out
12 in the audience to be taken. She's okay. She's okay. She's
13 with the paper.

14 (Whereupon, there is a pause in the proceedings.)

15 THE COURT: Okay. Let me ask this question. When these
16 -- when individuals came in of the general public, whether
17 they be family members of defendants or victims and/or family
18 members, did they go through a metal detector?

19 A DEPUTY: They've been wandng everybody today, Your
20 Honor.

21 THE COURT: All right.

22 A DEPUTY: Downstairs.

23 THE COURT: And will that wand pick up whether or not
24 cell phones are on somebody?

25 A DEPUTY: Yes, sir.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: All right. I want them all taken out here
2 and before they come back in the courtroom, I want the wand
3 run over them to see whether or not they have any cell phones
4 on them. If they are, I want them confiscated. Check them as
5 they go out of this door right here. Check them as they go
6 out of this door. Check under the seats, as well as any
7 cushions out there.

8 (Whereupon, there is a pause in the proceedings.)

9 THE COURT: Can y'all come up here for just a minute,
10 please, while they're doing that?

11 (Whereupon, a bench conference is held as follows.)

12 THE COURT: Like I said, I understand what you're doing
13 here and it's within my discretion as to how far I let you go
14 on this. Okay? And I understand. I mean this is a situation
15 where -- I mean most people do understand the concept of jail
16 now. There's so much on TV. And while I'll allow you to some
17 extent -- I mean it's six o'clock.

18 MR. BAILEY: I know, but as Steven and I were talking
19 about it, Judge, I mean it wasn't our idea to call this case
20 on a Wednesday.

21 THE COURT: I understand.

22 MR. BAILEY: When there's 15 witnesses in a murder case
23 with two defendants.

24 MR. CLEMENTS: It's not 15. It's 13.

25 MR. BAILEY: I was close -- in the ballpark.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Okay.

2 MR. CLEMENTS: I just wanted to be accurate. Y'all --
3 y'all just got to be close, but I've got to be accurate.

4 THE COURT: I mean get to the issues. I mean I
5 understand and I want to you to do whatever you need to do to
6 protect your client, but at the same token, all that's out
7 there.

8 MR. CLEMENTS: But some things you do don't protect your
9 client and waste time.

10 (Whereupon, the bench conference ends.)

11 THE COURT: All right. Everybody checked fine? And I
12 want to make this clear that the reason I did that is it's my
13 understanding that -- and I addressed this before we started
14 this trial -- that there were some issues relating to this
15 case wherein a bond hearing was conducted months ago by Judge
16 Seals. Bond was denied and whether it was in any way related
17 to this case at all, shortly thereafter within the hour I
18 believe there was a bomb threat made at this courthouse and to
19 Judge Seals.

20 For security purposes -- for security purposes, that's
21 why that was done. You are not to have cell phones in here
22 without prior Court authorization and approval and you are not
23 to be recording, whether it be by audio or video, any
24 proceedings going on in this courtroom without prior Court
25 approval, and that's why I did that for security reasons.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Okay? It's my understanding everything is fine.

2 You all, whether you are defendants' family or victims
3 and victims' family, you have every right to be in here and I
4 want you to be in here. I want you to be in here, but my
5 primary concern is making sure that security is completely
6 taken care of while everybody is in here. Okay?

7 All right. Now, the issue concerning the cross
8 examination I sent the jury out on. We've spoken about that
9 at sidebar. I'm certainly going to allow -- and it's within
10 this Court's discretion as to -- to what extent I'm going to
11 allow Mr. Bailey to go on his cross examination to establish
12 bias. I'm going to allow some of it, Mr. Bailey, but I want
13 you to get to the point.

14 MR. BAILEY: All right.

15 THE COURT: It's six o'clock. It's been a long day. And
16 I understand the case was called yesterday, but we're going to
17 plow along and we're going to finish this case. All right?

18 MR. BAILEY: I understand.

19 THE COURT: Anything also before I bring the jury out?

20 MR. CLEMENTS: No, Your Honor.

21 THE COURT: Anything else, Mr. Bailey or Mr. Deberry?

22 MR. BAILEY: No, sir.

23 THE COURT: Bring me the jury, please, sir.

24 (Whereupon, the jury enters the courtroom at 5:52 p.m.)

25 THE COURT: All right. All the jurors are present. Mr.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Bailey, you may continue with your cross examination.

2 MR. BAILEY: Thank you, Your Honor. May it please the
3 Court.

4 BY MR. BAILEY:

5 Q: Mr. Williams, prior to us taking a brief recess, we were
6 talking about -- a little bit about life in jail. You're
7 limited in the amount of meals that you receive in jail,
8 aren't you?

9 A: Yeah.

10 Q: It's not the best food in the world, is it?

11 A: No.

12 Q: You don't get to go to a restaurant and choose off of a
13 menu?

14 A: No.

15 Q: Has it been a good experience for you for the last two-
16 and-a-half years to be sitting in jail?

17 A: No.

18 Q: Now, I know you answered a little bit of the questions
19 about this earlier, but you are charged for -- with murder in
20 this case; correct?

21 A: Yeah.

22 Q: And you've been explained that murder carries 30 to life;
23 is that correct?

24 A: Yeah.

25 Q: You understand that you can't be paroled on that offense

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 if you're found guilty of it?

2 A: Yeah.

3 Q: If you receive a life sentence, you're going to die in
4 prison. Do you understand that?

5 A: Yeah.

6 Q: Okay. Now, on the four attempted murders, you understand
7 that that carries zero to 30 years on each count?

8 A: Yeah.

9 MR. CLEMENTS: Your Honor, I object to even going into
10 this. He's got pending charges, but I don't think he can --
11 it's improper for him to go into each sentence and possible --
12 because he's not sure --

13 THE COURT: Objection overruled. Continue the line of
14 questioning, please.

15 BY MR. BAILEY:

16 Q: And you understand that each of those 30-year sentences
17 on the attempted murder can be run consecutive; is that
18 correct?

19 A: Yeah.

20 Q: That means a total of 120 years is a possibility on those
21 four charges; correct?

22 A: Yeah, that's correct.

23 Q: All right. Now, you also have a discharging a weapon
24 into a dwelling charge; correct?

25 A: Yeah, I got that.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: Okay. And that carries up to ten years; correct?

2 A: Correct.

3 Q: And that can be ran consecutive to any other sentence you
4 receive in this case; correct?

5 A: Correct.

6 Q: And you also have a possession of a weapon during a
7 violent crime charge; correct?

8 A: That's correct.

9 Q: And you understand that that carries up to five years in
10 prison; correct?

11 A: That's correct.

12 Q: And that's in addition to all of your other sentences you
13 could receive; correct?

14 A: That's correct.

15 Q: So you understand that coming into this case today you
16 are facing a possibility of life in prison plus 135 years,
17 don't you?

18 A: Mm-hmm.

19 Q: And last week you decided you didn't want to face those,
20 did you?

21 A: No. I was going to tell the truth regardless. I mean --
22 I mean ain't nothing going to change that.

23 Q: Now, you don't want to go to prison, do you?

24 A: No.

25 Q: You don't want to die in prison, do you?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 A: No.
- 2 Q: Was that a no?
- 3 A: That's a no.
- 4 Q: Okay. You'd be willing to do anything you could to avoid
- 5 having to go to prison on these charges, don't you?
- 6 A: I mean the truth is the truth, like I said before.
- 7 Q: Okay. Now, you testified earlier you have no deal put in
- 8 place on these charges for your testimony; correct?
- 9 A: I mean yeah, I did say that, but I'm coming out to tell
- 10 the truth today.
- 11 Q: So you do have a deal?
- 12 A: Hold up. Oh, no, I ain't got no deal. I thought you --
- 13 I ain't heard what you said. My bad. I'm sorry. I'm sorry.
- 14 Q: Okay. So there's no deal in place?
- 15 A: No. Ain't no deal in place.
- 16 Q: So after this trial concludes this week, you're going to
- 17 plead guilty to murder?
- 18 A: I mean -- no. I ain't going to try -- I ain't trying to
- 19 plead guilty to murder.
- 20 Q: Okay. But you don't have a deal put in place, do you?
- 21 A: No.
- 22 Q: So what do you think you're going to plead guilty to?
- 23 A: I don't know, man.
- 24 Q: You testified earlier that you don't remember the first
- 25 time you spoke with detectives in this case, do you?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: No.

2 Q: Did you go talk with them voluntarily?

3 A: I mean yeah.

4 Q: You did?

5 A: Yeah.

6 Q: Your first statement was voluntarily given to Detective
7 Bell?

8 A: Yeah.

9 Q: Okay. And you testified earlier that your first
10 statement was a complete lie, wasn't it?

11 A: Yeah.

12 Q: Okay. In your first statement, do you recall telling
13 them where you took the guns?

14 A: I can't remember. I know I lied. I can't remember.

15 Q: Okay. When you were making your first statement to
16 Detective Bell, did you tell him you were lying to him?

17 A: No.

18 Q: You were just trying to avoid having to go to jail,
19 weren't you?

20 A: I was already in jail. Why am I going to avoid going to
21 jail for that?

22 Q: Oh. So your first statement was given after you got
23 arrested in this case?

24 A: Yeah.

25 Q: Okay. So the shooting happened on April the 13th;

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 correct?

2 A: I'm not sure what exact day it was, but whatever y'all
3 say.

4 Q: Okay. And you got arrested on May the 1st?

5 A: Yes.

6 Q: That's about 19 days later; correct?

7 A: Yeah.

8 Q: At any point during that 19 days, did you walk or did you
9 go down to the Marion County Sheriff's Office and say I shot
10 somebody?

11 A: No.

12 Q: Okay. During that 19-day period, did you go talk to the
13 Dillon Police Department or the Latta Police Department and
14 say I shot somebody?

15 A: No.

16 Q: Okay. Did you go to any law enforcement agency during
17 that 19-year [sic.] period and say Blaton Smith made me shoot
18 somebody?

19 A: No.

20 Q: In fact, for 19 days you remained free out on the street;
21 right?

22 A: Pretty much.

23 Q: You only started talking because you got arrested; right?

24 A: No. I started talking because I wanted to start talking.

25 Q: Okay. And that first talking was a lie; correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: Correct.

2 Q: All right. If you would have never got arrested on May
3 the 1st, would you have ever come forward with any information
4 about this case?

5 A: No.

6 Q: Okay. Now, you testified for Solicitor Clements about
7 the night riding around in the car and you attributed some
8 statements that Blaton Smith made that night?

9 A: Pretty much.

10 Q: Okay. He's the one who told you to shoot; correct?

11 A: Correct.

12 Q: And you didn't tell that to the investigators the first
13 time you talked to them, did you?

14 A: No.

15 Q: Okay. He handed you a gun to shoot out of the window.
16 That's what you testified to a little bit earlier; right?

17 A: Correct.

18 Q: You didn't tell that to the law enforcement officers
19 earlier, did you?

20 A: No.

21 Q: You've had two-and-a-half years to get your story correct
22 to come into the court today, didn't you?

23 A: No. I mean, like, I know the truth, but I just wanted to
24 say it. I'm telling you the truth. I'm telling the truth.

25 Okay?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: But --

2 A: Let me ask you a question.

3 THE COURT: No, sir.

4 Q: Sir, you cannot.

5 A: All right. Okay.

6 Q: Do you remember when Detective Bell and Detective Watson
7 picked you up from the jail to take you up to Florence to give
8 another interview after you got arrested?

9 A: No, I don't.

10 Q: You don't recall that?

11 A: I don't remember.

12 Q: Do you recall meeting with Detective Bell and Detective
13 Watson after your first statement and tell them I wasn't even
14 there?

15 A: Yeah, I remember that.

16 Q: You remember that?

17 A: Yeah.

18 Q: Okay. And -- and your story here today is that that was
19 another lie?

20 A: That was a lie.

21 Q: Okay. Because you're telling the truth today for us?

22 A: I'm telling you the truth.

23 Q: You were there that night; correct?

24 A: Yeah.

25 Q: Okay. Do you remember getting picked up from the

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 detention center and being transported up here to the Florence
2 City-County Complex up there? Do you recall that?

3 A: I can't recall right now because my mind -- not at the
4 moment, no.

5 Q: Do you recall having the opportunity to meet with an
6 officer in Florence by the name of Julie Duff?

7 A: I can't recall that.

8 MR. CLEMENTS: Your Honor?

9 A: I don't remember.

10 THE COURT: Hold on a minute.

11 MR. CLEMENTS: I think we may have a matter of law we
12 need to discuss.

13 THE COURT: All right. Can y'all come up here?

14 (Whereupon, a bench conference is held in the presence of
15 the jury but out of the hearing of the jury as follows.)

16 THE COURT: Yes, sir?

17 MR. CLEMENTS: The reason I interrupted was because you
18 can't unring a bell, but Julie Duff took him there for
19 polygraph purposes and the polygraph was inconclusive and I
20 don't -- I don't think -- it's inadmissible and I don't think
21 he should be allowed to pursue that line of questioning.

22 THE COURT: I don't want you to open that door.

23 MR. BAILEY: Judge, I'm not asking him anything specific,
24 but there -- on the polygraph questionnaire, there were two
25 questions. One of the questions was, like, did you lie about

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 seeing Blaton Smith shoot a gun. He said no. And then the
2 other --

3 THE COURT: How are you trying to get into that?

4 MR. CLEMENTS: He -- it's just inappropriate all the way
5 around.

6 MR. BAILEY: I can ask him if he was asked those
7 questions. Do you recall being asked --

8 MR. CLEMENTS: But he's laying -- he's liable to --

9 THE COURT: Y'all come over here.

10 (Whereupon, the bench conference on the record ends and a
11 bench conference is held off the record.)

12 THE COURT: Objection overruled on that issue. Go ahead.

13 MR. BAILEY: Are you ready to proceed, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. BAILEY:

16 Q: Mr. Williams, do you recall telling Julie Duff that you
17 did not shoot into the trailer on April the 13th?

18 A: Yeah, I recall that.

19 Q: And that was a lie then too; correct?

20 A: Correct.

21 Q: Okay. And do you recall telling her that you saw Blaton
22 Smith shoot into the trailer that night?

23 A: I probably said that. I don't know. I mean probably so,
24 yeah.

25 Q: Okay. And that would have been a lie as well; correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: It was a lie, yeah.

2 Q: Now, since you've been in jail, Mr. Williams, have you
3 picked up any new charges?

4 A: I mean -- yeah.

5 Q: Do you have a pending charge right now?

6 A: Yeah.

7 Q: What county is your charge pending in?

8 A: Horry County.

9 Q: And what is that charge pending for?

10 A: Assault and battery second degree.

11 Q: Okay. Earlier you testified that you were scared and you
12 didn't know what to do when Mr. Deberry was questioning you
13 about your statement last week. Do you remember that?

14 A: Yeah, I remember that.

15 Q: Okay. You figured out real quick what you were going to
16 do last week, didn't you?

17 A: Yeah. I mean --

18 Q: How many people last week told you that you were looking
19 at life in prison?

20 A: Ain't nobody tell me that last week.

21 Q: Okay. Now, you would agree with me that this fourth
22 statement that you gave last week, all the details that you
23 testified for Solicitor Clements, they match perfectly to his
24 theory in court today; right?

25 A: I mean I don't remember nothing about no statement. I

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 know my statement though.

2 Q: Okay. Let me ask you a question, Mr. Williams, before I
3 wrap up. In your opinion, do you deserve to go to prison for
4 what you did in this case?

5 MR. CLEMENTS: Objection, Your Honor. First, it's an
6 opinion question. I think it's improper.

7 THE COURT: I'll allow him to answer the question.
8 Answer the question.

9 A: I mean if I do, I do, man, because at the end of the day
10 wrong is wrong and right is right.

11 Q: Okay.

12 MR. BAILEY: I have no further questions.

13 THE COURT: Any redirect?

14 MR. CLEMENTS: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q: Mr. Bailey was asking you about your different statements
18 in his questions about what you said back then and what you're
19 saying now. Did you ever put yourself as a shooter in this
20 back then?

21 A: No.

22 Q: And you were how old then?

23 A: Seventeen.

24 Q: How old are you now?

25 A: Nineteen.

JAMIE WILLIAMS - REDIRECT BY MR. CLEMENTS

1 Q: Are you the same man now at 19 as you were at 17?

2 A: No, sir.

3 Q: Why in the world would you put yourself as being the
4 shooter if it wasn't the truth?

5 A: I mean honestly I understand. You know what I'm saying?
6 If there's somebody that didn't do something, didn't really do
7 it, they should have their life. You know what I'm saying? I
8 mean the truth is the truth, man, and I feel like I'll become
9 better and I'll be forgiven for whatever I did as a man. Now
10 that I'm a man, I feel like I'm a better person today than
11 what I used to be as a boy.

12 Q: Are you owning up to what you've done?

13 A: Yeah.

14 MR. CLEMENTS: Thank you.

15 THE COURT: Any recross, Mr. Deberry?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Mr. Bailey?

18 MR. BAILEY: Nothing further.

19 THE COURT: All right. Sir, you may step down. Thank
20 you. As he's exiting, can the lawyers come up here a minute,
21 please?

22 (Whereupon, a bench conference is held in the presence of
23 the jury but out of the hearing of the jury off the
24 record regarding scheduling.)

25 THE COURT: All right. Ladies and gentlemen, it is after

1 six o'clock and we're going to stop for the day. It's been a
2 long day. I know you're probably tired. I'm going to ask
3 that you be back here at nine o'clock in the morning. We will
4 finish the trial of this case tomorrow. Okay? We'll finish
5 the trial of this case tomorrow; so be prepared to stay
6 tomorrow. All right?

7 Do not discuss the case. Do not discuss the case. I
8 look forward to seeing you back tomorrow morning. Get a good
9 night's sleep. Thank you. Nine o'clock.

10 (Whereupon, the jury exits the courtroom at 6:09 p.m.)

11 THE COURT: All right. Anything from the State before we
12 release -- before we go for the balance of the day or leave
13 for the day?

14 MR. CLEMENTS: No, Your Honor.

15 THE COURT: Mr. Deberry?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Mr. Bailey?

18 MR. BAILEY: I just want to confirm the time, Judge.

19 THE COURT: Nine o'clock, 0900.

20 MR. BAILEY: With bells on.

21 THE COURT: All right. Mr. Clements? Mr. Clements?

22 MR. CLEMENTS: Yes?

23 THE COURT: On your objection to him asking about the
24 penalties -- do you remember that?

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: Look at State v. Whatley, 407 S.C. 460, which
2 was one of my cases that I was affirmed on, but look at it.

3 (Whereupon, the proceedings adjourn for the day at 6:11
4 p.m.)

5 AUGUST 8, 2014

6 (Whereupon, the proceedings resume at 9:02 a.m.)

7 THE COURT: All right. Anything from the State before I
8 bring the jury in? Anything from the State?

9 MR. CLEMENTS: No, Your Honor. We're ready.

10 THE COURT: Defense counsel, Mr. Deberry?

11 MR. DEBERRY: Your Honor, I'd just like to make the same
12 motion again as I made yesterday with regards to my objection
13 to the incarcerated co-defendants that come and testify
14 dressed in plain clothes.

15 THE COURT: Well, your objection is so noted for the
16 record. You got any case law you want me to look on that? We
17 had the overnight to look at it.

18 MR. DEBERRY: No, Your Honor.

19 THE COURT: Okay. Objection so noted for the record.
20 Anything else?

21 MR. DEBERRY: No, Your Honor.

22 MR. BAILEY: No, Your Honor.

23 THE COURT: Bring me the jury, please, sir.

24 (Whereupon, the jury enters the courtroom at 9:03 a.m.)

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 jury, I hope you all had a nice restful evening last night and
2 are ready to proceed this morning. At this time, I'm going to
3 recognize Mr. Clements. Call your next witness, please, sir.

4 MR. CLEMENTS: Thank you, Your Honor. If it please the
5 Court, we would call Willie Bethea. Willie O'Brian Bethea.

6 THE CLERK: Sir, if you would, come around and let me
7 swear you in, please, sir. Place your left hand on the Bible
8 and raise your right hand. Do you solemnly swear or affirm
9 the evidence you give in the trial of this case shall be the
10 truth, the whole truth, and nothing but the truth, so help you
11 God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Thank you. You can have a seat in the
14 witness box.

15 WILLIE BETHEA, being first duly
16 sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. CLEMENTS:

19 Q: Good morning.

20 A: Good morning.

21 Q: You're a little bit soft-spoken. I'm going to tell you
22 to try to speak into this microphone as best you can.

23 A: Yes, sir.

24 Q: And if you don't understand one of my questions, you ask
25 me to ask you again. And I want -- first, I want to ask you

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 if you would please tell this jury who you are and where
2 you're from?

3 A: I'm Willie O'Brian Bethea. I'm from Latta, South
4 Carolina.

5 Q: All right. And how long have you lived in Latta, Willie?

6 A: Probably about 17 years.

7 Q: All right. How old are you today?

8 A: Twenty-seven.

9 Q: Twenty-seven?

10 A: Yes, sir.

11 Q: Now, on -- do you go by a nickname?

12 A: Yes, sir.

13 Q: What's your nickname?

14 A: Boo Boo.

15 Q: Boo Boo? Do you know Blaton Smith?

16 A: Yes, sir. That's my cousin.

17 Q: That's your cousin? Do you see him here in the
18 courtroom?

19 A: Yes, sir.

20 Q: Can you point him out? What's he got on?

21 A: (Indicating) Buttoned-up shirt.

22 Q: All right.

23 MR. CLEMENTS: Let the record reflect he's identified Mr.
24 Blaton Smith.

25 THE COURT: So noted.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Do you know Shaheed Hayes?

2 A: Yes, sir.

3 Q: How do you know Shaheed Hayes?

4 A: One of my people from Latta.

5 Q: Okay.

6 A: Around the Latta area.

7 Q: Do you see him in the courtroom?

8 A: Yes, sir.

9 Q: What's he got on?

10 A: (Indicating) A buttoned-up shirt.

11 Q: All right.

12 MR. CLEMENTS: Let the record reflect he's identified

13 Shaheed Hayes.

14 Q: Now, let me ask you a few other questions about yourself
15 and about your history. Willie, do you have a conviction for
16 grand larceny and burglary and accessory after the fact of a
17 felony from 2008?

18 A: Yes, sir.

19 Q: All right. Do you have a malicious injury to personal
20 property conviction from 2010?

21 A: Yes, sir.

22 Q: Do you have a conviction from the state of Georgia for
23 giving a false name or address or birthdate?

24 A: Yes, sir.

25 Q: And right now, do you have pending charges for forgery in

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Marion County?

2 A: Yes, sir.

3 Q: And do you have pending charges from this event here for
4 murder, four counts of attempted murder, discharging a firearm
5 into a dwelling, and possession of a weapon during the
6 commission of a violent crime?

7 A: Yes, sir.

8 Q: Are you currently in jail?

9 A: Yes, sir.

10 Q: Now, you're dressed nice today. Did your family bring
11 you that to wear?

12 A: Yes, sir. My dad.

13 Q: Okay. But you're currently in jail without a bond; is
14 that correct?

15 A: Yes, sir.

16 Q: Now, how long have you known Blaton Smith?

17 A: All my life.

18 Q: How long have you known Shaheed Hayes?

19 A: A long time too.

20 Q: A long time too?

21 A: Yes, sir.

22 Q: Where is he from?

23 A: Latta.

24 Q: Latta? Okay. Do you know Adrian Smith?

25 A: Yes, sir.

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1 Q: Is Adrian Smith related to Blaton Smith?

2 A: Yes, sir.

3 MR. BAILEY: Objection. Relevancy, Your Honor.

4 THE COURT: I'll allow it. Go ahead.

5 BY MR. CLEMENTS:

6 Q: Answer the question.

7 A: Yes, sir.

8 Q: How is he related?

9 A: On his -- on his side of the family. We came through him

10 through my dad.

11 Q: Okay. So you're kin to Blaton, but you're not kin to

12 Adrian? Is that what you're telling us?

13 A: Yes, sir.

14 Q: Does Adrian have a nickname?

15 A: Duke.

16 Q: Duke?

17 A: Yes, sir.

18 Q: Does Blaton have a nickname?

19 A: Blaton.

20 Q: Blaton?

21 A: Nukie.

22 Q: Nukie?

23 A: Yes, sir.

24 Q: Okay. Now, did you know Jamie Christopher Williams?

25 A: No, sir. I met him through my cousin, Nukie.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: All right. How long had you known him?

2 A: It was, like, three or four days before this event
3 happened.

4 Q: Okay. Now, what kind of car does Blaton usually drive?

5 A: He had a Cadillac Deville.

6 Q: And who owned that car?

7 A: I think Duke.

8 Q: Okay. And who usually drove it?

9 A: My cousin, Blaton.

10 Q: Your cousin, Blaton? Okay. Do you remember what you
11 were doing the day of April 12th, 2012?

12 A: What I was doing?

13 Q: What were you doing that day and who were you with?

14 A: I was with my cousin. I was -- I was dealing with one of
15 Duke's sisters named Annette.

16 Q: Okay.

17 A: When we woke up that morning, we went to Dillon to get
18 some -- some spark plugs and stuff from AutoZone to fix the --
19 his Cadillac they he bought and we went to J&J on 301.

20 Q: Okay. Who -- who went there to J&J? You said we.

21 A: Me and my cousin, Blaton.

22 Q: Okay. And you went there to get spark plugs?

23 A: No. I went to AutoZone. We went to AutoZone and he
24 purchased some spark plugs.

25 Q: Okay. And did y'all go work on that car then or not?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 A: We took it to J&J.
- 2 Q: You took it to J&J?
- 3 A: But we -- we had to wait for a minute of time, but it
- 4 wasn't the right one. We had got the super sports one. We
- 5 had got the wrong ones.
- 6 Q: Okay. And did you end up getting the right ones and
- 7 fixing the car that day or not?
- 8 A: No, sir. We ended up leaving.
- 9 Q: Okay. All right. And what did you do later that --
- 10 later that day and later that evening?
- 11 A: We went back to the trailer at Oakie Point.
- 12 Q: Okay. At Oakie Point?
- 13 A: Yes, sir.
- 14 Q: And that's located where?
- 15 A: In Latta.
- 16 Q: All right. Later on, you stayed with Blaton? Did you
- 17 hang out with him the rest of the day and on into the night?
- 18 A: Yes, sir.
- 19 Q: All right. Later on, who did you get to be with other
- 20 than just Blaton?
- 21 A: Me, Jamie, and Shaheed.
- 22 Q: All right. How did y'all get Shaheed? Do you remember?
- 23 A: From the hilltop.
- 24 Q: You picked him up?
- 25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: And where is the hilltop?

2 A: It's in Latta. You go up, like, past the church and you
3 get to the left and you make a left and you go on a slight
4 curve. That's where he stay at.

5 Q: Okay. And y'all picked him up where he stayed?

6 A: Yes, sir.

7 Q: All right. And what about Jamie?

8 A: Jamie lived in Riverdale and that's in Dillon.

9 Q: Okay. Did y'all get up with him that day?

10 A: Yes, sir.

11 Q: How did you get up with him?

12 A: Me and Blaton went to go pick him up.

13 Q: Where did y'all pick him up at?

14 A: By his house. He stay in a doublewide trailer in
15 Riverdale.

16 Q: Okay.

17 A: We picked him up. He ran to the car and we went back to
18 Latta.

19 Q: All right. And did you pick Jamie up first or Shaheed up
20 first?

21 A: Jamie.

22 Q: Jamie?

23 A: Yes, sir.

24 Q: Okay. What were y'all doing that -- that day? And what
25 time -- when y'all picked up Jamie and Shaheed, what time of

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 day was that?

2 A: By the time we picked up Jamie, it was probably about
3 6:30 or something in the afternoon.

4 Q: Okay.

5 A: Around getting about pitch dark. It was getting dark
6 later on that day.

7 Q: Okay. And about what time did you pick up Shaheed?

8 A: Later on that night.

9 Q: Later on in that night?

10 A: Yes, sir.

11 Q: All right. In your mind, what -- what were y'all
12 planning on doing or what did you have in mind that you were
13 going to do?

14 A: Going to go to the club.

15 Q: Which club?

16 A: In Latta on Old Ebony Road.

17 Q: On Old Ebenezer Road?

18 A: Yes, sir.

19 Q: Whose club is that?

20 A: One of Adrian's people, Mike Mike.

21 Q: Mike Mike?

22 A: Yes, sir.

23 Q: All right. And where did you say Mike Mike's club was?

24 A: On Old Ebony Road.

25 Q: Old Ebenezer Road? I'm going to show you State's Exhibit

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 36. Can you identify that?

2 A: Yes, sir. That's the club.

3 Q: That's Mike Mike's club?

4 A: Yes, sir.

5 MR. CLEMENTS: Your Honor, at this time, I'd move State's
6 Exhibit 36 into evidence.

7 THE COURT: Any objection?

8 MR. DEBERRY: No, Your Honor.

9 THE COURT: Mr. Bailey?

10 MR. BAILEY: No objection.

11 THE COURT: Without objection, State's Exhibit 36
12 admitted into evidence.

13 MR. CLEMENTS: All right.

14 (Whereupon, State's Exhibit Number 36, a color
15 photograph, is admitted into evidence.)

16 BY MR. CLEMENTS:

17 Q: Are you pretty familiar with that area on Old Ebenezer
18 Road?

19 A: Yes, sir. My baby mama's grandma stay right in that
20 area.

21 Q: All right. Now, Mike Mike's club -- how far is that on
22 Old Ebenezer Road from Highway 501?

23 A: Not far.

24 Q: Not far?

25 A: No, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Okay. So how did y'all go? Y'all were on Old Ebenezer
2 Road. What vehicle were you in?
3 A: We was in the Cadillac Deville.
4 Q: And you -- you got up to Mike Mike's club. Did you stop
5 at Mike Mike's club?
6 A: We passed the club.
7 Q: You passed the club?
8 A: Yes, sir. And went to -- we turned to the left and we
9 went towards where Eyebrows live at.
10 Q: All right. And when you passed Mike Mike's club, what
11 did you think, if anything?
12 A: Probably thought we were going to Fusion or something,
13 but we stopped in front of the house.
14 Q: You thought maybe you were going to Fusion?
15 A: Yes, sir.
16 Q: Where is Fusion?
17 A: Marion.
18 Q: In Marion? Okay. And so you say you turned on 501.
19 Which way were you going? Towards Marion?
20 A: To the left.
21 Q: To the left?
22 A: Yes, sir.
23 Q: And that -- that's going where?
24 A: Towards Marion.
25 Q: Okay. All right. As you were riding down that road,

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 tell us what happened?
- 2 A: We were riding down the road and we stopped in front of
- 3 the trailer.
- 4 Q: All right. You stopped in front of what trailer?
- 5 A: Eyebrows' trailer.
- 6 Q: Now, did anybody say anything or did anything happen
- 7 prior to you stopping the car?
- 8 A: Yes, sir. My cousin stopped.
- 9 Q: He stopped the car? Did he say anything before he
- 10 stopped?
- 11 A: When he stopped, he was like, "This is the house right
- 12 here. That's the car in the back."
- 13 Q: He said that's the house right here?
- 14 A: Yes, sir.
- 15 Q: Okay. There were cars in the back? You could see the
- 16 cars as you were approaching?
- 17 A: You could see the trucks and the cars in the back.
- 18 Q: Okay. Now, who was driving the car?
- 19 A: My cousin, Blaton.
- 20 Q: Where were you seated?
- 21 A: The passenger seat.
- 22 Q: The passenger seat in the front or back?
- 23 A: Front.
- 24 Q: And who was in the back seat, if anyone?
- 25 A: Shaheed and Jamie.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Where was Shaheed sitting in the back seat?

2 A: In the back of me.

3 Q: Back of you?

4 A: Yes, sir.

5 Q: And where was Jamie sitting?

6 A: In the back of my cousin.

7 Q: Back of your cousin? Behind Blaton?

8 A: Yes, sir.

9 Q: I want to show you what's been marked as State's Exhibit

10 43. Do you recognize that at all?

11 A: Yes, sir.

12 Q: What is that?

13 A: The residence where they were living at.

14 Q: And when you say the residence where they was living at,

15 who are you talking about?

16 A: Eyebrows. Derrick.

17 Q: Eyebrows? Derrick?

18 A: Yes, sir.

19 Q: Okay. How long have you known Eyebrows?

20 A: A long time. He got a cousin by my cousin, Demetrius.

21 Q: And he grew up -- you knew him from Latta?

22 A: Yes, sir. He used to play ball. I always knew all of

23 them.

24 Q: You knew all of them?

25 A: I'm talking about Demetrius. That's my -- that's my

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1 daddy's niece.

2 Q: All right. And you say Demetrius and Derrick got a
3 child?

4 A: Yeah.

5 Q: Okay. Now, when you pulled up and you stopped in front
6 of the trailer, which direction was the car headed in?

7 A: Going towards Marion.

8 Q: Going towards Marion?

9 A: Yes, sir.

10 Q: Did you ever turn around or anything prior to that?

11 A: Yes, sir.

12 Q: All right. So it was going towards Marion?

13 A: Yes, sir.

14 Q: So if you were sitting in the passenger side and you
15 looked out the window --

16 A: I could see the house.

17 Q: You could see the house?

18 A: Yes, sir.

19 Q: All right. Now, what was said, if anything, at that
20 time?

21 A: Shaheed had started shooting, him and Jamie.

22 Q: All right. He started -- well, let me ask you this
23 backing up. Where did the guns come from?

24 A: The guns?

25 Q: Yes.

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- 1 A: They was in the car.
- 2 Q: They were in the car?
- 3 A: Yes, sir.
- 4 Q: Did you know they were in the car prior to this when you
- 5 were riding by Mike Mike's?
- 6 A: No, sir.
- 7 Q: All right. When did you first know the guns were in the
- 8 car?
- 9 A: When we got close by the house.
- 10 Q: All right. How did you find out the guns were in the car
- 11 then?
- 12 A: Because they started cocking the guns. Shaheed say it
- 13 and he started shooting.
- 14 Q: All right. Now, Shaheed was shooting and he was shooting
- 15 in what direction?
- 16 A: He was behind me shooting.
- 17 Q: He was behind you shooting?
- 18 A: Yes, sir.
- 19 Q: Did he have his arm or the gun in the car or outside of
- 20 the car?
- 21 A: Outside of the car.
- 22 Q: Outside?
- 23 A: Yes, sir.
- 24 Q: Did he get out or just put it out the window?
- 25 A: He just put his hand out of the window and start

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 shooting.
- 2 Q: He started shooting? All right. Was there anybody else
- 3 shooting other than Shaheed?
- 4 A: Jamie.
- 5 Q: Jamie? How -- how did Jamie shoot?
- 6 A: Over the top of the hood of the car -- over the top of
- 7 the car.
- 8 Q: Over the top of the car?
- 9 A: Yes, sir.
- 10 Q: How did he get up over the top of the car?
- 11 A: He got hisself out of the car and started shooting.
- 12 Q: Did he get out of the car --
- 13 A: No.
- 14 Q: -- or did he get out --
- 15 A: He sort of leaned over the top of the hood of the car.
- 16 Q: Okay. So he got out the window?
- 17 A: With his ass sitting on top -- on the window.
- 18 Q: Okay. And shooting over the top of the car?
- 19 A: Yes, sir.
- 20 Q: Did you have a gun?
- 21 A: No, sir.
- 22 Q: Did you do any shooting?
- 23 A: No, sir.
- 24 Q: Did Blaton do any shooting?
- 25 A: No, sir.

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1 Q: Did you ever see Blaton handle the guns?

2 A: He had some. He passed one.

3 Q: He passed them?

4 A: Yes, sir.

5 Q: Okay. Now, how many shots were fired, if you know?

6 A: A lot. He fired a lot of shots.

7 Q: You say he fired a lot of shots --

8 A: Shaheed.

9 Q: Shaheed?

10 A: Yes, sir.

11 Q: Did Jamie fire?

12 A: He fired some shots.

13 Q: Some shots?

14 A: A couple shots.

15 Q: A couple shots? About -- are you sure how many?

16 A: A couple. About seven or eight shots.

17 Q: All right. Now, did they shoot quickly or that there was

18 a drawn-out process shooting?

19 A: We probably stayed there about a little minute while they

20 were shooting.

21 Q: All right. Did it go bang, bang or bang, bang, bang,

22 bang, bang?

23 A: They shot a lot of times?

24 Q: Bang, bang, bang, bang, bang?

25 (Whereupon, there is no verbal response.)

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 THE COURT: Is that a yes?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MR. CLEMENTS:

5 Q: Now, once the shooting stopped, did anybody say anything?

6 A: He said he hoped somebody hit in the house.

7 Q: Who said that they hoped somebody was hit in the house?

8 A: Shaheed.

9 Q: Shaheed?

10 A: Yes, sir.

11 Q: All right. After the shooting stopped and that was said,
12 what -- what did y'all do with the car then?

13 A: We went straight up and branched off to the left and went
14 the back way going towards Latta. We went to Latta.

15 Q: All right. So you went straight. Does that mean you
16 went headed towards Marion?

17 A: Yes, sir. And we branched off to the left.

18 Q: Is there a road that turns to the left?

19 A: Yes, sir.

20 Q: What's -- what's on that road?

21 A: It's like when you make a left, you go to the end of the
22 road and there's, like, a church on the left side of the road.

23 Q: Okay. And then you turned which way after that?

24 A: We went left like going back towards Latta.

25 Q: Okay. Is that --

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 A: The back way.
- 2 Q: -- the back way?
- 3 A: Yes, sir.
- 4 Q: Okay. Do you know the name of that road?
- 5 A: I don't know. I don't know the name of it.
- 6 Q: Where did that road empty out onto?
- 7 A: It takes us, like, going back, like, the Old Ebony way
- 8 and we can go, like, the back way a lot.
- 9 Q: Okay. So you get back to Old Ebenezer and turn to the
- 10 right, which way does that go?
- 11 A: Going back to Latta.
- 12 Q: Going back to Latta? Is that the direction you went?
- 13 A: Yes, sir.
- 14 Q: Where did you go or where did you first stop at?
- 15 A: We went and dropped the guns off.
- 16 Q: Where did you drop the guns off?
- 17 A: Karen house.
- 18 Q: And what street was that on?
- 19 A: Around the road from my mom and dad's house behind IGA.
- 20 Q: All right. And do you know the name of the street?
- 21 A: No. I used to, but I don't know it. My nerves kind of
- 22 messed up. I think it's --
- 23 Q: Your nerves?
- 24 A: Yeah.
- 25 Q: All right. Tell me yes or no. Was it Session Street?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Or do you remember?
- 2 A: Yes, sir. That should be the street from around there.
- 3 Q: That should be the street?
- 4 A: Yes, sir.
- 5 Q: Okay. Now, you pulled up there in what car?
- 6 A: The Cadillac we were driving.
- 7 Q: All right. And who got out of the car?
- 8 A: My cousin.
- 9 Q: Blaton?
- 10 A: Yes, sir.
- 11 Q: What did he do when he got out of the car?
- 12 A: He took the guns in the house.
- 13 Q: How did he take them in the house?
- 14 A: Blanket.
- 15 Q: He had them in a blanket?
- 16 A: Yes, sir.
- 17 Q: Did anyone go in the house with him?
- 18 A: No, sir.
- 19 Q: What were y'all doing or saying in the car, if anything,
- 20 while Blaton went in the house?
- 21 A: Nothing.
- 22 Q: Nothing was being said?
- 23 A: No, sir.
- 24 Q: How did you feel?
- 25 A: Nervous.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Q: All right. How long was Blaton in the house?
- 2 A: Not long.
- 3 Q: He came back out and what happened? What was said and
- 4 what was done?
- 5 A: We went to Dillon and we were not going to say nothing
- 6 about it.
- 7 Q: All right. Went to Dillon for what reason?
- 8 A: We dropped Jamie off at the stop sign.
- 9 Q: You dropped Jamie off at the stop sign?
- 10 A: Yes, sir.
- 11 Q: In Riverdale?
- 12 A: Yes, sir.
- 13 Q: And then what did you do next?
- 14 A: We went to my -- my aunt's house on Quarters.
- 15 Q: On Quarters?
- 16 A: Yes, sir.
- 17 Q: Was anybody --
- 18 A: That's in Dillon.
- 19 Q: -- in that house at that time?
- 20 A: It's an abandoned house then.
- 21 Q: It was -- it was empty?
- 22 A: Yes, sir.
- 23 Q: Did y'all go inside the house?
- 24 A: Yes, sir. We didn't stay long.
- 25 Q: Okay. And what, if anything, was said there or done

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 there?

2 A: Nothing. We just said don't say nothing about it and
3 just keep your mouth closed.

4 Q: And the -- the house y'all were in there -- that belongs
5 to your aunt, but nobody's living in it; is that right?

6 A: Yes, sir. My sister stay there now.

7 Q: Your sister stays there now?

8 A: My sister and her mama.

9 Q: Okay. And after you left your aunt's house there, where
10 did you go next?

11 A: We went back to Latta.

12 Q: And then in Latta what did you do?

13 A: I got dropped off in Latta.

14 Q: You got dropped off in Latta? Where were you dropped off
15 at?

16 A: Home.

17 Q: Home?

18 A: My daddy's house.

19 Q: All right. When was the next time you saw Shaheed or
20 Blaton --

21 A: I didn't see Shaheed --

22 Q: -- or talked to them?

23 A: I didn't see him no more. I seen my cousin.

24 Q: You've seen Blaton?

25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: But you didn't see Shaheed anymore?

2 A: No, sir.

3 Q: Where would you see Blaton at after this?

4 A: We were having a cookout. He came by a couple times.

5 Q: He came by your house a couple times?

6 A: Yes, sir.

7 Q: All right. Did he say anything to you?

8 A: He was like, "Keep your cool." He brought -- he brought

9 my -- my shoes to the house. He brought my shoes to my mama

10 house.

11 Q: All right. How did he have your shoes?

12 A: He brought them to the house in the car.

13 Q: I mean why did he have your shoes?

14 A: I had -- I had some shoes at that trailer.

15 Q: Okay. At Adrian's trailer?

16 A: Yes, sir.

17 Q: All right. And Blaton stays there with Adrian?

18 A: Yes, sir.

19 Q: What kind of physical condition is Adrian in?

20 A: He's paralyzed.

21 Q: He's paralyzed? Okay. And your shoes that were -- you

22 got those back?

23 A: Yes, sir.

24 Q: Had you asked him to bring them to you or he just brought

25 them to you?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 A: He just brought them to me and said don't say nothing
2 about what happened.

3 Q: I'm sorry?

4 A: He brought them to me like don't say nothing about what
5 happened.

6 Q: Okay. All right. And had you said anything to anybody
7 and tell?

8 A: No, sir.

9 Q: When did you first find out that somebody got killed in
10 that shooting?

11 A: It started coming around -- it started going around to
12 people that somebody got shot.

13 Q: It started going around people? Just the news --

14 A: Yes, sir.

15 Q: -- got in the street?

16 A: Yes, sir.

17 Q: Did you know who got shot?

18 A: Yes, sir. I didn't know --

19 Q: Who?

20 A: It was Christian.

21 Q: Did you know him?

22 A: Yes, sir.

23 Q: Did -- did you know if he had any problems with anybody
24 in that car?

25 A: No, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Did you have a -- was there a particular target in this
2 shooting?

3 A: Yes, sir.

4 Q: Who?

5 A: Eyebrows.

6 Q: And who was -- who was mad with Eyebrows?

7 A: Adrian.

8 Q: Adrian? How about Blaton?

9 MR. BAILEY: Objection, Your Honor.

10 THE COURT: Restate your question.

11 BY MR. CLEMENTS:

12 Q: Did Blaton and Derrick get along?

13 A: No, sir.

14 Q: Did they have bad blood?

15 A: Yes, sir.

16 Q: Okay. All right. Did you ever go back to Adrian's house
17 after this occurred?

18 A: No, sir.

19 Q: Where did you go and what did you do and why?

20 A: I went to Clio to my cousin's, my other paralyzed --
21 well, my paralyzed cousin on my mom's side named Don.

22 Q: And he lived in Clio?

23 A: Yes, sir.

24 Q: Why did you go to Clio?

25 A: Because I was nervous and scared and I ain't -- and I

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 knew there was consequences behind it.

2 Q: You were nervous and scared?

3 A: Yes, sir.

4 Q: Scared of the police finding out?

5 A: No. Just --

6 Q: What were you scared of?

7 A: -- worried something crazy was going to happen. That

8 somebody was going to get shot or something.

9 Q: You were scared somebody --

10 A: And I ain't wanted --

11 Q: -- was going to get shot?

12 A: I ain't wanted nothing to happen to my mom and them.

13 Q: You didn't want nothing to happen to your mom? Were you

14 worried about something happening to you?

15 A: Yes.

16 Q: Why?

17 A: Because they'd do something to me or something or they

18 want revenge about what happened to them.

19 Q: Okay. All right. So you kind of laid low?

20 A: Yes, sir.

21 Q: All right. Were you worried about Blaton or Shaheed or

22 any of them?

23 A: They just told me -- they kept calling me, like, don't

24 say nothing or we're going to do something to you. And then

25 we had a shooting uptown so I was like I ain't wanting nothing

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 to happen to my mom and daddy.

2 MR. BAILEY: Judge, I'm going to object to that.

3 THE COURT: Can the lawyers approach?

4 (Whereupon, a bench conference is held in the presence of
5 the jury but out of the hearing of the jury as follows.)

6 THE COURT: What's the objection?

7 MR. BAILEY: Judge, he's talking about the shooting
8 uptown. We have -- we're getting into it through the
9 detectives -- I mean if that's going to let us get into that
10 shooting.

11 MR. CLEMENTS: I wasn't going to ask him about it. I
12 didn't intend for him to ask it, but I think he told me Blaton
13 got shot at by Kollock.

14 THE COURT: Is that what had happened?

15 MR. DEBERRY: I don't know.

16 MR. BAILEY: I mean --

17 MR. CLEMENTS: That happened after this.

18 MR. BAILEY: No, no. I'm talking about the shooting with
19 Ren Ren Waldo.

20 MR. CLEMENTS: Oh, no, no. I don't know. I don't know
21 what he's talking about, but I wasn't going to get into any of
22 that.

23 MR. BAILEY: Well, I mean -- but the problem is now is
24 we've got him talking about a shooting that happened uptown.

25 THE COURT: Well, he didn't name anybody involved in the

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 shooting.

2 MR. BAILEY: Well --

3 THE COURT: Let me finish talking.

4 MR. BAILEY: Sorry.

5 THE COURT: He didn't name anybody as relating in any way
6 to what we're here for today. Now --

7 MR. BAILEY: Well, Judge, the questions preceding this
8 talked about the shooting.

9 THE COURT: He said he was scared.

10 MR. BAILEY: And he said he was scared of Blaton and he
11 was scared of him and then he starts talking about a shooting
12 that happened uptown. Judge, that's so far prejudicial.

13 MR. CLEMENTS: I don't think it is because he isn't --

14 THE COURT: Do what?

15 MR. CLEMENTS: I'm thinking it was very nebulous what he
16 said. I don't think it points out anything. He was just
17 nervous.

18 THE COURT: All right. Your objection is noted for the
19 record.

20 (Whereupon, the bench conference ends.)

21 BY MR. CLEMENTS:

22 Q: All right. Boo Boo, listen. Listen closely to the
23 question.

24 A: Yes, sir.

25 Q: Were you worried about possible revenge from the people

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 that got shot at from the trailer?

2 A: No, sir.

3 Q: Does that have -- were you nervous about that?

4 A: No, sir, not really about that. It was just, you know,
5 like, don't say nothing.

6 Q: All right.

7 A: Or we'll do something.

8 Q: Okay. Now, you went to Clio?

9 A: Yes, sir.

10 Q: How long did you stay there?

11 A: About a day with my cousin.

12 Q: Okay. And who came to get you?

13 A: My dad.

14 Q: And where did y'all go?

15 A: He took me to my baby mama house in Lakeview.

16 Q: All right. And how long did you stay there?

17 A: I put my little girl on the bus and then -- I stayed the
18 night, I put my little girl on the bus, and then my mama came
19 and said the police kept coming to her house and she wasn't
20 going to have it; so I let her take me over here and I turned
21 myself in.

22 Q: So you went and turned yourself in?

23 A: (No verbal response.)

24 THE COURT: Is that a yes?

25 Q: Is that a yes?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 THE COURT: I mean I see you nodding your head, but I
2 want a verbal response for the record, please, sir.

3 Q: Say yes or no. She's got to --

4 A: Yes, sir.

5 Q: -- take down what your words are.

6 THE COURT: Okay. Thank you.

7 THE WITNESS: All right.

8 Q: And you turned yourself in?

9 A: Yes, sir.

10 Q: At that time right when you turned yourself in, did they
11 arrest you then?

12 A: Yes, sir.

13 Q: Or did they talk to you first?

14 A: They talked to me first, but I got arrested that day.

15 Q: You got arrested after you talked to them? Did you tell
16 them -- did you give them full cooperation?

17 A: Yes, sir.

18 Q: Did you tell them everything that happened?

19 A: Yes, sir.

20 Q: Did you tell them the same thing then that you're telling
21 us today?

22 A: Yes, sir.

23 MR. CLEMENTS: I beg the Court's indulgence.

24 Q: Did you tell them who all was in the car with you?

25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Q: Who did you tell them was in the car?
- 2 A: Me, Willie Bethea, my cousin Blaton Smith, Shaheed, and
- 3 Jamie Williams.
- 4 Q: Did you tell them Jamie Williams at that time? Did you
- 5 know that name?
- 6 A: No. It was Lil Boosie then.
- 7 Q: That's his nickname?
- 8 A: Yes, sir.
- 9 Q: And you knew his nickname was Lil Boosie?
- 10 A: Yes, sir.
- 11 Q: You didn't know his real name?
- 12 A: No, sir.
- 13 Q: Well, how were you -- how could you identify him just by
- 14 nickname to the law enforcement officers?
- 15 A: I met him through my cousin.
- 16 Q: Okay. Did they ever show you any photographs?
- 17 A: Yes, sir.
- 18 Q: Did they show you --
- 19 A: A line-up.
- 20 Q: A line-up?
- 21 A: With pictures on it.
- 22 Q: With pictures on it?
- 23 A: Yes, sir.
- 24 Q: And was Lil Boosie on that line-up?
- 25 A: Yes, sir.

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1 Q: And you picked him out?

2 A: Yes, sir.

3 Q: And you found out then what his real name was?

4 A: Yes, sir.

5 Q: That's how you know his real name?

6 A: After he got incarcerated.

7 Q: Okay. All right. And have you been incarcerated ever
8 since?

9 A: Twenty-seven months.

10 Q: Okay. And the story you told them that day -- is that
11 the same thing you're telling here today?

12 A: Yes, sir.

13 Q: All right. Please answer any questions Mr. Bailey or Mr.
14 Deberry may have.

15 A: Yes, sir.

16 THE COURT: Cross examination, Mr. Deberry.

17 MR. DEBERRY: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. DEBERRY:

20 Q: Good morning, Mr. Bethea.

21 A: Good morning.

22 Q: How are you doing?

23 A: All right.

24 Q: Good. You've been in -- been in jail for how long?

25 A: Twenty-seven months.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Twenty-seven months? That's more than two years?

2 A: Yes, sir.

3 Q: Did you do any time on the crimes that you've been
4 convicted of?

5 A: Yes, sir.

6 Q: You've been to the South Carolina Department of
7 Corrections?

8 A: Yes, sir.

9 Q: How long have you been up there?

10 A: I went to -- I went to prison when I was -- I think I was
11 19.

12 MR. CLEMENTS: Your Honor, I object to this on relevance
13 about what he did on prior charges.

14 THE COURT: Can y'all approach, please?

15 (Whereupon, a bench conference is held in the presence of
16 the jury but out of the hearing of the jury as follows.)

17 THE COURT: It's cross examination. I'll allow him to
18 ask what sentence he received as a result of what happened,
19 but no more. All right?

20 MR. DEBERRY: I can ask him if he don't want to go back
21 though.

22 THE COURT: Huh?

23 MR. DEBERRY: I can ask him if he doesn't -- he doesn't
24 want to go back; right?

25 THE COURT: Yeah. Yeah. I mean I understand. I'm not

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 going to let him -- the rules don't permit you to go into all
2 the facts about what those prior convictions were, but I'll
3 certainly allow you to ask him you were charged with such and
4 such and you received a sentence of such and such and you went
5 to the Department of Corrections for how long. Okay? You can
6 ask him.

7 (Whereupon, the bench conference ends.)

8 BY MR. DEBERRY:

9 Q: So you -- so you spent some time in the Department of
10 Corrections in South Carolina?

11 A: Yes, sir.

12 Q: That's different than just Marion County time; right?

13 A: Yes, sir.

14 Q: Okay. Do you know -- do you know how much time you're
15 facing as a result of the charges that you're -- that you're
16 charged with now?

17 A: No, sir.

18 Q: You don't know that you've got the possibility to spend
19 the rest of your life in prison?

20 A: Yes, sir.

21 Q: You do know that?

22 A: Yes, sir.

23 Q: Are you planning on getting a deal from Solicitor
24 Clements for being here testifying for him today?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: So you're planning on going to prison?
- 2 A: I don't know. Whatever.
- 3 Q: You're not sure --
- 4 A: I'm just coming here to tell the truth.
- 5 Q: You're trying to help yourself; is that right?
- 6 A: No, sir.
- 7 Q: All right.
- 8 A: I'm just telling what happened.
- 9 Q: Tell me about the shoes that Blaton brought you sometime
- 10 after the crime?
- 11 A: Tell you about them?
- 12 Q: Yeah. They were shoes.
- 13 Q: What did they look like?
- 14 A: What did they look like?
- 15 Q: Yeah.
- 16 A: They were red, white, and blue Barkley's -- Charles
- 17 Barkley's.
- 18 Q: Were they burgundy could you say?
- 19 A: Red, white, and blue.
- 20 Q: It had some red on it?
- 21 A: Red, white, and blue.
- 22 Q: Okay. Tell me what Blaton Smith was wearing that night?
- 23 A: What night?
- 24 Q: That you -- that you claim that y'all rode over there and
- 25 shot the house up.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 A: He had on black on.
- 2 Q: He had on what?
- 3 A: It was dark and he had on black. He had on black jeans.
- 4 Q: You had on jeans?
- 5 A: He had on jeans -- Blaton, my cousin.
- 6 Q: Okay.
- 7 A: They were black.
- 8 Q: What kind of shoes did he have on?
- 9 A: Black Uptowns.
- 10 Q: He had black Uptowns on?
- 11 A: Yes, sir.
- 12 Q: Are those boots or shoes or what were they?
- 13 A: Shoes.
- 14 Q: All right. Are they laced up?
- 15 A: I don't know. It was dark.
- 16 Q: It was dark?
- 17 A: Yes, sir.
- 18 Q: But you'd been with him all day, hadn't you?
- 19 A: I told you it was black Uptown shoes. It was dark that
- 20 night. It was black Uptowns.
- 21 Q: But you testified earlier you got up with him -- I mean
- 22 that you picked up Lil Boosie around 6:30?
- 23 A: Yes, sir.
- 24 Q: That would have been in the daylight, wouldn't it?
- 25 A: Yeah. About 6:30, yeah.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: So what -- what was Lil Boosie wearing?
- 2 A: He had on black and burgundy with some Tims.
- 3 Q: He had on burgundy?
- 4 A: Burgundy and black, upper shirt with some Tims and some
- 5 jeans on.
- 6 Q: All right. How about Shaheed Hayes? What was he
- 7 wearing?
- 8 A: Black on.
- 9 Q: Huh?
- 10 A: He had on black too.
- 11 Q: Everybody was dressed in black?
- 12 A: Well, by the time we got him, it was dark.
- 13 Q: So you don't know what he was wearing?
- 14 A: He had on black and I think some shoes. He was in the
- 15 back of me.
- 16 Q: Shorts?
- 17 A: Pants.
- 18 Q: He had pants on? What kind of pants?
- 19 A: I don't know.
- 20 Q: Well, how about you? What were you wearing?
- 21 A: I had on some -- some Adidas and a hoodie jacket, an Army
- 22 fatigue jacket, and some 501 Levi jeans.
- 23 Q: You had a jacket with a hood on it?
- 24 A: Yes, sir. We were going to the club.
- 25 Q: Why do you need a hood to go to the club?

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 A: It was cold out at the time. I said -- I said an Army
2 fatigue coat what I got from Walmart.

3 Q: With a hood on it?

4 A: Yes. It's -- they come with the hood. The hunting --
5 like, when you go to Walmart and get hunting gear.

6 Q: Yeah.

7 A: Yes, sir.

8 Q: All right. What did you have in your pockets?

9 A: Money.

10 Q: Where did you get -- I mean what kind of money? How much
11 money?

12 A: I don't know. I was going out to the club.

13 MR. CLEMENTS: Your Honor, the relevance of this escapes
14 me.

15 THE COURT: Well, it's cross examination. I'll allow it
16 right now. Go -- get to your point, please, Mr. Deberry.

17 BY MR. DEBERRY:

18 Q: Just describe what you -- what you had on other than your
19 clothes -- than the -- the hooded shirt?

20 A: Just describe it?

21 Q: Yeah. What -- what kind of pants were you wearing?

22 A: I had on my 501 Levis.

23 Q: Some blue jeans?

24 A: Yes, sir.

25 Q: All right. Did you ever tell the detectives that y'all

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 rode back and forth in front of the house any?

2 A: No, sir.

3 Q: Okay. So it's your testimony you just pulled up there
4 and then every -- everybody started shooting?

5 A: Yes, sir.

6 Q: All right. But you were in the front?

7 A: Yes, sir.

8 Q: So when they started shooting, did you turn around?

9 A: Did I turn around?

10 Q: Yeah.

11 A: After they stopped shooting, we took off.

12 Q: I mean when they -- when they started shooting. Did you
13 turn around and look at them?

14 A: Can you repeat that again?

15 Q: Did you turn around and look at the shooters when they
16 started shooting?

17 A: I was nervous. I was just like, "Let's go."

18 Q: How do you know they had a hand out the window?

19 A: Sir?

20 Q: How do you know they had their hand out of the window?

21 A: How I know? Can you repeat that again? How I know --

22 Q: How do you know --

23 A: -- they had their hand out --

24 THE COURT: Hold on a minute. Hold on a minute. When
25 he's talking, let him finish answering the --

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 THE WITNESS: Yes, sir.

2 THE COURT: -- asking his question. Okay? When he's
3 talking, please let him finish his response.

4 THE WITNESS: Yes, sir.

5 THE COURT: The court reporter can't take down when both
6 of you are talking. Okay? Thank you. Go ahead, Mr. Deberry.

7 BY MR. DEBERRY:

8 Q: How do you know the particulars of how they were
9 shooting?

10 A: All that loud noise from the guns, I'm going to turn
11 around would have been off of my reflection -- my reaction.

12 Q: Did you ever hear Blaton Smith say or anybody say,
13 "There's Eyebrows' truck?"

14 A: We seen the truck in the back yard.

15 Q: Y'all saw a truck in the back yard?

16 A: Yes, sir.

17 Q: Which -- whose truck was it?

18 A: Eyebrows. Derrick.

19 Q: How did you -- how did you know what Eyebrows was
20 driving?

21 A: I told you earlier he got a cousin by my cousin,
22 Demetrius. He got a baby by my cousin, Demetrius.

23 Q: All right. I'm going to show you what's marked as
24 State's Exhibit 42. Which way were y'all coming from? This
25 way or this way? This is -- this is the house. Down on the

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 bottom is the front.

2 A: We were going that way towards Marion.

3 Q: All right. So if you're going towards Marion, where was

4 Eyebrows' truck?

5 A: In the back yard.

6 Q: If you could, just step down and point to it.

7 (Whereupon, the witness complies.)

8 A: You said where was it backed up?

9 Q: Mm-hmm.

10 A: (Indicating)

11 Q: Eyebrows' truck is over here?

12 A: Yes, sir.

13 Q: Okay. Have a seat.

14 (Whereupon, the witness complies.)

15 MR. DEBERRY: Just a second, Your Honor.

16 BY MR. DEBERRY:

17 Q: I'm going to show you what's marked as State's Exhibit

18 20. Do you see anything in that bottom picture?

19 A: Yes, sir.

20 Q: What do you see?

21 A: A hole.

22 Q: A hole?

23 A: Where's -- where's you talking about?

24 Q: What do you mean?

25 A: I can see the truck. It's kind of blurry at the bottom.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Can you tell much about it?

2 A: Yes, sir.

3 Q: What can you tell about it?

4 A: It's a truck.

5 Q: That's what you saw that night?

6 A: Yes, sir. I seen the truck. I told you I already know
7 the truck anyway because we all from Latta.

8 Q: Mm-hmm.

9 MR. DEBERRY: I'd like to publish this to the jury.

10 THE COURT: Mm-hmm.

11 BY MR. DEBERRY:

12 Q: So your testimony is that it was on the side that y'all
13 were coming up on?

14 A: Sir?

15 Q: It was on the side that y'all were coming up on?

16 A: That it was on the side --

17 Q: That the truck was -- all right. I'm sorry.

18 A: You can go.

19 Q: Is it your testimony that the truck was parked behind the
20 house but kind of on the side that y'all were coming up from
21 Latta where you could see it?

22 A: We was going toward Marion. The truck was parked in the
23 back where the concrete in the back yard is.

24 Q: Right. All right. If you're coming from Latta towards
25 the house the way y'all were, don't you come to some woods

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 before you get there?
- 2 A: Sir?
- 3 Q: Are some woods on your -- on your left before you get
- 4 there? Or on your right?
- 5 A: Some woods?
- 6 Q: Yes.
- 7 A: I don't really know what you're talking about.
- 8 Q: Okay.
- 9 A: What do you mean by woods? There's a lot of woods.
- 10 Q: Like a wooded area?
- 11 A: Sir?
- 12 Q: A wooded area?
- 13 A: A wooded area?
- 14 Q: Yeah.
- 15 A: It's a trailer park.
- 16 Q: Okay. All right. Are you familiar with General Road?
- 17 A: Sir?
- 18 Q: General Road?
- 19 A: No, sir. I'm not from around that area.
- 20 Q: Okay. Did you know there was a dirt road right there?
- 21 A: Yes, sir. There's a lot of dirt roads.
- 22 Q: Okay. Did you walk on those dirt roads?
- 23 A: No, sir. I'm not from around that area.
- 24 Q: Did you run on those dirt roads?
- 25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Did you get out of the car?

2 A: No, sir.

3 Q: You didn't get out of the car?

4 A: No, sir.

5 Q: Did anybody get out of the car?

6 A: No, sir.

7 Q: Let me ask you this. Who knocked on the back door right
8 before they started shooting?

9 A: Nobody never get out of the car to knock on no back door.

10 Q: If somebody knocked on the back door, you're saying you
11 don't know who it was?

12 A: No. I said -- I said nobody never get out of the car
13 because nobody never knocked on no back door.

14 Q: But you had on your red shoes?

15 A: No. I had on red, white, and blue Charles Barkley's.

16 Q: Let me ask you this. How did you know Christian Drawhorn
17 got shot?

18 A: Like I said earlier, it was around the neighborhood that
19 somebody got killed in the house.

20 Q: All right. Do you know Charlie B?

21 A: Yes, sir.

22 Q: Was he with y'all that night?

23 A: No, sir.

24 Q: Did you see him that day at all?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Did you talk to him that day at all?

2 A: I probably seen him walking around the neighborhood or
3 something. I ain't talked to him.

4 Q: You ever seen Charlie B over at Duke's house?

5 A: No, sir.

6 Q: Do you know if Charlie B and Duke know each other?

7 A: Everybody know each other from Latta.

8 Q: All right. How about Christopher Kollock? Do you know
9 him?

10 A: No, sir.

11 Q: Did you see anybody outside?

12 A: No, sir.

13 Q: Did you see anybody outside before the shooting?

14 A: No, sir.

15 Q: Did you see any outside -- anybody outside after the
16 shooting?

17 A: No, sir.

18 Q: Which way did y'all leave to go to leave from there?

19 A: We went straight like going towards Marion and we
20 branched off.

21 Q: You had to wait on people to run back to the car?

22 A: Like I told you earlier, nobody never get out the car.

23 Q: Did you ever hear that this thing was going to go down as
24 a robbery?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: Did y'all steal anything?
- 2 A: Nobody never get out the car to take anything, sir.
- 3 Q: Is that why you had your hoodie on?
- 4 A: I never had a hoodie on. I said I had on my hoodie
- 5 jacket. It came with a hoodie. You want to know where I
- 6 bought it from?
- 7 Q: Yeah.
- 8 A: Walmart.
- 9 Q: From Walmart?
- 10 A: Yes, sir.
- 11 Q: That's good. How long had you had it?
- 12 A: I just went and when I went shopping, I bought it.
- 13 Q: You bought it that day?
- 14 A: No. I had it for about two -- three weeks.
- 15 Q: Okay. Are you a football fan?
- 16 A: Yes, sir.
- 17 Q: Who's your team?
- 18 A: Cowboys.
- 19 Q: How about college?
- 20 A: Gamecocks.
- 21 Q: Are you a Michael Vick fan?
- 22 A: Yeah.
- 23 Q: You know he played for Virginia Tech?
- 24 A: He probably did.
- 25 Q: Thank you.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. CLEMENTS: Your Honor, I --

2 MR. DEBERRY: I don't have anything further.

3 THE COURT: All right. Thank you. Mr. Bailey, cross
4 examination.

5 CROSS EXAMINATION

6 BY MR. BAILEY:

7 Q: Mr. Bethea?

8 A: Yes, sir.

9 Q: Good morning. You've been in jail for the last 27 months
10 you say?

11 A: Mm-hmm.

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you.

15 BY MR. BAILEY:

16 Q: How many times have you met with law enforcement?

17 A: How many times have I met with them?

18 Q: Mm-hmm. About this case.

19 A: I don't know.

20 Q: More than two?

21 A: Yes, sir.

22 Q: More than five?

23 A: No, sir.

24 Q: So somewhere between two and five times over two -- 27
25 months?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: I can't recall. They should have it on record.
- 2 Q: They should have it on record?
- 3 A: Yes, sir.
- 4 Q: Okay. Were you transported to court yesterday?
- 5 A: Sir?
- 6 Q: Were you transported here yesterday?
- 7 A: Yes, sir.
- 8 Q: Did you meet with law enforcement yesterday?
- 9 A: I was -- met with my lawyer.
- 10 Q: But did you meet with law enforcement yesterday?
- 11 A: I was appointed to my -- Mr. Brooker. Yeah, law
- 12 enforcement was up there.
- 13 Q: Okay.
- 14 A: Yes, sir.
- 15 Q: Did you talk with law enforcement yesterday?
- 16 A: No. I was with my lawyer.
- 17 Q: Okay. Did you talk with Mr. Clements yesterday?
- 18 A: Mr. Ed Clements?
- 19 Q: Mm-hmm.
- 20 A: No, sir. I spoke to him one time.
- 21 Q: One time?
- 22 A: Yes, sir.
- 23 Q: When was that?
- 24 A: I don't --
- 25 Q: When did you talk to Mr. Clements?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Yesterday afternoon.

2 Q: Yesterday afternoon?

3 A: Yes, sir.

4 Q: Okay. What did y'all talk about?

5 A: He had told me about my lawyer, Mr. Brooker. They was
6 talking to me, asked me a few questions, like, was I nervous
7 or something, and I told them no. Let's get on and get this
8 over with.

9 Q: Okay.

10 A: Do we -- do we supposed to have something to talk about?

11 THE COURT: Let him ask the questions. Okay, Mr. Bethea?

12 THE WITNESS: Yes, sir.

13 BY MR. BAILEY:

14 Q: So -- so when you met with Mr. Clements yesterday, y'all
15 just talked about your lawyer, Mr. Brooker, sitting over
16 there.

17 A: I need to know directly what you want to -- want me to
18 answer you what were we talking about.

19 Q: Okay. Here's my question.

20 A: Yes, sir.

21 Q: What did you and Mr. Clements talk about yesterday
22 afternoon? Tell me everything y'all talked about.

23 A: I need to know what you want to know. We ain't talked
24 about --

25 Q: Mr. Bethea --

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: I mean --

2 Q: I'm going to ask you --

3 THE COURT: Hold on a minute. He wants to know
4 everything that y'all talked about.

5 THE WITNESS: I want to know what you want me to know
6 what he told me to talk about. The only thing I told him that
7 we talked about was them appointing me to my lawyer, Mr.
8 Brooker.

9 THE COURT: Was there anything else you talked about
10 yesterday?

11 THE WITNESS: He just told me to stay calm and -- and --
12 and speak the truth.

13 MR. BAILEY: Okay.

14 THE COURT: Okay. Go ahead, Mr. Bailey.

15 MR. BAILEY: Thank you, Your Honor.

16 BY MR. BAILEY:

17 Q: You testified earlier that you have a child?

18 A: Yes, sir.

19 Q: How old is your child?

20 A: Six years old. Rihanna Reeves.

21 Q: Any other children?

22 A: No, sir.

23 Q: Are you married?

24 A: No, sir.

25 Q: Live in Latta?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Yes, sir.
- 2 Q: Pretty much grew up in Latta; correct?
- 3 A: Yes, sir.
- 4 Q: Okay. And you testified a little bit ago that everybody
- 5 in -- everybody knows everybody in Latta?
- 6 A: Yes, sir.
- 7 Q: Small community?
- 8 A: Yes, sir.
- 9 Q: You never knew Jamie Williams before?
- 10 A: No, sir.
- 11 Q: Never knew he grew up in Latta?
- 12 A: I know he ain't grow up in Latta.
- 13 Q: Okay. Where did he grow up at?
- 14 A: I think he grewed up from Marion or something.
- 15 Q: Okay. Did you ever see him come into Latta?
- 16 A: I met him through my cousin.
- 17 Q: Okay. How many times have you guys met?
- 18 A: Not a lot.
- 19 Q: Two?
- 20 A: Probably two or three before we got in this.
- 21 Q: Okay. Who did you live with in Latta?
- 22 A: I live with my dad, Willie B. McKirk [phonetic].
- 23 Q: Where's your mama stay?
- 24 A: With my dad.
- 25 Q: Okay. You testified for Mr. Clements and Mr. Deberry

WILLIE BETHEA - CROSS BY MR. BAILEY

1 earlier that you have some convictions; right?

2 A: Sir?

3 Q: You have some prior convictions; correct?

4 A: Yes, sir.

5 Q: You went to prison on some of those prior convictions;
6 correct?

7 A: Yes, sir.

8 Q: How long did you have to go to prison for?

9 A: What is you talking about going to prison for? Which?

10 Q: Well, you pled guilty to accessory after the fact, grand
11 larceny, and burglary second degree all together. Do you
12 remember that?

13 A: It's on file.

14 Q: Did you go to prison for those charges?

15 A: Yes, sir. It's on the paper. Yes, sir.

16 Q: How long did you go to prison for?

17 A: Six months.

18 Q: Okay. After you got out of prison, did you return to
19 Latta?

20 A: Yes, sir.

21 Q: Excited to see your mama and daddy after six months?

22 A: Like everybody would.

23 Q: Yeah. Did y'all have a party?

24 A: No.

25 Q: No? Just excited to see mama and daddy?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Mm-hmm.

2 Q: Okay. Have you had any conversations with anyone about
3 what you're going to do with these pending charges today?

4 A: No, sir.

5 Q: None? You understand that you could get life in prison
6 for murder?

7 A: Yes, sir.

8 Q: And you have no deal regarding that murder charge?

9 A: No, sir.

10 Q: When are you scheduled to plead guilty to murder?

11 A: Sir?

12 Q: When are you scheduled to plead guilty to murder?

13 A: I don't know about that, sir. I just come in here to
14 tell the truth.

15 Q: How about the attempted murder? Do you understand you
16 could get up to 30 years on each one of those?

17 A: Yes, sir.

18 Q: And do you understand that that could be a total of 120
19 years?

20 A: If you add them up, yeah, that should be correct.

21 Q: Okay. When are you going to plead guilty to those four
22 counts of attempted murder?

23 A: I just told you. I don't know, sir.

24 Q: Okay. The discharging of a weapon into a dwelling -- you
25 have one of those charges?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Still have a charge with it, yes, sir.

2 Q: Okay. Don't know what's going to happen to that one
3 after today?

4 A: Sent all my -- sent all my charges home.

5 Q: Okay. Your lawyer hasn't had any talks with you about
6 what's going to happen after trial this week?

7 MR. CLEMENTS: I'll object to that, Your Honor. That's
8 attorney/client privilege.

9 MR. BAILEY: I didn't ask any specifics, Judge. I just
10 want to know if they talked about it.

11 THE COURT: Come here.

12 (Whereupon, a bench conference is held in the presence of
13 the jury but out of the hearing of the jury as follows.)

14 THE COURT: I mean I understand you're not asking
15 specifics, but you're walking a fine line there.

16 MR. BAILEY: That's the only question I'm going to ask.

17 THE COURT: Okay. You've asked him whether or not he's
18 got a deal. He's testified he doesn't. Whether he does or
19 not, he's testified he doesn't. Okay? I'm not going to allow
20 you to get into something or even open the door for a
21 possibility of him blurting out something that may be
22 protected by attorney/client privilege. Now, you understand?
23 I mean just be careful in walking that line.

24 MR. BAILEY: That was the only question I was going to
25 ask, if they've talked about any deals.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. CLEMENTS: And if he says --

2 THE COURT: Sure. I mean that's not anything that's
3 protected. He can ask that question, but --

4 MR. BAILEY: And I just want a yes or no.

5 THE COURT: If you get into that next --

6 MR. BAILEY: No.

7 THE COURT: -- or any more of those discussions, now
8 you've got a problem.

9 MR. BAILEY: Just a yes or no is all I'm looking for.

10 THE COURT: Okay. Well, I mean it goes to -- it
11 certainly goes to his bias or prejudice.

12 MR. CLEMENTS: But I don't know what his attorney might
13 have told him.

14 THE COURT: He didn't ask him what they said, but I'll
15 ask him -- I'll allow him to ask him if he talked to him about
16 it, but be careful. It's just a yes or no question.

17 (Whereupon, the bench conference ends.)

18 MR. BAILEY: Are you ready to proceed, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BAILEY:

21 Q: Mr. Bethea, my question was have you and any of your
22 lawyers had any discussions about resolving these charges?

23 A: I've only got one lawyer. That's Mr. Brooker. He told
24 me --

25 Q: I don't want to know what he talked about. Just a yes or

WILLIE BETHEA - CROSS BY MR. BAILEY

1 no question. Have you guys had any talks about resolving
2 these charges?

3 A: Resolving is saying what?

4 Q: Any deals on the table -- have you guys talked about
5 that?

6 A: No, sir.

7 Q: Okay. Now, Mr. Bethea --

8 A: Yes, sir.

9 Q: When -- when -- when you're in prison, the guards control
10 everything you do; correct?

11 A: Yes, sir.

12 Q: They can tell you where to go; right?

13 A: Yes, sir.

14 Q: Tell you where not to go?

15 A: Yes, sir.

16 Q: How many people are in a cell with you in prison?

17 A: It isn't a cell. It's a pod.

18 Q: It's a pod?

19 A: Three to a cell.

20 Q: Okay. So you have a cell in a pod?

21 A: Yes, sir.

22 Q: Okay. And there's three individuals in there with you?
23 Not a lot of privacy in prison, is there?

24 A: No, sir.

25 Q: A lot of bad people in prison?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Pretty much.
- 2 Q: People do bad things in prison?
- 3 A: Pretty much.
- 4 Q: Are you subject to being searched at all times?
- 5 A: Routine. Yeah. Yes, sir.
- 6 Q: Routine searches for you?
- 7 A: Every day.
- 8 Q: It's not a very pleasant experience to be in prison, is
- 9 it?
- 10 A: No, sir.
- 11 Q: You don't want to go back to prison, do you?
- 12 A: Nobody want to go to prison.
- 13 Q: Yeah. Okay. Now, Mr. Bethea, let me ask you have you
- 14 ever received any type of mental health treatment?
- 15 A: Yes, sir.
- 16 Q: Okay. Have you been diagnosed as a schizophrenic?
- 17 A: Yes, sir.
- 18 Q: Have you been diagnosed as having any type of psychosis
- 19 disorders?
- 20 A: What you mean by that?
- 21 Q: Have you been diagnosed -- are you aware of any diagnosis
- 22 for psychosis?
- 23 A: I don't know what psychosis is.
- 24 Q: Okay. Do you know what schizophrenia means?
- 25 A: I was diagnosed with it, but I don't really, really,

WILLIE BETHEA - CROSS BY MR. BAILEY

1 really know what it means.

2 Q: Okay. As a result of your mental health, you've been
3 institutionalized; correct?

4 A: What you mean by institutionalized?

5 Q: You've had to go up to Columbia to a mental health
6 hospital; correct?

7 A: A holding facility?

8 Q: Yeah.

9 A: Yes, sir.

10 Q: Okay. That's not a pleasant experience, is it, either?

11 A: No, sir.

12 Q: Did you get any mental health treatment while you were in
13 prison?

14 A: Yes, sir.

15 Q: Not the best treatment up there, is it?

16 A: No, sir.

17 Q: You can get better treatment out here on the street if
18 you need it?

19 A: Sir?

20 Q: You can get better mental health treatment if you're not
21 in prison; correct?

22 A: I don't know about all that.

23 Q: Okay. Do you recall telling any doctors that people were
24 jealous of your lifestyle?

25 A: I don't know what was going on during that time.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Okay.

2 MR. CLEMENTS: Your Honor, I object to the relevance of
3 that.

4 THE COURT: Can the lawyers approach?

5 (Whereupon, a bench conference is held in the presence of
6 the jury but out of the hearing of the jury as follows.)

7 THE COURT: First of all, his mental health treatment is
8 absolutely objectionable. I mean there's case law out there.
9 Unless you can tie -- tie that together with his inability to
10 tell the truth, it's not admissible.

11 MR. BAILEY: But, Judge, what I'm doing is I'm tying it
12 to him not getting the treatment in prison. He don't want to
13 go to prison because he can't get the treatment.

14 THE COURT: That's not relevant to this case.

15 MR. BAILEY: Him going to prison is not relevant in this
16 case?

17 THE COURT: That's not what you said.

18 MR. BAILEY: But the aspects of prison -- I mean I'm goig
19 to ask him --

20 (Whereupon, the bench conference ends.)

21 THE COURT: Ladies and gentlemen, I'm going to ask you to
22 step to your jury room for just a minute. Do not discuss the
23 case. I'll get you back out here in just a second.

24 (Whereupon, the jury exits the courtroom at 9:55 a.m.)

25 THE COURT: All right. Yes, sir, Mr. Bailey?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. BAILEY: Your Honor, I believe Mr. Clements had the
2 objection.

3 THE COURT: Well, he objected on the grounds of
4 relevancy. I want to hear your argument on the other side of
5 it.

6 MR. BAILEY: Your Honor, this -- his treatment for mental
7 health goes to his credibility as a witness first. Number
8 two, it goes towards his bias and his motive to testify
9 because he's already testified without objection that he
10 didn't get good mental health treatment in prison. He's
11 already testified he doesn't want to go back to prison. So I
12 should be allowed to cross examine those issues in front of
13 the jury.

14 THE COURT: When was the mental health treatment? What
15 does it have anything to do with his ability to get on this
16 witness stand and tell the truth or not tell the truth? Do
17 you have any case law that you can provide to me that would
18 say that the cross examination of a witness concerning their
19 mental health is admissible when it's not -- when you can't
20 tie it at least -- and I haven't heard it yet -- tie it to his
21 ability to tell the truth or not tell the truth.

22 MR. BAILEY: I'm not -- I do not have a case, Judge.

23 THE COURT: Okay.

24 MR. BAILEY: I just --

25 THE COURT: Well, I've researched that issue before

WILLIE BETHEA - CROSS BY MR. BAILEY

1 because I had it in a case not too long ago over in Florence
2 County wherein a witness had been diagnosed with schizophrenia
3 or some issues relating to it, and the case law that I recall
4 did not allow you to go into that because it's not relevant to
5 their ability to tell the truth. All right?

6 Now, I understand what you're saying that it is your
7 intention to put out there that he doesn't want to go to
8 prison because he can't get the mental health treatment that
9 he needs. I've heard nothing that would indicate -- and maybe
10 you have it. I just want to hear it and I'll allow you to
11 proffer it, but nothing that he had ongoing mental health
12 treatment and that there is a need for ongoing mental health
13 treatment that would tie it in.

14 You've established through your cross examination that
15 jail ain't a good place. I've allowed you to do that and that
16 certainly goes to bias or whatever you want to call it as to
17 his testimony for that jury to make a decision on, but as far
18 as this mental health stuff, I mean it's just -- it's not
19 relevant at this point unless you can give me some more
20 information as to its relevancy.

21 MR. BAILEY: Judge, I would just note my exception to
22 that.

23 THE COURT: Well -- and I want you to proffer whatever
24 you want. If you want to proffer something --

25 MR. BAILEY: I just have one question for him.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Okay.

2 MR. BAILEY: He has made statements in his past to two
3 doctors about visual hallucinations when he smokes marijuana.

4 THE COURT: Well, I --

5 MR. BAILEY: And number two, Judge, if you just let me
6 put this on the record.

7 THE COURT: Yes, sir.

8 MR. BAILEY: And number two, Judge, when he went for his
9 psychiatric evaluation in connection with this case, he told
10 that physician that he smoked marijuana 30 minutes before he
11 got arrested.

12 THE COURT: Okay.

13 MR. BAILEY: Am I allowed to bring those up?

14 THE COURT: Mr. Clements?

15 MR. CLEMENTS: Your Honor, he hadn't smoked marijuana 30
16 minutes prior to taking this witness stand. I can tell you
17 that and that's what he's testified to. Any statement he made
18 back then if he was delusional, that statement's not before
19 the -- the Court. There's a video of it that if Mr. Bailey
20 wants to put into evidence, then the jury can watch it and see
21 if they thought he was delusional at that time, but I think
22 he's gone far afield and what he's attempting to do is not
23 admissible at all.

24 THE COURT: Okay. Well, you've brought out what you
25 wanted to get out outside the presence of the jury, but

WILLIE BETHEA - CROSS BY MR. BAILEY

1 there's no evidence that every time he smoked marijuana that
2 he was delusional, is it? Or is it?

3 MR. BAILEY: Judge, it's just he gets delusional. He has
4 visual hallucinations when he smokes marijuana is what he told
5 the doctor.

6 THE COURT: Well, is there evidence within that report
7 that he was delusional or hallucinating that night that he
8 conveyed to his doctor?

9 MR. BAILEY: Well, Judge, the --

10 THE COURT: I mean first go back to my first question.
11 Is there evidence in there that he was delusional every time
12 he smokes marijuana? And if so -- do you understand what I'm
13 getting at?

14 MR. BAILEY: Well, I understand, Judge, and -- and no.
15 His statement to the doctor does not say specifically every
16 time I smoke marijuana it's visual hallucinations. It's just
17 I see visual hallucinations when I smoke marijuana.

18 THE COURT: Okay. I understand. Your objection is so
19 noted for the record, but I'm not going to allow you to go
20 there. I don't think the case law allows it. It doesn't go
21 to his ability to tell the truth. So I'm not going to allow
22 it. Anything else?

23 MR. DEBERRY: Your Honor, just for the record, I'd like
24 to join in that objection.

25 THE COURT: So noted for the record. All right. We're

WILLIE BETHEA - CROSS BY MR. BAILEY

1 going to stand down for just a minute before I bring the jury
2 back out. Sir, you can step down and have a seat right over
3 there, but you can't -- listen to me. Okay? You can't
4 discuss your testimony. Okay? You can't discuss your
5 testimony with anybody.

6 THE WITNESS: Yes, sir.

7 (Whereupon, there is a break in the proceedings from
8 10:02 a.m. until 10:17 a.m.)

9 THE COURT: Mr. Bethea, if you would, come back up and
10 take the stand, please, sir. All right. Let me ask this
11 question before we go any further. Mr. Bailey has questioned
12 this witness about mental -- some mental health issues and we
13 discussed this back in chambers, but I want to ask these
14 questions on the record. Has this witness been declared
15 incompetent?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: All right. Has through his evaluation it
18 indicated that he has an inability to know right from wrong?

19 MR. CLEMENTS: No, Your Honor.

20 THE COURT: Has it been declared in his evaluation that
21 he does not know the difference between a truth and a lie?

22 MR. CLEMENTS: No, Your Honor.

23 THE COURT: All right. Again, that is the basis of my
24 ruling here and I've heard nothing to the contrary. And while
25 Mr. Clements has responded to my questions, the questions were

WILLIE BETHEA - CROSS BY MR. BAILEY

1 directed at Mr. Bailey because it was his effort to try -- I
2 mean whoever answered the questions, whether it Mr. Bailey or
3 Mr. Clements, I needed to know those answers to determine to
4 what extent where we go from here. All right? Anything else?

5 MR. BAILEY: Nothing from me, Your Honor.

6 THE COURT: All right. Anything else? And it's noted
7 that Mr. Deberry has joined in that objection. All right.
8 Bring me the jury, please, sir.

9 (Whereupon, the jury enters the courtroom at 10:19 a.m.)

10 THE COURT: Thank you for your patience. Please note
11 that all jurors are back in the courtroom. Mr. Bailey, you
12 may continue.

13 MR. BAILEY: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 BY MR. BAILEY:

17 Q: Mr. Bethea, you had testified earlier that you
18 voluntarily submitted yourself to the Marion County Sheriff's
19 Office on April the 30th; is that correct?

20 A: Yes, sir.

21 Q: Okay. And this incident happened on April the 13th;
22 correct?

23 A: I don't know. It been a minute ago.

24 Q: Okay. Would you disagree with me that it was April the
25 13th?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Sir?
- 2 Q: Would you disagree with me that it was April the 13th was
- 3 the night this --
- 4 A: I don't disagree. I would like for you to tell me what's
- 5 on the paper because it's been a minute -- a minute ago.
- 6 Q: You testified earlier that for one day you spent out in
- 7 Clio; correct?
- 8 A: Yes, sir.
- 9 Q: One day you spent out in Lakeview, maybe two days out in
- 10 Lakeview?
- 11 A: No. I said I put my little girl on a bus.
- 12 Q: And did you stay the night in Lakeview?
- 13 A: I came and stayed one night, yeah.
- 14 Q: Okay.
- 15 A: And I put her on the bus that morning.
- 16 Q: So that's two nights you stayed away from Latta?
- 17 A: Yes, sir.
- 18 Q: Were you in Latta for the other 17 nights?
- 19 A: Sir?
- 20 Q: Were you in Latta --
- 21 A: Yes, sir.
- 22 Q: -- for the other 17 nights?
- 23 A: Yes, sir.
- 24 Q: Did you tell your daddy about what happened that night?
- 25 A: Did I tell him? No, sir.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Did you tell your mama?

2 A: No, sir.

3 Q: Did you go to the Latta Police Department and tell them
4 what happened that night?

5 A: To the police department?

6 Q: Yeah. In Latta. Did you go there and tell them what
7 took place on April the 13th? Did you tell them about this
8 shooting?

9 A: I was in Dillon.

10 Q: Okay.

11 A: I was in Dillon.

12 Q: Did you go to the Dillon Police Department and tell them
13 what happened on the --

14 A: No, sir.

15 Q: -- night of the shooting? So you told nobody until you
16 showed up in Marion County at the Sheriff's Department?

17 A: Yes, sir.

18 Q: Okay. Now, they interviewed you that day; correct?

19 A: Yes, sir.

20 Q: They told you that that interview was going to be video
21 recorded; correct?

22 A: Yes, sir.

23 Q: You had an opportunity to talk to them before they put
24 you on video; correct?

25 A: I turned my -- my mama brought me up.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Okay. Did Detective Bell and Detective Watson interview
2 you prior to them placing you on a video recording?

3 A: Did they interview me?

4 Q: Yes.

5 A: That's saying as what?

6 Q: Did they ask you any questions before they told you we're
7 going to video record your statement?

8 A: Questions like what?

9 Q: My question --

10 A: Pertains to the case?

11 Q: In regards to this case before you went on video, did
12 they ask you any questions?

13 A: They asked me what I want -- what -- my mama had told me
14 the police was coming -- kept coming to our house. That's how
15 I came up.

16 Q: Okay. And when you went there, did you sit down in a
17 room and talk with them?

18 A: Me and my mama went in the waiting -- in the waiting area
19 at the Marion County Detention Center.

20 Q: Okay. Where did you go after that?

21 A: Where I go?

22 Q: Mm-hmm.

23 A: In a room.

24 Q: Okay. And who was in that room with you?

25 A: Mr. Martin Bell.

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 Q: Okay. Was Detective Watson there with you? He's a real
2 big detective.
- 3 A: Yes, sir.
- 4 Q: Real muscular guy?
- 5 A: Yes, sir.
- 6 Q: Okay. Did they immediately tell you that you were going
7 to be on video?
- 8 A: No. I told them what happened.
- 9 Q: Okay. And then they said, well, let's video record this?
10 Is that what happened?
- 11 A: Sir?
- 12 Q: After you told them what happened, did they want your
13 story on video?
- 14 A: Did they want it on video?
- 15 Q: Yes.
- 16 A: I wanted -- I could have wrote it, but I -- I demanded
17 video.
- 18 Q: How many times did you drive by the trailer that night?
- 19 A: I told you we went only one time, sir.
- 20 Q: Okay. Do you recall telling the detectives that you
21 passed in front of that trailer a number of times?
- 22 A: Did I recall telling them that?
- 23 Q: Yeah. Do you recall telling them that?
- 24 A: No, sir. If I did, I was kind of nervous.
- 25 Q: Okay. So it's possible that you told them that?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Is it --

2 Q: Do you recall telling the detectives that there were a
3 lot of cars outside the trailer that night?

4 A: Yes, sir.

5 Q: Okay. Were there a lot of cars outside the trailer that
6 night?

7 A: Yes, sir.

8 Q: There was? A lot of people coming and going at that
9 trailer?

10 A: I told you we just stopped.

11 Q: Okay. But did you see people coming and going to the
12 trailer?

13 A: Yes, sir.

14 Q: You did?

15 A: I ain't see it. We just stopped. There was cars in the
16 back yard like I told them.

17 Q: Okay. Do you recall telling the police that you saw no
18 guns that night?

19 A: I seen some guns that night when they got -- when the
20 shooting started.

21 Q: When Mr. Clements asked you a question earlier, you first
22 testified that Blaton Smith handed no one a gun that night.
23 Do you remember that?

24 A: Yes, sir.

25 Q: Okay. Then he asked you another question and you changed

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 your story and said yes, Blaton Smith handed somebody one gun.
- 2 Do you remember that?
- 3 A: I said that. Yes, sir.
- 4 Q: Okay. So what is it, Mr. Bethea? Did he hand a gun to
- 5 somebody or did he not?
- 6 A: Yes, sir. The guns was in the car, yes.
- 7 Q: The guns were in the car?
- 8 A: Yes, sir.
- 9 Q: Were they in the front seat or the back seat?
- 10 A: It was on the floor.
- 11 Q: On the floor of the front seat or the back?
- 12 A: I just know they was on the floor in the car.
- 13 Q: Okay. But were they in the front of the car or were they
- 14 in the back of the car with where you say Shaheed and Jamie
- 15 were sitting?
- 16 A: There was guns in the car, sir.
- 17 Q: Okay. Do you recall telling the detectives that there
- 18 were no guns in the car when you picked up Shaheed Hayes?
- 19 A: No, sir.
- 20 Q: You don't recall that? If I showed you your statement,
- 21 do you think it would help refresh your memory as to what you
- 22 told them about that?
- 23 A: Yes, sir.
- 24 Q: Okay. Mr. Bethea, here's a copy --
- 25 MR. CLEMENTS: Your Honor, may we approach?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Yes.

2 (Whereupon, a bench conference is held in the presence of
3 the jury but out of the hearing of the jury as follows.)

4 THE COURT: Yes?

5 MR. CLEMENTS: We got a video. I don't know what that is
6 he's got right there. I assume it's something somebody typed
7 up, but I haven't seen it and I don't know if it's accurate or
8 not. Do you want to play the video? If he wants to play the
9 video, we can put the video into evidence. I mean I don't
10 know what he's getting ready to show him. I haven't seen it.

11 MR. BAILEY: Here. Do you want to look at it?

12 MR. CLEMENTS: I mean I don't know if it's accurate.

13 MR. BAILEY: It was transcribed by Q&A Court Reporting
14 from the disk that you gave me.

15 MR. CLEMENTS: But that is not the best evidence.

16 THE COURT: You've got to look at the video and look at
17 this to insure that it's accurate.

18 MR. CLEMENTS: The best evidence is the video.

19 MR. BAILEY: Well, I'm --

20 THE COURT: Do you want to take a break and let's play
21 the video?

22 MR. BAILEY: Judge, because here's the problem. I mean
23 he made -- he's made a ton of inconsistent statements between
24 his testimony today and what he said at this interview. I
25 mean he's already --

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: I understand. I understand, but for you to
2 pull out a transcript that they haven't -- the State hasn't
3 even had an opportunity to review it and compare it to what
4 the video is.

5 MR. BAILEY: Well, he -- I mean he's had the disk. He
6 could have had it transcribed himself.

7 MR. CLEMENTS: The best evidence rule is the disk.

8 THE COURT: How long is the video?

9 MR. BAILEY: Probably an hour.

10 MR. CLEMENTS: An hour and 30 minutes or so.

11 MR. BAILEY: No. It's like an hour.

12 THE COURT: Okay. Well, do you want to stop and let me
13 listen to it and watch it?

14 MR. CLEMENTS: I object to that because it's not the best
15 evidence. I mean however you choose to deal with it.

16 THE COURT: I mean it's not --

17 MR. BAILEY: I mean I'm not introducing it. I just want
18 to refresh his recollection. I can use any document to
19 refresh his recollection.

20 MR. CLEMENTS: If it's accurate. What are you talking
21 about? Where do you say there's an inconsistency?

22 MR. BAILEY: Here he's talking about -- so you went and
23 picked up Shaheed. Yeah, I picked him up and the other little
24 dude. No guns or nothing in the car? No. So he had to have
25 the guns.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Well --

2 MR. CLEMENTS: He didn't say that. He said there was no
3 guns in the car.

4 MR. BAILEY: I can -- I need to clarify that. I mean at
5 the time he picked him up --

6 THE COURT: Here's the way you do it. All right? You
7 can pull out his statement and you can cross examine -- you
8 can use this in questioning. Do you recall saying this? You
9 told them this? Then do you -- are you saying this now?
10 What's the -- what's the truth in this? I mean --

11 MR. BAILEY: Okay.

12 THE COURT: -- you can cross examine him on that just
13 like you're holding a copy of this statement. You were
14 talking to the police on such and such a day.

15 MR. BAILEY: Okay. I'll do it that way.

16 THE COURT: Yes, sir. Do you remember telling them such
17 and such? Do you understand what I'm saying?

18 MR. BAILEY: Yeah. I'll do it that way.

19 THE COURT: Hey. Can y'all come back here a minute? One
20 of the best cross examinations I saw one time was by Judge
21 Nicholson when he was prosecuting a rape case down in
22 Kingstree. Audiotape recording of the defendant's statement
23 wherein he made statements concerning what happened and they
24 played it back to that jury and every time he would give an
25 inconsistency, he'd stop the tape. Do you remember saying

WILLIE BETHEA - CROSS BY MR. BAILEY

1 that?

2 But anyway, I'm not going to allow -- I'm not going to
3 allow you to put that -- and you're assuming he can read.

4 MR. BAILEY: Well, I was going to ask him if can read it.

5 THE COURT: Well, anyway, I believe the best avenue is to
6 --

7 MR. BAILEY: Well, I'll just question him.

8 THE COURT: Question him the way I told you to.

9 MR. BAILEY: Okay.

10 (Whereupon, the bench conference ends.)

11 MR. BAILEY: Ready to proceed, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. BAILEY:

14 Q: Mr. Bethea --

15 A: Yes, sir.

16 Q: You testified earlier that the -- that you believe the
17 white Cadillac was owned by Adrian Smith; correct?

18 A: I don't know who owned it.

19 Q: Okay. So you don't know who owns that Cadillac?

20 A: No. My cousin was driving it.

21 Q: Okay. Have you ever driven that Cadillac?

22 A: Yes, sir.

23 Q: You have? On how many occasions have you driven that
24 Cadillac?

25 A: Not a lot.

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 Q: No? Have you ever driven that Cadillac down to Georgia?
- 2 A: No, sir.
- 3 Q: No? You testified earlier that you were hanging out with
- 4 Blaton Smith pretty much all day on the 13th? Or on the 12th I
- 5 guess it is?
- 6 A: I guess.
- 7 Q: Okay. The day before the shooting, you and Blaton Smith
- 8 were hanging together?
- 9 A: You say the day before?
- 10 Q: Yeah.
- 11 A: I told you I was dealing with one of his -- I was dealing
- 12 with Adrian's sister.
- 13 Q: Okay. And you guys went into Dillon and went to an
- 14 AutoZone?
- 15 A: Yes, sir.
- 16 Q: And got some spark plugs? Did you tell that to Detective
- 17 Bell?
- 18 A: Sir?
- 19 Q: Did you tell that to Detective Bell?
- 20 A: I just told him I went to J&J to fix the car.
- 21 Q: Okay. Do you remember telling Detective Bell during your
- 22 interview that you also got the windows tinted on the car?
- 23 A: I never said I got the windows tinted. I said we got
- 24 tint for the windows.
- 25 Q: Oh, so you got -- so you got tint for the windows, but

WILLIE BETHEA - CROSS BY MR. BAILEY

1 you didn't put it on the windows?

2 A: That ain't my car.

3 Q: Okay. Do you remember telling Detective Bell that Blaton
4 Smith dropped you off at home and you went to sleep that
5 afternoon?

6 A: Sir?

7 Q: Do you remember telling Detective Bell in your statement
8 that Blaton Smith dropped you off at home that afternoon and
9 you went to sleep?

10 A: No, sir.

11 Q: You don't remember telling him that?

12 A: No, sir.

13 Q: Did you go home that day and go to sleep?

14 A: That day of what?

15 Q: The day before the shooting.

16 A: The day before the shooting?

17 Q: Mm-hmm. Yes, sir. The day before the shooting, did you
18 go home and go to sleep?

19 A: I can't really recall 27 months ago.

20 Q: Okay.

21 A: Unless you got it down.

22 Q: Okay. Did Detective Bell tell you he could help you out
23 in these charges if you cooperate?

24 A: No, sir. I told you that earlier.

25 Q: He never told you that?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: No, sir.
- 2 Q: What time did you pick up Shaheed that night?
- 3 A: It was around getting dark. I don't know the exact time.
- 4 Q: Okay. Did you see Shaheed get in the car with a gun?
- 5 A: I don't know what he had on him then.
- 6 Q: Okay. Then y'all went and picked up Jamie?
- 7 A: No. I told you --
- 8 Q: You picked up Jamie first?
- 9 A: -- we picked up Jamie first.
- 10 Q: Okay. Did you see him get in the car with a gun?
- 11 A: It was dark. He got in. He came and ran to the car.
- 12 Q: Okay. Did he take out a gun when he got in the car?
- 13 A: No, sir.
- 14 Q: Did Shaheed take out a gun when he got in the car?
- 15 A: Later on.
- 16 Q: You saw him take out the gun?
- 17 A: Yes, sir.
- 18 Q You were sitting in front of Shaheed; correct?
- 19 A: Yes, sir.
- 20 Q: When Martin Bell asked you what kind of guns were used
- 21 that night, you told him that you thought they were .40
- 22 calibers; correct?
- 23 A: Yes, sir.
- 24 Q: You didn't know for sure; correct?
- 25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: He also asked you if they were black or chrome. Do you
2 remember that?

3 A: Sir, I said -- like I told you, it was dark.

4 Q: Okay. Do you recall telling the detectives that you
5 thought they were black .40s?

6 A: It was real dark, sir.

7 Q: Do you recall making that statement?

8 A: No. No, sir.

9 Q: Did you see any other guns in the car besides a .40
10 caliber?

11 A: An automatic weapon.

12 Q: You saw an automatic weapon?

13 A: It was something in the blanket.

14 Q: Okay. And where was that?

15 A: In the back.

16 Q: In the back? Did you tell Detective Bell when he
17 interviewed you that there was an assault rifle in the back
18 seat of that car?

19 A: I said there was guns in the car.

20 Q: Okay. How did you get to court today?

21 A: Sir?

22 Q: How did you get to court today?

23 A: How did I get to court today?

24 Q: Mm-hmm. Yes, sir.

25 A: I'm not trying to be funny, but how -- how do you -- by

WILLIE BETHEA - CROSS BY MR. BAILEY

1 assistance from Marion County Detention Center.

2 Q: Okay. So they drove you over here?

3 A: Yes, sir.

4 Q: Were you shackled?

5 A: Yes, sir.

6 Q: They took the shackles off before you came up here in the
7 courtroom?

8 A: Sir?

9 Q: They took the shackles off of you right before you came
10 into the courtroom?

11 A: Yes, sir.

12 Q: Do you recall telling Detective Bell that you got dropped
13 off in Dillon after the shooting?

14 A: Sir?

15 Q: Do you recall telling Detective Bell that you got dropped
16 off in Dillon after the shooting?

17 A: Sir, like I told you in the past, if it's on the
18 statement, that's what I said, sir.

19 Q: Okay. Did you tell Detective Bell about this abandoned
20 house that y'all ended up at that night?

21 A: I stated my aunt from Alabama owned that house.

22 Q: Okay. And you told that to Detective Bell that night?

23 A: Anything that's on the paper I said.

24 Q: When you pulled up and you stopped in front of the house
25 for the shooting, you were sitting closest to the house;

WILLIE BETHEA - CROSS BY MR. BAILEY

1 correct?

2 A: Yes, sir.

3 Q: Okay. It would have made a lot of sense for you to shoot
4 out your window; right?

5 A: It would have, but like I told you, I didn't have no gun.

6 Q: Everybody else in the back seat had guns shooting; right?

7 A: Sir?

8 Q: Everybody else had a gun in the back seat and they were
9 shooting?

10 A: Everybody else? What you mean by everybody else?

11 Q: Well, your testimony was Shaheed and Jamie were in the
12 back seat shooting?

13 A: Yes, sir.

14 Q: And it would have been easier for you to shoot out of the
15 car than Jamie. You would agree with that; right?

16 A: Well, it probably would have been easier, but I told you
17 I ain't had nothing to do with it.

18 Q: You could have just rolled down your window and shot
19 right out of the car; correct?

20 A: I just told you I ain't had no business shooting so I
21 ain't -- why would I roll down my window and shoot a gun?

22 Q: My question is -- is it would have been easier for you to
23 roll down your window and shoot directly out of --

24 A: It would have been easier for me to do --

25 THE COURT: Hold on a minute. Hold on a minute. Mr.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Bethea, let him finish asking his question. Okay? And then
2 you answer. Okay?

3 Q: It's just a yes or no question, Mr. Bethea. Okay? Would
4 you agree with me that it would have been easier for you to
5 roll down your window and shoot than it would be for Jamie to
6 shoot over the top of the car?

7 A: Why would I shoot? Shoot --

8 MR. BAILEY: Judge, he won't answer --

9 THE WITNESS: Yes, sir.

10 THE COURT: Answer the question, Mr. Bethea.

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay?

13 THE WITNESS: Yes, sir.

14 BY MR. BAILEY:

15 Q: Do you know Fred Frye?

16 A: Yes, sir.

17 Q: Do you hang out with Fred Frye?

18 A: I told you everybody from Latta know each other. I don't
19 hang out with nobody, just my associate.

20 Q: He's your associate?

21 A: I know him from the Latta area.

22 Q: Do you do drugs with Fred Frye?

23 A: No. I don't do drugs with Fred Frye.

24 Q: Okay. I know you testified earlier that you know Charlie

25 B. Are you friends with Charlie B?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: I told you everybody from Latta.

2 Q: Okay. My question is is are you friends with Charlie B?

3 A: I said he's -- he's just a person that's around the Latta
4 area.

5 Q: Mr. Bethea, my question is just a simple yes or no.

6 A: I just told you. You said -- asked me is he my friend
7 and I said he just be in Latta.

8 Q: Is that yes, he's your friend or no, he's not your
9 friend?

10 A: I consider that as a friend, yes.

11 Q: Okay. Do you know Gino Upton?

12 A: No, sir.

13 Q: Okay. You ever buy drugs from Derrick Wilson?

14 A: No, sir.

15 Q: How about Gavin Graves? You ever buy drugs from him?

16 A: I don't even know him.

17 Q: Okay. Do you smoke marijuana, Mr. Bethea?

18 A: Yes, sir.

19 Q: And do you recall telling Detective Bell that you snort
20 cocaine?

21 A: I did a couple times.

22 Q: Okay.

23 MR. BAILEY: The Court's indulgence for one moment, Your
24 Honor.

25 THE COURT: Yes, sir.

1 MR. BAILEY: I have no further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. CLEMENTS: No, Your Honor.

4 THE COURT: All right. Sir, you may step down. Call
5 your next witness.

6 MR. CLEMENTS: Your Honor, at this time the State would
7 rest.

8 THE COURT: All right. All right. Ladies and gentlemen,
9 the State has presented its case and they have rested. What I
10 am going to do right now if I am going to ask you -- I have to
11 ask you to step to the jury room. There's some matters of law
12 that we need to take up at this time outside of your presence.
13 I'm going to ask you to step to the jury room. Do not -- do
14 not discuss the case at all. I'll get you back out here as
15 quickly as possible. Please step to the jury room.

16 (Whereupon, the jury exits the courtroom at 10:42 a.m.)

17 THE COURT: Hold it down, please. All right. Any -- the
18 State has rested. Any motions from you, Mr. Deberry,
19 concerning your client?

20 MR. DEBERRY: Your Honor, at this time we would like to
21 renew all of our prior objections up to this point in time and
22 make a motion for a directed verdict. We believe that any
23 evidence that's been produced against my client, Shaheed
24 Hayes, is completely inconsistent and non-existent to the fact
25 that he committed these crimes.

1 THE COURT: Thank you, sir. Mr. -- I'm going to hear
2 from both of you and then I'm going to hear from the State and
3 then I'll make my ruling. Go ahead, Mr. Bailey.

4 MR. BAILEY: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Yes, sir.

7 MR. BAILEY: Judge, likewise we would renew all of our
8 pre-trial motions and our objections to any of the Court's
9 rulings. We would also move for a directed verdict of not
10 guilty in this case. Two of the alleged victims of the
11 attempted murder did not take the stand. Additionally, Judge,
12 we believe that the inconsistent nature of the statements
13 established that there is no evidence linking Blaton Smith to
14 this shooting and that this matter should not proceed further
15 and go to the jury.

16 THE COURT: All right. Mr. Clements, anything in
17 response?

18 MR. CLEMENTS: Your Honor, I think there's sufficient
19 evidence to go to the jury on all counts. It doesn't matter
20 that the two victims of the attempted murder were not here.
21 The other two victims of the attempted murder testified to
22 them hitting the ground squirming around and they were all
23 scrambling for their life as the bullets went flying through
24 the trailer.

25 And I certainly believe we have established by competent

1 evidence that both Blaton Smith and Shaheed Hayes were there
2 and that Blaton Smith was in control, he was the man in
3 charge, and he was driving the car. He put them there on the
4 scene, provided the weapons, and Shaheed Hayes was the first
5 to shoot and by testimony emptied his clip, and I believe
6 there's sufficient evidence for both these gentlemen to have
7 to answer to the jury.

8 THE COURT: All right. Mr. Deberry didn't say this, but
9 -- and Mr. Bailey did, but I want to put it on the record as
10 Mr. Deberry making this motion as well. Mr. Deberry simply
11 said renew all prior objections. Mr. Bailey said prior
12 objections and motions. For the record, I assume you're
13 joining in all prior motions too, Mr. Deberry?

14 MR. DEBERRY: Yes, Your Honor.

15 THE COURT: I want to make sure the record is protected
16 for your client on that. Okay?

17 With regards to the prior objections and prior motions of
18 each defense counsel, the Court's rulings remain the same on
19 all prior motions and objections.

20 With regards to each of the defendant's motion for
21 directed verdict, under the law the trial court is concerned
22 with the existence -- with the existence or non-existence of
23 evidence, not its weight. If there is any direct evidence or
24 any substantial circumstantial evidence reasonably --
25 reasonably tending to prove the guilt of the accused, then the

1 case should be submitted to the jury.

2 In this particular case, based upon the testimony of Mr.
3 Williams, Jamie Williams, and Willie Bethea as to the
4 involvement of Shaheed Hayes and Blaton Smith, the Court
5 believes that there is sufficient evidence for this case to go
6 to the jury on all charges -- on all charges. Therefore, the
7 Court is respectfully denying the defendants' motion for a
8 directed verdict.

9 Now, at this time what I am going to do is advise each of
10 the defendants of their rights. Mr. Blaton Smith, if you
11 would, stand, please, sir. Mr. Hayes, if you would, stand,
12 please, sir.

13 (Whereupon, the defendant comply.)

14 THE COURT: If each of you would, raise your right hand
15 to be sworn. Do you swear to tell the truth, the whole truth,
16 and nothing but the truth, so help you God, Mr. Smith?

17 THE DEFENDANT SMITH: Yes, sir.

18 THE COURT: Mr. Hayes?

19 THE DEFENDANT HAYES: Yes, sir.

20 THE COURT: All right. You can put your hands down. All
21 right. At this time, gentlemen, I am going to explain to you
22 certain of your rights. If you do not understand anything
23 that I say, please let me know. If you want me to explain
24 anything in more detail, please let me know as well. Do each
25 of you understand, Mr. Smith?

1 THE DEFENDANT SMITH: Yes, sir.

2 THE COURT: Mr. Hayes?

3 THE DEFENDANT HAYES: Yes, sir.

4 THE COURT: All right. We have now reached the stage of
5 the trial where you may present your defense. You have the
6 right to claim the protections given to you by the Fifth
7 Amendment to the Constitution of the United States and that
8 amendment states in part that no person -- no person shall be
9 compelled in any criminal case to be a witness against
10 himself. This means that you cannot -- you cannot be required
11 to testify in this case.

12 You have the right to testify on your own behalf.
13 However, no one -- and I repeat no one can make you testify.
14 This is a personal right and no one can waive this right
15 except you.

16 If you decide to testify, you will be subject to the same
17 rules that govern other witnesses and you may be examined and
18 cross examined on any relevant issue in this case. In
19 addition, if you have any convictions involving dishonesty or
20 false statement or for crimes punishable by imprisonment for
21 more than one year and this Court determines that the
22 probative value of admitting this evidence outweighs its
23 prejudicial effect to you, the solicitor will be able to
24 introduce your record to attack your credibility.

25 If you decide to testify, this decision on your part must

1 be freely, voluntarily, and intelligently made with knowledge
2 of the protections given to you by the Fifth Amendment and the
3 consequences of your decision to testify. If you decide not
4 to testify, I will instruct the jurors that they cannot --
5 that they cannot give the fact that you did not testify any
6 consideration whatsoever and that there is to be absolutely no
7 prejudice to you because you did not testify.

8 Now, it is left entirely up to you whether or not you
9 testify. You may talk with your attorney, your family,
10 friends, or anyone else, but the final decision is left
11 entirely up to you. Do you understand what I have explained
12 to you, Mr. Smith?

13 THE DEFENDANT SMITH: Yes, sir.

14 THE COURT: Mr. Hayes?

15 THE DEFENDANT HAYES: Yes, sir.

16 THE COURT: Do you have any questions about what I have
17 explained to you, Mr. Smith?

18 THE DEFENDANT SMITH: No, sir.

19 THE COURT: Mr. Hayes?

20 THE DEFENDANT HAYES: No, sir.

21 THE COURT: Have you discussed with your attorney whether
22 or not you should testify, Mr. Smith?

23 THE DEFENDANT SMITH: Yes, sir.

24 THE COURT: Mr. Hayes?

25 THE DEFENDANT HAYES: Yes, sir.

1 THE COURT: Do you need any more time to talk to your
2 attorney, Mr. Smith?

3 THE DEFENDANT SMITH: No, sir.

4 THE COURT: Mr. Hayes?

5 THE DEFENDANT HAYES: Yes, sir.

6 THE COURT: All right.

7 MR. BAILEY: I was going to request a few minutes to
8 talk.

9 THE COURT: Well, I'm going to stand down for just a
10 minute and allow you two to -- or allow each of you to talk
11 with your respective attorneys. Let me know when you all are
12 finished talking to your clients. At that time, I want to
13 talk with all the lawyers in chambers concerning the charge
14 and et cetera. All right?

15 All right. We'll stand down for just a few minutes. You
16 all may be seated, Mr. Hayes and Mr. Smith.

17 (Whereupon, there is a break in the proceedings from
18 10:52 a.m until 11:16 a.m.)

19 THE COURT: All right. We stood down for a minute for
20 the defendants, Mr. Smith and Mr. Hayes, to speak with their
21 respective attorney. Mr. Smith, if you would, please stand.
22 Mr. Hayes, would you please stand? Have each of you had
23 sufficient time -- enough time to talk with your lawyer
24 concerning whether or not you will testify, Mr. Smith?

25 THE DEFENDANT SMITH: Yes, sir.

1 THE COURT: Mr. Hayes?

2 THE DEFENDANT HAYES: Yes, sir.

3 THE COURT: Do you wish to testify in this case, Mr.
4 Smith?

5 THE DEFENDANT SMITH: No, sir.

6 THE COURT: Mr. Hayes?

7 THE DEFENDANT HAYES: No, sir.

8 THE COURT: All right. I'm going to ask that you be
9 seated at this time. Thank you, gentlemen, very much. What I
10 am going to do now is I'm going to bring the jury back out and
11 I'm going to recognize Mr. Deberry, followed by my recognition
12 of Mr. Bailey. Is there any other testimony or any --
13 anything you all are going to put up, Mr. Deberry?

14 MR. DEBERRY: No, Your Honor.

15 THE COURT: Mr. Bailey?

16 MR. BAILEY: Nothing, Judge.

17 THE COURT: All right. You all can rest in front of the
18 jury and then what we are going to do is I'm going to let the
19 jury go and tell them to be back here like we discussed in
20 chambers at 12:45 and we will move forward at that time with
21 arguments and my charge on the law. Okay? Anything before I
22 bring the jury in?

23 MR. CLEMENTS: No, Your Honor.

24 THE COURT: Mr. Deberry?

25 MR. DEBERRY: No, Your Honor.

1 THE COURT: Mr. Bailey?

2 MR. BAILEY: No, Judge.

3 THE COURT: All right. Bring me the jury, please, sir.

4 (Whereupon, the jury enters the courtroom at 11:17 a.m.)

5 THE COURT: All right. Mr. Foreman and ladies and
6 gentlemen of the jury, thank you for your patience. At this
7 time, I am going to recognize Mr. Deberry. Mr. Deberry, you
8 are so recognized.

9 MR. DEBERRY: Thank you, Your Honor. The defense for
10 Shaheed Hayes rests.

11 THE COURT: All right. Mr. Bailey, I recognize you, sir.

12 MR. BAILEY: Thank you, Your Honor. May it please the
13 Court. On behalf of my client, Blaton Smith, the defense
14 rests.

15 THE COURT: All right. All right. Ladies and gentlemen,
16 you all have heard all of the testimony that you're going to
17 hear in this case. What we're going to do now is I am -- I
18 told you I was going to keep you here today, but we changed up
19 here. I'm going to let you go to lunch. Okay? I'm going to
20 let you go to lunch and I'm going to ask that you be back here
21 at 12:45. It's a little bit early, but please be back at
22 12:45.

23 The only thing that remains in the trial of this case
24 before it's submitted to you all for your decision is
25 arguments of counsel, the State and the defendants, and my

1 charge on the law to you -- and my charge on the law. During
2 your break, don't discuss the case with anybody. Don't do any
3 independent investigation. You're to decide this case, as
4 I've told you from the outset, based upon the testimony from
5 this witness stand and/or exhibits that have been admitted
6 during the course of this trial.

7 Anything before I release this jury and have them back
8 here at 12:45, Mr. Clements?

9 MR. CLEMENTS: Nothing from the State, Your Honor.

10 THE COURT: Mr. Deberry?

11 MR. DEBERRY: No, Your Honor.

12 THE COURT: Mr. Bailey?

13 MR. BAILEY: Nothing, Your Honor.

14 THE COURT: All right. Please be back at 12:45 and we
15 will resume and conclude the trial of this case. Thank you.

16 (Whereupon, the jury exits the courtroom at 11:19 a.m.)

17 THE COURT: Are all jurors clear? Are all jurors clear?

18 THE DEPUTY: Yes.

19 THE COURT: All right. Close that door, please. Thank
20 you very much.

21 All right. At this time, I'm going to recognize you, Mr.
22 Deberry. I assume you want to renew all prior motions, as
23 well as objections?

24 MR. DEBERRY: Yes, Your Honor. At this time, we would
25 renew all prior motions and objections and our motion for

1 directed verdict.

2 THE COURT: Very well. Mr. Bailey?

3 MR. BAILEY: Your Honor, I would also renew all prior
4 objections, prior motions, rulings by this Court adverse to
5 Mr. Smith, and our motion for directed verdict.

6 THE COURT: Very well. I wanted to make sure you all's
7 client's rights were protected with regards to those
8 particular motions. This Court so notes those objections and
9 motions for the record, but the Court's rulings remain the
10 same. The Court's rulings remain the same.

11 All right. Now, what we are going to do is we are going
12 to stand down right now. I do want to see the lawyers back in
13 my chambers real -- for a few minutes. We started -- started
14 -- started to review the charge and after making some
15 decisions came out here to let the jury go. Just come back in
16 my chambers just for a few minutes so we can try to finalize
17 that so once the jury comes back at 12:45 we can move right
18 into closing arguments and my charge on the law. Okay? We'll
19 stand at ease until 12:45.

20 (Whereupon, there is a break in the proceedings from
21 11:21 a.m. until 12:47 p.m.)

22 THE COURT: For the record, myself, Mr. Clements, Mr.
23 Deberry, and Mr. Bailey went over the jury charge prior to us
24 coming back in here. I will note in going over the jury
25 charge I initially had in there identification as being part

1 of a charge. Mr. Deberry indicated he wanted that in there.
2 However, I have taken it out and I want to note for the record
3 his objection to that. I want to note for the record his
4 objection to that.

5 Now, in reviewing the charge over lunch -- let me ask
6 this question. In reviewing my charge specifically as it
7 relates to possession of a weapon during the commission of a
8 violent crime, the charge reads as follows:

9 The defendants are charged with possession of a weapon
10 during the commission of a violent -- excuse me -- during the
11 commission of or attempt to commit a violent crime. The State
12 must prove beyond a reasonable doubt that the defendants were
13 in possession of a firearm or visibly displayed what appeared
14 to be a firearm during the commission of a violent crime.

15 It goes on and defines a firearm. One thing what it does
16 not include is the definition of possession, and possession
17 can be actual or constructive. It can be actual or
18 constructive, which I believe needs to be added in there
19 simply saying that actual possession is possession and
20 constructive possession includes dominion and control. Mr.
21 Clements?

22 MR. CLEMENTS: I have no objection to that, Your Honor.

23 THE COURT: Mr. Deberry?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: Mr. Bailey?

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Okay. Let me ask you all this before I bring
3 the jury out and you start closing arguments and then my
4 charge on the law.

5 (Whereupon, there is a pause in the proceedings as the
6 Court and the law clerk confer.)

7 THE COURT: As I go through my charge -- and I told and
8 instructed the jury at the outset of this trial that they are
9 to decide this case based solely upon the testimony from this
10 stand and the evidence -- that which is introduced into
11 evidence during the course of this trial.

12 There's been testimony throughout this trial of video
13 statements, handwritten statements, incident reports, et
14 cetera. Do either -- and inevitably -- inevitably, it seems
15 like every time a jury comes back with a question. We want to
16 see the video statement or we want to see the police incident
17 report. Does anybody as I charge this jury have any objection
18 to me saying something to the effect of video statements,
19 incident reports, written statements aren't admitted into
20 evidence and you can't consider it? Does anybody have any
21 objection to that, Mr. Clements?

22 MR. CLEMENTS: No objection, Your Honor.

23 THE COURT: Mr. Deberry?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: Mr. Bailey?

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Okay. All right. Anything else before I
3 bring the jury in, Mr. Clements?

4 MR. CLEMENTS: No, sir, Your Honor.

5 THE COURT: Mr. Deberry?

6 MR. DEBERRY: No, Your Honor.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: Nothing, Your Honor.

9 THE COURT: All right. Bring me the jury, please, sir.

10 (Whereupon, the jury enters the courtroom at 12:50 p.m.)

11 THE COURT: All right. Mr. Foreman and ladies and
12 gentlemen of the jury, I hope you had a good lunch and are
13 ready to proceed in the trial of this case.

14 What we are going to do at this time is have closing
15 arguments by counsel. Under our rules, Mr. Clements will go
16 first, followed by Mr. Deberry and then Mr. Bailey. And at
17 the conclusion of their arguments to you, I will charge you on
18 the applicable law in this case.

19 Prior to them making their arguments, ladies and
20 gentlemen, I want to remind you that arguments of counsel --
21 arguments of counsel are not evidence in this case. It is not
22 evidence in this case.

23 Mr. Clements, you're so recognized for closing argument.

24 MR. CLEMENTS: Thank you, Your Honor. If it please the
25 Court.

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. CLEMENTS: Good afternoon. I want to thank you for your attention and your patience and your consideration on behalf of the State of South Carolina and on behalf of Christian Drawhorn and on behalf of the other four young men that were with him that night and also on behalf of the defendants.

My job is to represent the State of South Carolina and my job is to present this matter to you beyond a reasonable doubt and to do it in a fashion where the rights of the accused are always protected and that they get a fair trial. We have a wonderful, wonderful system of justice. I think Mr. Deberry rightly so -- and I agree with him on this matter wholeheartedly is he said it was the greatest nation that has ever been on the face of this earth. Part of that reason is because of our judicial system.

And the reason why this judicial system is so good -- it's not perfect because it's made out of people, but it's so good because it's made out of people like you, citizens that come in and listen and weigh the facts and weigh the evidence and listen to the law as the judge gives it to them and apply that law to the facts to bring about a verdict as I told you earlier in our opening, veredicto, a verdict that speaks the truth.

Now, remember -- it seems like many, many days ago, but

1 it was just a couple days ago. Remember when I stood before
2 you and these gentlemen stood before you and we made our
3 opening statements and there were promises made to you. We
4 made promises to you and I want to tell you at the end of this
5 I think and believe firmly that you will see that my promises
6 were kept.

7 So I asked you to hold my feet to the fire and make sure
8 the promises that were made to you on opening statements were
9 kept. And that is to present a case against these two
10 defendants, Shaheed Hayes and Blaton Smith, and find them
11 guilty beyond a reasonable doubt.

12 Now, the judge is going to tell you that the only
13 evidence is what came from this witness stand, sworn
14 testimony, and the exhibits that have been presented into
15 evidence, and every bit of that is right here. These pictures
16 -- and y'all probably got tired of looking at so many pictures
17 of holes in the wall, but, you know, there was a lot of holes.
18 That trailer was like Swiss cheese. So trying to document,
19 there was a lot of pictures taken and we chose these to
20 present to you. So you saw a lot and if you thought it was
21 redundant, we're just trying to be thorough.

22 We had a projectile here that was testified to by Agent
23 Eichenmiller and we had shell casings that were presented to
24 her. She tested them and came back to Marion County and, as
25 Lieutenant Sawyer said, took them back to attempt to have

1 fingerprints done. Maybe that should have been done first,
2 but it wasn't done first. The ballistics test was done first.
3 And so when it was submitted for fingerprint analysis, it was
4 futile because of what had already been done, but they came
5 back to you and that was why it was in packaging and she said
6 it wasn't her packaging because it had gone that second time,
7 as Lieutenant Sawyer testified to.

8 So this is all the evidence right here: these two charts,
9 the trailer, a very rough not-to-scale drawing, and then this
10 map that shows you the area, these items of ballistic nature,
11 and these pictures, and then this testimony. Nothing else.

12 You probably heard all kind of things referred to. We
13 talked about statements and that were recorded. Well, you got
14 people that testified so you don't need those. They're not in
15 evidence. You've got incident reports that the officers wrote
16 up. Well, they testified so that's not -- those incident
17 reports aren't in evidence. But what you heard and what you
18 saw right here and right here and I'm going to ask you to
19 weigh every bit of it and to bring your common sense and your
20 wisdom to it.

21 And the judge is going to tell you when he charges you on
22 the law that the credibility of the witnesses and the facts,
23 that's what you're the judge of. He's the judge of the law.

24 So you've heard from witnesses up here. Look at their
25 demeanor. Look at how they presented themselves. Look at

1 whether they had some reason to try to protect theirsself or
2 not and what gave them motivation to testify as you weigh out
3 what they had to say.

4 And I'm going to tell you the first day started a little
5 rough for us. We called up patrol officers that came up and
6 they got barraged with a lot of questions about all these
7 things they didn't do which were things that the investigators
8 did that came on later, but you remember Officer Pike did a
9 good job. He was the first one there. He didn't see anybody
10 else on the scene, but the victims.

11 Then we had Marion Richardson come up and I guess he just
12 flat forgot he went up there and moved those shell casings out
13 of the highway so they wouldn't get run over, but they were
14 still all there. They were still close to the scene, but he
15 moved them. He said he didn't. He said he didn't remember
16 going out there. He didn't remember a lot of things. Mr.
17 Deberry and Mr. Bailey kept asking him if he had notes I guess
18 you'd remember better. Well, I guess that's now why he's in
19 codes enforcement instead of the Sheriff's Office.

20 But he came up and he testified. Clemson Legette came up
21 and he explained to y'all what happened when he came on scene
22 and how he called the investigators and the investigators came
23 and they began to go over that trailer and go over that
24 landscaping there with a fine-toothed comb.

25 And, you know, this isn't one of these cases where it's

1 heavy with forensic evidence like you see on TV with CSI and
2 all these -- all these different kinds of TV shows. Well, I
3 want to tell you that's Hollywood. In every case you don't
4 have a lot of forensic evidence. You don't have a lot of
5 forensic evidence here because the perpetrators of this crime
6 drove by, slowed up, came to a stop, fired a bunch of bullets
7 into this trailer, and then they were gone.

8 So there's not a lot of forensic evidence. So don't be
9 confused by that. And don't let that worry you about whether
10 -- well, you don't have fingerprints, you don't have this.
11 You got testimony and you got what we have.

12 Now, Charlie Watson came to start off the next day. He
13 testified about the investigation and what it led to and how
14 they followed it up, what they found, and who they talked to
15 and what charges were made. He and Martin Bell.

16 And then we brought in Dr. Schandl who told you what
17 killed Christian Drawhorn, what kind of wound he had. You
18 heard from two of the young men that were in the trailer and I
19 don't know if I'll ever forget Gavin Graves explaining what
20 happened and how scared he was. He stood about right here
21 before you and he said they heard two shots and said what is
22 that and then it just went ping, ping, ping, ping, ping, ping,
23 and it all chaos broke loose and he hit the ground.

24 As a matter of fact, Derrick grabbed him and pulled him
25 down to the ground and how he -- I think he's the one who used

1 the term about they squirmed around for their life when all
2 these bullets came flying through. And they were consistent
3 the entire time. They talked about all these bullets came
4 through the front and they came from the highway in the front.

5 And Mr. Bailey and Mr. Deberry did a good job, a real
6 good job, of trying their best to confuse them and talk about
7 things in the back yard and all this like there was some kind
8 of shooting or something going on in the back yard. Nothing
9 went on there. You heard the testimony. Every one of those
10 came through the front wall and some went out the back wall.
11 Some stopped inside the trailer, but how all of them fell and
12 cowered there for their lives as bullets were flying over
13 their heads.

14 And then they realized Christian was hit and they took
15 him out and had him outside here when EMS came and when law
16 enforcement came. And don't be confused about, you know, if
17 there was a knock on the door or not or whatever. All that
18 wasn't relevant. Nobody was there at the door, you know.
19 Bullets didn't come from the back. Nobody was shot in the
20 back.

21 And there was a lot made by Mr. Deberry particularly and
22 Mr. Bailey about, well, it was all in the back. You couldn't
23 see anything. Well, we had all the testimony from the
24 different people and we got the map right here. As it curves
25 -- and you saw the pictures and the picture is in there. When

1 you are approaching that trailer of Gavin Graves where he and
2 Derrick were living and you're approaching it from the north,
3 you can see clean into that back yard, everything that's back
4 there, and then you curve and there you are right in front of
5 it. There it is down the slope right where that white
6 Cadillac stopped that Blaton Smith drove it and they riddled
7 that trailer with bullets.

8 So don't be confused by any of that. You know, I'm
9 reminded of when I was in law school way back in the day and
10 my third year when I took a course called Trial Advocacy, and
11 it was taught by not just law professors but guys that were
12 practicing attorneys that were in court all the time trying
13 cases and they also worked with the university as an adjunct
14 law professor.

15 And one of them told me -- he said, "Ed, when you get to
16 court and you become a lawyer and you're trying a case, if
17 you've got the facts, argue the facts. And if you have the
18 law, you argue the law."

19 And I said, "Professor, what do I do if I don't have
20 either one of them?" He says, "Well, in that case you just
21 blow smoke."

22 Well, there's been a lot of smoke blown here today and
23 yesterday and the day before, but clear that smoke out the way
24 and look at the facts and apply the law Judge Brown is going
25 to give you, and the facts boil down to something that's not

1 complex at all. Basically, that's Jamie Christopher Williams
2 and Willie O'Brian "Boo Boo" Bethea.

3 What did they do? What did they testify to? What did
4 they say they did? Were they consistent? Were they
5 inconsistent? What was their demeanor on the stand? Those
6 are the things you've got to judge. And does what they say
7 get supported by all the other evidence that we know about?

8 But it boils down to those two young men and I'll admit
9 to you right now if you don't believe them, the State doesn't
10 have that much of a case, but I'm going to tell you they're
11 believable. They're credible. Just as I know that y'all know
12 they were credible. You heard it on the stand. They could
13 not be shaken from what they said.

14 Jamie Williams -- when he came he was -- he said he was
15 17 years old. He was following after these older fellows,
16 following after Duke -- Adrian Smith. And he got -- well, he
17 got picked up by Blaton and they went and he said there they
18 are, there's the trailer, there they are, that's his truck,
19 shoot, shoot. What did he tell y'all? He felt like if he
20 didn't shoot that there was going to be some trouble.

21 So he shot. He said he shot a few times and he kind of
22 froze up. He said he shot three to five times the best he can
23 remember. Willie said he thought he shot seven -- eight
24 times. He wasn't sure, but both of them were consistent in
25 one thing and that is that Shaheed Hayes emptied his clip.

1 Well, can you believe what Jamie was saying? The defense
2 attorneys asked him about his inconsistent statements. They
3 asked him when you first talked to law enforcement, what did
4 you tell him? He told them he wasn't doing anything, that
5 Willie was driving and that Blaton was shooting and Shaheed
6 was shooting. He put himself out of it. He wasn't shooting.
7 He wasn't doing it. He was just there, you know, and he said,
8 yeah, that was a lie. That was a lie.

9 And then later he told law enforcement, man, I wasn't
10 even there. I wasn't even there. And that was a lie. He was
11 trying to protect himself. But he gets up here under oath and
12 he says he decided he wanted to get it off his chest and he
13 had to tell the truth regardless and hopefully it's going to
14 help him out, but he's just got to go with what the truth is
15 because what's right is right and what's wrong is wrong.
16 Remember him saying that several times when they questioned
17 him? I just got to tell the truth.

18 He told me I'm a different man now. I'm 19. He was 17
19 years old when this happened. I imagine he's had a lot of
20 time to think this over and think, man, how can I live with
21 myself? I imagine every day he's got to look in the mirror
22 and go, you know, what have I been a part of?

23 Well, I asked him on this stand right here and I said why
24 in the world would you put yourself as being a shooter in a
25 murder case if it wasn't the truth? And I submit that same

1 question to y'all, ladies and gentlemen of the jury. Why in
2 the world would he say, yeah, I'm the shooter? I shot over
3 the top of the car. I'm a shooter. Under oath, why would you
4 claim that action if he didn't do it? The reason he claimed
5 that action, ladies and gentlemen, is because he's telling the
6 truth. He did it. He shot.

7 And was -- his statement about what he did, what is
8 corroborated by anything else? Well, he said he shot three to
9 five times and Shaheed emptied his clip. I think a clip on a
10 .40 is sixteen -- fifteen and one in the chamber. You got 16.
11 If he shot five times, how many is that? Twenty-one. How
12 many shell cases were found out there? Twenty-one.

13 Well, maybe they missed a few shell casings might be
14 argued by Mr. Deberry and Mr. Bailey. We don't know if that
15 was the number of shots. We don't know. We know there's 21
16 shell casings found. And if there was a few more, Willie said
17 he thought he might have shot seven to eight times. Well,
18 what did Jamie say? He said I kind of froze up. I kind of
19 froze up.

20 And Mr. Deberry kept trying to trick him and get him to
21 say they were driving back towards Latta and he kept saying,
22 man, I ain't good on roads. He's 17 years old. He's sitting
23 in the back seat. He don't -- he ain't going to know where
24 they're going. He's not familiar with that area.

25 He kept saying -- he kept coming back to Mr. Deberry and

1 Mr. Deberry was trying to put those words in his mouth that he
2 was driving back towards Latta and he says all I can tell you
3 is I was shooting over the top of the car. If he's shooting
4 over the top of the car, the car is going towards Marion, just
5 like Willie "Boo Boo" Bethea told you it was. He's shooting
6 over the top of the car and Shaheed is shooting out of the
7 window.

8 They're parked right out here on this Highway 501,
9 stopped right there. You heard both of them testify when they
10 saw Derrick's car, the white Yukon with rims -- you've seen
11 the picture of it where it got shot where the bullets passed
12 through and hit it. Derrick told you about it. It was parked
13 there -- parked around here in the back. I don't know if it
14 was here, here, somewhere in this area around this concrete
15 pad, and this is not to scale, but it was back here in the
16 back and when they were coming down 501 headed towards Marion,
17 they could see it and Blaton got excited. There it is. There
18 it is. That's the truck. That's him. And then stopped the
19 car and bang, bang, bang, bang, bang, bang.

20 I submit to you, ladies and gentlemen, Jamie was telling
21 the truth. He told about how they got rid of the guns. He
22 told you that Blaton was in charge. Blaton was driving the
23 car. You know, whoever is driving the car is going to
24 determine where they go; right? Whoever is driving the car is
25 going to determine whether that car stops in front of that

1 trailer or keeps going. Am I not right?

2 So whoever is driving that car, he's in control of that
3 situation, and I'm telling you Blaton was in control. He was
4 Adrian's number two man. Blaton was the number one man in
5 that car. He was in control. He was calling the shots and he
6 gave them the guns so he made sure the shots were fired. And
7 Blaton was in control.

8 And you might say, well, you know, Blaton didn't pull the
9 trigger. He didn't. He didn't. There's no evidence Blaton
10 pulled a trigger except in that first statement that Jamie
11 gave law enforcement which he says he lied. Blaton didn't
12 shoot. He was shooting.

13 So Blaton is in control of the situation and the judge is
14 going to tell you about the law and he's going to tell you
15 that the hand of one is the hand of all. So Blaton is just as
16 responsible for those shots being fired as Shaheed is and
17 Jamie is. He was in control and he gave them the guns. The
18 hand of one is the hand of all.

19 So if you've got any questions about murder or attempted
20 murder or even shooting a firearm into a dwelling, you look at
21 it under the hand of one is the hand of all. What were they
22 planning to do? What did they have in their minds? Blaton
23 had in his mind as soon as he saw Derrick's car, he stopped
24 and said there it is, y'all shoot. So that's what he intended
25 to happen.

1 The only thing that didn't happen the way they wanted to
2 happen -- you heard about that. Jamie said we went back to
3 Adrian and he was mad that the wrong fellow got hit. You
4 know, poor Christian Drawhorn. We heard from what Derrick
5 said when they started interviewing him -- he said, hey, who
6 you got problems with? Who are your enemies? Who you got a
7 beef with? He told them about the Smiths, but he put them
8 straight when he was asked about it. Didn't you write this
9 down for law enforcement? That Christian Drawhorn didn't have
10 any problems with the Smiths. He didn't have a problem with
11 anybody. He was there. He catches a bullet just because of
12 where he is.

13 Well, the judge is going to tell you about transferred
14 intent. They might not have intended to kill Christian. They
15 might have intended to kill Derrick. Well, that intent got
16 transferred to Christian and Christian is dead. So that means
17 murder. That's what happened.

18 Now, Jamie -- I think he told the truth absolutely clear,
19 you know, getting it off his conscience and putting himself
20 there and putting himself in and owning up to what he did.
21 And Boo Boo -- Willie -- nobody ever said Willie fired
22 anything and Willie told you that when this happened, he was
23 scared and he was like let's go, let's go. He thought they
24 were going to Mike Mike's club, which is right there on Old
25 Ebenezer Road right before you hit 501, and they drove by it.

1 And then he went, oh, where we going? Are we going to Fusion
2 in Marion? Fusion's Club here in Marion?

3 But then they stopped because they saw Derrick's truck
4 and Willie said guns came out. Shaheed was shooting out the
5 window. Jamie was shooting over the top of the car. Did they
6 ever turn around? No, they never turned around. They came
7 up, they saw it as they approached, and then they stopped.
8 And when they left, what did Willie say? They left going back
9 towards Marion and then they took that first left by the old
10 church and went the back way back to Latta.

11 And when they went to Latta, they went to someone's house
12 there on Session Street and they dropped off the guns.
13 Shaheed got -- Shaheed stayed in the car. Blaton had them
14 wrapped up in a blanket with some weapons that weren't used.
15 They said an assault rifle was in there. They didn't use
16 that. He took it in that house on Session Street and that's
17 the house law enforcement testified to. They executed a
18 search warrant and they got a gun there and they thought maybe
19 this was the gun and they submitted it, but it was tested and
20 it wasn't the gun that was used in these -- with these shell
21 casings and these projectiles.

22 And they took Derrick's gun and they tested it. It was
23 not used to shoot anything on that scene that night where
24 these shells were found and these bullets were collected.
25 Neither one of those guns matched.

1 But what did Agent Eichenmiller tell us that makes
2 everything consistent with what Boo Boo said and what Jamie
3 said? She said there were two guns. All these that were
4 fired comes back to two guns. What was testified to by Boo
5 Boo and what was testified to by Jamie? Two guns. Two .40
6 calibers, one shot by Shaheed and one by shot by Jamie across
7 the top of the car.

8 And the numbers of the shots that they think they fired
9 emptying a clip and the number that Jamie shot very close to
10 the number of shell casings that were found. All that's what
11 you call circumstantial evidence. Well, it backs up and it
12 matches. It does not contradict what Boo Boo said. It does
13 not contradict what Jamie said.

14 And then Boo Boo said he went back when he got home and
15 he was real nervous. He was staying away from it. And Blaton
16 kept coming by. Don't say nothing. Don't say nothing. Don't
17 say nothing. And he was scared and he went out of town and
18 went to Clio and stayed with a relative, went to Lakeview, and
19 then his daddy said, man, come on, and his mom and he came and
20 he turned himself in to be interviewed by law enforcement.

21 And they didn't have an arrest warrant for him yet. They
22 were investigating. Once they talked to him and they found
23 out, they arrested him right then and they arrested Blaton,
24 who he knew all his life, his cousin. They arrested Shaheed,
25 who he knew for years. And all he knew about Jamie was that

1 he's Lil Boosie. So what did he say? They showed him a photo
2 line-up and he picked him out and who was Lil Boosie? That
3 was Jamie Williams.

4 Does Willie's statement contradict Jamie's? No. Does
5 Jamie's statement contradict Willie's when he finally said I'm
6 telling the truth and I'm putting myself where I was and what
7 I did and being a man? His statement backs up everything
8 Willie said.

9 And all the circumstantial evidence -- and I don't need
10 to go over all of it because y'all have heard it. Y'all
11 listened very carefully. Every bit of the circumstantial
12 evidence matches up and corroborates what they tell you
13 happened. It corroborates what Derrick told you happened,
14 what Gavin told you happened, what law enforcement told you
15 happened. It all matches up.

16 And, you know, we could sit here and we could say there's
17 a million other things you could have done. You could have
18 gone to the lumber company and got twenty-foot dowels and run
19 them through the holes in the trailer and seen where the
20 bullets went. I mean use your common sense. That's not
21 necessary.

22 You know, you could use a string and run through to see.
23 You know, it doesn't matter to me and I don't think it matters
24 to you which -- which hole in the wall on the front wall did
25 the bullet go through that went through the back wall and hit

1 Derrick's car. Is that critical to who did this? Absolutely
2 not.

3 You know, what is critical is where did all the bullets
4 come from and they were testified to by the people that were
5 there when the bullets were being fired that all of them came
6 from the front, and they were testified to by Charlie Watson
7 when he followed my man right here. My mind's gone blank.
8 When he followed him around as he helped them as he took
9 pictures, all the bullet holes were in the front.

10 So don't get caught up on all this trivial stuff about
11 whether you use dowels or ran string or anything else and
12 whether you tested the blood. You know, they want to make a
13 big deal out of the blood. Well, the pathologist told you
14 that he bled and he had a tremendous amount of blood on the
15 inside and some of it had already been drawn off from the
16 resuscitation efforts.

17 So he bled out on the inside, not on the outside, and so
18 what Gavin told you and what Derrick told you about how much
19 blood was on him, that's corroborated. The fact that there's
20 not blood all up and down on the floor and on the steps and
21 the walkway, that's corroborated. He bled out on the inside.
22 The bullet went in his back shoulder -- right shoulder, went
23 through a couple of arteries, and they're constantly under
24 pressure Dr. Schandl said and that blood would have been
25 pumped out on the inside and he died.

1 A little bit of blood on the dryer. No need to test
2 that. We know only one person was shot and one person was
3 bleeding. Use your common sense. Why bog down SLED's lab
4 even more so for stuff like that?

5 So don't get caught up in that smoke. Weigh it. Compare
6 it. All these pieces of the puzzle fit together and you can
7 believe Jamie and you can believe Boo Boo. I'm sure they're
8 hoping -- you know, we've all been told all our lives the
9 truth will set you free. The truth is your friend. You've
10 got to be truthful. And if you're truthful, good things can
11 happen to you. You know, no deals have been made. They
12 testified to that. Nothing has been offered, but they know.
13 They're not stupid. They know the best thing they can do is
14 tell the truth and hope for the best, and they told the truth.
15 They told the truth.

16 And there was no evidence of anybody else being there.
17 There was no evidence of anybody else being the shooter.
18 There's no evidence of anybody else out there with a gun.
19 Perhaps there maybe was a knock on the door, but nobody was
20 there. There -- there's other things that were -- people that
21 were talked to. Charlie said he followed up on those. We
22 followed all those leads and we talked to Charlie B. He gave
23 us a statement and later recanted. It was a bunch of lies.

24 The evidence is what you heard from that witness stand.
25 The evidence is what's in these exhibits and in these

1 pictures. The evidence is not what I say. It's not what
2 Deberry says. It's not what Bailey says. Take the evidence,
3 weigh it, apply the law the judge is going to give to you.
4 The hand of one is the hand of all. That's the law in South
5 Carolina. And return a verdict that tells the truth.

6 Now, I'm going to sit down and I don't get to get back
7 up. I'm the last person that gets to speak for Christian
8 Drawhorn and he needs justice. His family needs justice.
9 These other young men -- you know, beat them up if you want to
10 for selling some pot. Beat them up if you want to for that.
11 Well, law enforcement was out there. That wasn't the drug
12 unit. The drug unit is going to take care of the others.
13 They were there to investigate a murder. It doesn't matter,
14 you know, if they had marijuana there. It doesn't make them
15 not be a victim. They were victims and they're lucky to be
16 alive. And I'm the last person that gets to speak for them
17 too, you know.

18 There's always what we have to answer to that we do and
19 it might be another time or another place, but that is not
20 this time and that is not this place about the marijuana and
21 the cocaine that was found there that all we know is Christian
22 Drawhorn had that in his system. Maybe it was his. I don't
23 know.

24 But that's for another time and another place. Today is
25 the day that is Shaheed Hayes' day in court and Blanton Smith's

1 day in court. So hold them accountable.

2 Murder -- this is the last thing I'm going to tell you.
3 Murder is when you kill somebody with malice aforethought.
4 How much more malice, which is an evil intent of the heart --
5 how much more malice can there be than to pull up in front of
6 a trailer not caring who's in there, who's behind there,
7 whether there's somebody's child in there -- and Gavin's six-
8 year-old son was there 30 minutes earlier -- and just blow
9 that trailer up with bullets not caring who you're going to
10 hit? If that's not malice, nothing is, and that's murder and
11 that's attempted murder, and these two young men are guilty.

12 THE COURT: Mr. Deberry?

13 MR. DEBERRY: Thank you, Your Honor. Mr. Bailey. Mr.
14 Clements.

15 CLOSING ARGUMENT ON BEHALF OF DEFENDANT HAYES

16 MR. DEBERRY: One nation, under God, with liberty and
17 justice for all. That's why we're here is for justice. Mr.
18 Clements just forgot to mention that everybody that's a
19 citizen of this country deserves justice.

20 Did the crime happen? Absolutely. Did somebody get
21 murdered? Absolutely. Were there four counts of attempted
22 murder? Absolutely. Is somebody guilty of those crimes?
23 Absolutely. Has the State proved beyond a reasonable doubt
24 that Shaheed Hayes is guilty of those crimes? Absolutely not.
25 Absolutely not.

1 And that's where the word justice comes into this
2 equation. Do the victims deserve justice? Absolutely. Does
3 my client deserve justice? Absolutely. And the reason we
4 live in the greatest nation there ever was is because the
5 twelve of you are going to decide what justice is.

6 Mr. Clements -- he told you, you know, he believes that
7 you believe. Well, let me tell you something. We selected
8 you -- or at least I did. We went through a jury selection a
9 couple days ago and I contemplated every person that stood
10 before us and my main objective, my only objective, during
11 that entire process was to find twelve people who I believed
12 would give us a fair trial. And I appreciate that because you
13 paid attention. I watched you the whole time.

14 Mr. Clements says that we're blowing smoke. He's hanging
15 his hat on Hollywood and TV. We live in the real world. It's
16 not that hard to do your job. Do some investigation. For the
17 love of God, you're trying to put people in prison for the
18 rest of their life plus 135 years, but they want you to
19 believe just because you watched TV for the past ten or 15
20 years and you've seen some unbelievable crime scene stuff
21 going on that Marion County Sheriff's Office doesn't have to
22 do their job anymore.

23 When I was back in law school, I graduated and just like
24 you see the judge's clerk up there, I did a clerkship for a
25 judge down in Manning, South Carolina, and I learned more

1 during that year than I probably ever have in my entire life.
2 The man that I did that clerkship with, the Honorable -- his
3 name is Judge Ferrell Cothran and he's still on the bench.
4 He's a great person. He was a prosecutor for 35 years. He
5 went on the bench the same day that I graduated law school or
6 we started the job the same day together. He hadn't been a
7 judge for long, but he had been a minister of justice as a
8 prosecutor for 35 years.

9 And I'll be honest with you. I figured when I sat and
10 watched him take guilty pleas day after day and preside over
11 trials, I figured that, he being a prosecutor, he would
12 probably limit himself to being kind of hard on crime, you
13 know, to being sided with the prosecution. And the greatest
14 thing I learned from that man was that we can have belief in
15 our individuals and our citizens that people can be fair.

16 And he would tell people -- and I don't know how many
17 times I heard him tell this story, but it makes so much sense
18 and I think about it all the time and I've been thinking about
19 it ever since we learned that they just kicked these shells
20 out of the roadway. He would say there's two types of people
21 in this world that break the law. There's criminals and
22 there's police officers. There's a major difference in those
23 two types of people.

24 I submit to you, ladies and gentlemen, that the way you
25 become a criminal is that you get charged and you go through

1 the justice system. You either plead guilty or you go to
2 trial and you're found by a jury of your peers that you're
3 guilty beyond a reasonable doubt and then you're a criminal.
4 The judge has told you and he'll tell you again Shaheed Hayes
5 and Blaton Smith are innocent until the State proves them
6 guilty beyond a reasonable doubt. So they're not criminals.

7 The difference is they're on trial for their lives and
8 the police officers get to go home after they break the law.
9 Charlie Watson told you it's against the law to tamper with
10 evidence. I don't know if it's against the law or not to do
11 an investigation or not, but it sure seems like that would be
12 a fair thing to do.

13 You heard that there was more than a dozen cars parked
14 out there on General Road that night. And you also heard that
15 Charlie Watson had information to believe that there was a
16 Cadillac -- a white Cadillac that parked on the end of General
17 Road that night. And he also said all those shell casings --
18 they were kind of found a little ways down from General Road,
19 but we don't know where they were found and, if we had, then
20 we might could determine that there were shooters from
21 different places. And if there were shooters from different
22 places, then the two individuals that came in here trying to
23 save their life aren't telling the truth.

24 And if so far anything I've said has raised a reasonable
25 doubt in your mind, you can't convict these guys. You cannot

1 convict Shaheed Hayes. They haven't been proven guilty beyond
2 a reasonable doubt.

3 If we knew where those shell casings were -- but we don't
4 because Marion Richardson -- he lied about even moving them.
5 What if they were from here to the other wall over there
6 apart? How are they coming out of the same car? And the
7 reason I asked so many questions about trajectory or the way
8 bullets are traveling is because it makes a big difference.
9 They just want you to believe I'm blowing smoke and that they
10 don't have CSI technology like you see on TV and that you
11 can't find a 14-foot dowel rod.

12 I'm not talking about a 14-foot dowel rod. I'm talking
13 about a six-inch wall. All I want to know is if this is a
14 wall and it's riddled with bullet holes, which way did they
15 come through the wall? That's all I want to know because it
16 supports the theory that maybe they weren't in the car. It
17 supports the theory that Gavin Graves hears the knock on the
18 door. It supports the theory that maybe there was a robbery.

19 And by the way, Gavin Graves knew what kind of shoes
20 Willie Bethea had on. Thank about it. What else does he
21 know?

22 MR. CLEMENTS: Your Honor, I object to that. I think
23 he's arguing facts not in evidence.

24 THE COURT: Can y'all approach?

25 (Whereupon, a bench conference is held in the presence of

1 the jury but out of the hearing of the jury as follows.)

2 MR. CLEMENTS: I don't think Gavin Graves even knew
3 Willie Bethea.

4 MR. DEBERRY: I meant Charlie B -- Graves.

5 THE COURT: All right.

6 MR. CLEMENTS: And Charlie B wasn't here testifying.
7 That's not in evidence.

8 MR. DEBERRY: It is in evidence.

9 THE COURT: What's in evidence?

10 MR. DEBERRY: That Charlie Watson had information that
11 Boo Boo was there standing on the sidewalk with red shoes on.

12 MR. CLEMENTS: I don't recall that coming into evidence.
13 I can recall them asking about that outside the presence of
14 the jury.

15 MR. DEBERRY: No.

16 MR. CLEMENTS: And it was hearsay.

17 MR. DEBERRY: I can recall that coming in.

18 MR. CLEMENTS: And it wasn't -- it wasn't red. He said
19 it was orange and burgundy or something, Virginia Tech colors,
20 is what the statement said that I read that Charlie B gave to
21 them. And he also said Charlie B came back later and said
22 that was all a lie.

23 MR. DEBERRY: That doesn't mean I can't argue it.

24 THE COURT: The facts as I recall them is that there were
25 inconsistent statements given by Charlie B, which turned out

1 to be untrue.

2 MR. DEBERRY: Well, we don't know that. That's for the
3 jury to decide.

4 THE COURT: That was what the testimony was, was it not?

5 MR. DEBERRY: That they were untrue? Yeah, but the jury
6 can decide whether to believe them or not.

7 THE COURT: You cannot -- I mean Charlie B's statements
8 are hearsay.

9 MR. CLEMENTS: They're not in evidence.

10 MR. DEBERRY: Judge --

11 THE COURT: They're not.

12 MR. DEBERRY: There was one -- there was two parts of it
13 that came in, the part that Boo Boo was on the sidewalk with
14 the shoes and the part that the Cadillac was parked on General
15 Road. The rest of it you kept out.

16 THE COURT: Say that again?

17 MR. DEBERRY: There's two parts of it that came in, the
18 part that Boo Boo was outside the car on the sidewalk with
19 what he was wearing and the fact that the white Cadillac was
20 parked on General Road. After that, we did the proffer and
21 then you kept the rest of it out.

22 THE COURT: All right.

23 MR. DEBERRY: It's in the record.

24 MR. CLEMENTS: The only thing I remember is he asked him
25 did you have information there was a white Cadillac out in the

1 road and he said yes. I don't remember anything about shoes
2 coming into evidence.

3 THE COURT: I don't remember the specifics of it. I'm
4 going to tell this jury that your arguments aren't evidence.
5 That they're to decide what is evidence in this case.

6 (Whereupon, the bench conference ends.)

7 MR. DEBERRY: Continue?

8 THE COURT: Ladies and gentlemen, I'm going to allow him
9 to continue his arguments. I'll remind you again that
10 arguments of counsel are not evidence in this case. They're
11 not evidence in this case.

12 Mr. Deberry, I'll remind all lawyers that your arguments
13 need to be confined to that -- that which is in the record and
14 reasonable inferences to be drawn therefrom. You may
15 continue.

16 MR. DEBERRY: Thank you. Ladies and gentlemen, I may
17 have said Gavin Graves, but I meant David Graves, also known
18 as Charlie B. Okay?

19 Charlie B, if you'll remember, was the individual that
20 came by selling underwear and socks sometime that night before
21 the murder. And then, if you'll recall, Mr. Gavin Graves
22 testified -- he testified that he came by and sold the
23 underwear and the socks. He also testified that Charlie B
24 told him I got a room, fellows. I'm gone for the rest of the
25 night. Then later, you hear from Eyebrows that he got a call

1 from Charlie B after the shooting. They needed to know what
2 happened. They needed to know what happened.

3 There's so much reasonable doubt here. It's not smoke.
4 It's not smoke. Charlie Watson was on this stand and every
5 now and then it kind of really bothered me because if you
6 don't believe anything I say, please believe that I believe in
7 this system and that I believe in fair trials and that law
8 enforcement act fairly. He grinned and he chuckled several
9 times and it really bothered me. He wasn't truthful a hundred
10 percent and he told you SLED was never involved, but later you
11 found out that he and Martin Bell went and did some
12 investigating with Stephen Hough, a SLED agent.

13 I mean why is it so hard for them just to do their job?
14 Don't hide in the budget for a dowel rod. All it is is a
15 piece of wood about the size of your little finger. You stick
16 it right through a bullet hole and it will tell you which way
17 some bullets were coming from.

18 And all those pictures -- he decided to make one of them
19 an exit hole out of the back of the trailer. I don't have any
20 doubt that bullets went through and through everywhere. It
21 was a terrible situation, you know, and it was a tragedy. The
22 State hasn't proved that Shaheed Hayes did it.

23 Derrick Wilson, Eyebrows -- he got up here and the
24 solicitor corrected him, but he first told you that a bullet
25 went out of the back of the front window. I mean I give the

1 solicitor credit. He said, no, I think you meant came this
2 way and then he -- then he conformed.

3 Jamie Williams and Boo Boo -- Boo Boo told you nobody
4 wants to go to prison and the solicitor told you the truth
5 will set you free. Now, you think and you believe what you
6 want to believe about what those boys have coming, that
7 they've got a deal or not.

8 We know Gavin Graves had a deal. He got charged from
9 that -- from those drugs in his house that night, but two-and-
10 a-half years later, it comes rolling around to trial time and
11 he's going to take a PTI, pre-trial intervention, so he can
12 keep his job.

13 Something stinks. Something stinks. And they want you
14 to convict. He's asked you and told you that he believes that
15 justice requires conviction. Nothing could be further from
16 justice in my opinion. Absolutely nothing.

17 Do I believe that the people who did this should be held
18 accountable? Absolutely. Do I believe it was a terrible
19 crime that occurred? Absolutely. Do I believe that Christian
20 Drawhorn's family deserves closure? Absolutely.

21 But I'm a minister of justice and that's what I'm seeking
22 here today. I'm just going to ask you. You know, if you've
23 got a reasonable doubt, you can't convict. The judge is going
24 to tell you you have to find them not guilty. And I explained
25 to you when we first -- at the very outset of this trial that

1 doesn't mean that you believe in your heart that they may have
2 done it or they may not have done it. It just means that
3 you're not firmly convinced that they did it. That means that
4 you have a hesitation to act.

5 And hesitation whatsoever to convict Shaheed Hayes of
6 these crimes, you have to find him not guilty. That's the
7 law. That's the law. So please think about it. Think about
8 all the inconsistencies. The two that are coming up here that
9 don't want to go to prison, that are speaking the truth
10 because it will set them free, their stories are inconsistent.
11 They have been from day one.

12 Tell -- if you tell somebody a story about how something
13 happened one time and then you change later and you say no, I
14 wasn't there, and then you change later and all of a sudden a
15 week before you're looking at 135 years plus whatever time you
16 live on this earth and then everything lines up because the
17 truth will set you free.

18 Is that right or wrong? That's up for y'all. That's a
19 -- that's a question for you to answer. Is that right or
20 wrong?

21 There was a robbery that was planned to take place that
22 night. I believe they got out of that car. I believe that
23 Jamie Williams and Boo Boo were there. I believe that Charlie
24 B was there. I believe that somebody ran around the back of
25 that house and knocked on the door. And there's something

1 that really worries me and concerns me about what to believe
2 when it comes to Christopher Kollock. Why did he run out of
3 that house? Or was he in that house?

4 I know probably y'all are from around here and you've
5 experienced hurricanes on one point or another in our lives.
6 I can remember Hurricane Hugo. It was probably the worst that
7 I can remember. And my mother always told me and my father,
8 you know, that there's an eye in the hurricane and that it's
9 real calm and that, you know, you can get the worst of the
10 hurricane on the tail end, you know.

11 And Hurricane Hugo came through at nighttime and all I
12 can remember is sitting up, you know, in a safe place in the
13 house with my family, my sisters, and talking about what
14 hurricanes were and hearing the trees crash and the lights go
15 out and everything. And then it became daylight. We weren't
16 sure if it was the eye of the storm or if it was over. Mom
17 and Dad didn't let us go outside.

18 It might have been the eye of the storm and then we might
19 have got stuck outside for the rest of it, number one, and,
20 number two, that storm created some dangerous conditions.
21 They wouldn't let me ride my bicycle anywhere. I couldn't do
22 any of that kind of stuff because a tree might fall on me and
23 there might be some electric lines down. There's all kind of
24 hazards out there.

25 Let me tell you, ladies and gentlemen, if you're in a

1 house and it gets shot full of holes and everybody is on the
2 floor, you don't just get up and run outside. You don't just
3 do that. You already know Charlie B came over earlier. Were
4 there other informants? Were there other people that were on
5 the inside on the inside?

6 All these are questions that I don't have an answer to,
7 but I'd submit to you that all of them are questions that
8 raise a reasonable doubt. They all are.

9 They don't even have the car driving down the road in the
10 same direction. And if the car is traveling in different
11 directions, then there might have been bullet holes according
12 to their story -- I mean bullet shells according to their
13 story way across Highway 501 North. We've all gone Highway
14 501 North. You got four lanes of traffic and a -- and a
15 median. But we don't know because they didn't even include
16 where they did find the shell casings in the crime scene area.

17 And then, you know, it was later I guess that Charlie
18 Watson and Mr. Bell heard about a car that was parked -- the
19 while Cadillac was parked on the end of General Road. The
20 trouble was there was over a dozen vehicles from law
21 enforcement and all -- everybody that responded to the scene
22 that night that parked on General Road. So all that evidence
23 was destroyed, if there was any. So that's the only place
24 they found anything, but I'm -- you know, they didn't look
25 really where they needed to. All their cars were parked out

1 there.

2 There's just a lot here, ladies and gentlemen, and
3 there's a lot on the line for my client. If you believe he
4 did it, then find him guilty. If that's what justice calls
5 for in this case, find him guilty. But I'm a believer in this
6 system. I'm a believer in this nation. I'm a citizen of this
7 nation and I'm so proud to be one, and one of the main reasons
8 is because I believe you can get a fair trial in this -- in
9 this country and I know you can get a fair trial in Marion
10 County and that's why I know that we've already received it.

11 The smoke? That's from the Solicitor's Office. The
12 smoke is all around Martin Bell and the investigation they
13 didn't do. I ask you to find him not guilty. Thank you.

14 THE COURT: Mr. Bailey?

15 MR. BAILEY: Thank you, Your Honor. May it please the
16 Court. Solicitor Clements. Mr. Deberry.

17 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT SMITH

18 MR. BAILEY: Ladies and gentlemen, I've been waiting over
19 two years to stand up here and talk to you about this case.
20 I've had it sitting in my office for over two years.

21 When I stood up here two days ago, I told you about two
22 things you were going to hear in testimony. You were going to
23 hear lies and that was true. You heard lies. And I told you
24 there wasn't even one piece of physical evidence in this case
25 that says Blaton Smith had anything to do with this. Why is

1 there no physical evidence? The short answer? Martin Bell.

2 How many times in the first four witnesses -- Deputy
3 Pike, Marion Richardson, Clemson Legette, and Charlie Watson.
4 How many times did we hear from them about notes? I didn't
5 take any notes. All that responsibility is on that man right
6 there.

7 (Whereupon, counsel points at Detective Martin Bell.)

8 MR. BAILEY: He sat here for three days. He heard every
9 single thing that came out of this stand. His responsibility.
10 He took the pictures. He collected the evidence, interviewed
11 witnesses. His responsibility. Why didn't he testify?

12 I submit to you that's the million dollar question. Why
13 didn't he get up here and tell us? I can answer the question
14 for you. He didn't do an investigation. He did not do an
15 investigation.

16 My esteemed Mr. Deberry came up here and was talking to
17 you about the crime scene, shell casings, tampering with
18 evidence. I would assume if it was an ordinary citizen who
19 tampered with evidence, they'd have got arrested. And
20 Solicitor Clements even put Marion Richardson on the stand to
21 try to get him to talk about that, to explain why he did it.
22 And what did he do? He lied to you. His testimony was I
23 didn't have anything to do with the crime scene. I was called
24 and I showed up. I stood back by my car. I waited for the
25 EMS to come and then I followed them down to the hospital.

1 But then when his supervisor testified next, what did he
2 tell you? Yes, he had something to do with that crime scene.
3 We sent him out looking for evidence. And then it came to
4 light. The light bulb turned on. He tampered with the
5 evidence. You heard him. We could have got fingerprints off
6 those shell casings. DNA is pretty solid evidence in a
7 criminal case. Marion Richardson touched them. That could
8 have damaged those fingerprints right there.

9 You heard from Eddie Sawyer. Who makes the decisions on
10 what evidence gets submitted to SLED and for what testing
11 purposes? The lead detective. Martin Bell. He called the
12 shots. He submitted it to the firearms department first. I
13 can't imagine this is his first rodeo in a murder case. Any
14 person knows submit it for DNA and latent print analysis
15 first. That might tell us who the real killers are.

16 Imagine that. The evidence sat in his office for over
17 two years that could have put the real killers in this
18 courtroom, but because he made the wrong decisions and had
19 incompetent deputies working for him coming out to the scene,
20 we don't -- we don't get to hear any of that.

21 I agree with Mr. Deberry. We got shell casings that were
22 all bunched up into a gutter. Where did they come from?
23 Where did they come from? Twenty-five feet that way? Fifteen
24 feet this way? Maybe five or ten feet back that way? We
25 don't know.

1 Solicitor Clements stands up here and he's got a theory
2 and his theory was that this was a drive-by. And I told you
3 at the beginning two days ago this case was going to boil down
4 to two witnesses, Willie Bethea and Jamie Williams. Nobody
5 else puts a car out there. Nobody but those two guys. Is it
6 so far unreasonable, ladies and gentlemen, that those two guys
7 could have been in the car by themselves? That's possible.

8 One witness, Jamie Williams -- he got up here and told
9 you the car never stopped. They just kept rolling. Willie
10 Bethea comes in. He testifies no, we stopped for a minute.
11 We stopped for a minute and shot. Was that enough time for a
12 driver and a passenger to shoot a gun? I submit to you,
13 ladies and gentlemen, Willie Bethea and Jamie Williams in a
14 car by themselves. It's a possibility. It causes you to
15 think a little bit. That's reasonable doubt.

16 How about this car? How about this car? A white
17 Cadillac. Sure they say my client drives a white Cadillac on
18 occasion. You heard Willie Bethea. He drives a white
19 Cadillac on occasion. Did they go find the white Cadillac?
20 Did they seize it, put it into evidence, and examine the car
21 for any evidence? They could have, but they didn't do it.

22 Do we know if they even went to look for the car? That's
23 a question I would have asked Detective Bell if he got on that
24 stand. What investigation did you do into this white
25 Cadillac? The name of a possible owner came up. Adrian

1 Smith. Did you go to his house? Execute a search warrant?
2 Pull DMV records? All of these things I would have asked
3 Detective Bell if he would have got on the stand for us.

4 It didn't happen. I submit to you why. Because he
5 didn't do it. Okay? We asked Detective Watson did y'all
6 execute a search warrant at Adrian Smith's house. It wasn't
7 done. Why not? You went and executed a search warrant at
8 another house. They found a gun. They probably thought it
9 was the smoking gun. Submitted it to SLED. Not connected.

10 Why didn't they go interview Adrian Smith? Why? Why
11 didn't Solicitor Clements bring Adrian Smith and put him on
12 this stand? He could have brought him in here just like he's
13 brought every other witness he's got. He could have put him
14 on that stand right there and said did you order this hit?
15 Did you tell these boys what to do? Who did you tell to go do
16 it?

17 We don't have that testimony, and it's not my job to do
18 it and it's not Mr. Deberry's job to do it. The government,
19 ladies and gentlemen, has to prove their case. I would have
20 loved to have the opportunity to cross examine Adrian Smith.
21 I would have loved it. We might have been here until next
22 week, but I'd have enjoyed it.

23 I wish I could have asked Detective Bell questions. You
24 heard me ask names about -- did you associate with these
25 random people throughout the night? You heard about Charlie

1 B. Out of left field, he -- they're talking about him selling
2 drawers and socks. Do y'all really believe he went to this
3 house to sell these grown men drawers and socks? That's what
4 Gavin wants you to believe. Really?

5 This is coming from a man who claims he only sells
6 marijuana. Okay? His house gets blown up with bullet holes
7 and what was his first instinct? Dadgum, I better throw my
8 marijuana in the bedroom. The cops are coming. Not is
9 Derrick shot? Darrell -- is he shot? Christopher Kollock --
10 is he shot? Christian Drawhorn -- is he shot? No. This was
11 a man who was worried about a little bit of marijuana and he
12 stayed calm enough during this shooting to throw it in his
13 bedroom before he does anything else.

14 And you heard him because I asked him. Is dealing drugs
15 a dangerous business? Yeah. Sure it is. We probably hear on
16 the news a lot about drug dealers getting robbed. Reasonable
17 doubt? A possibility in this case? Absolutely. Absolutely.

18 Now, we heard from Jamie Williams first, and I told you
19 that you're going to hear from people who have to tell a lie
20 to cover another lie to cover another lie. At what point is
21 the truth? What point is the truth? I asked that question.
22 The very first words out of my mouth on Wednesday -- in a
23 world of lies, there is nothing more dangerous than the truth.
24 And we don't know where it is.

25 Solicitor Clements comes up here and he wants you to

1 believe that, oh yeah, he told a lie the first three times he
2 talked to law enforcement, but last week when his mama and
3 daddy brought him a suit nicer than anybody wearing in this
4 courtroom because he's getting ready to come to trial this
5 week looking at life in prison, going to die if he's found
6 guilty, put 135 years on top of that, he says no, I'm going to
7 tell the truth. He's had 27 months to tell the truth and he
8 ain't done it yet, but last week he's going to tell the truth
9 or at least that's what Solicitor Clements is going to have
10 you believe.

11 And let me ask you, ladies and gentlemen, is it a
12 coincidence that after 27 months waiting to come to court that
13 Jamie Williams gets up here and corroborates the first witness
14 that law enforcement based this case on? Is it a coincidence?
15 Their stories were too much identical to be a coincidence.
16 Too much. Too much alike to be the truth.

17 They talked to Willie Bethea and he told a story. Okay?
18 He told a story about what happened. Detective Bell I'm
19 assuming ran with it because it wasn't until Willie Bethea
20 came in and talked to them that he got warrants issued for
21 everybody's arrest. Nineteen days passed by. They have no
22 physical evidence and they get this guy who walks in off the
23 street and says let me tell you about a crime I committed.
24 Y'all been out at my house looking for me, but I better come
25 tell you what I did. And let me take you down this road.

1 Okay.

2 What happened to all the other people that Detective Bell
3 interviewed? The other evidence? You heard Mr. Deberry talk
4 about shoes. We hear a knock at the back door. Did they
5 investigate that? There's a knock at the back door and
6 shortly thereafter -- and I'm talking I think the testimony
7 was a minute or two -- bullets start ringing out. Where's
8 that guy? Because I can tell you this. That guy would have
9 seen whoever was outside shooting. There ain't no doubt about
10 that. There ain't no doubt about that.

11 Guns -- .40 calibers. We hear for the first time in two-
12 and-a-half years that there's an AK assault rifle in the back.
13 If you really wanted to do damage or you really wanted to kill
14 somebody, wouldn't you have used an automatic assault rifle if
15 it was in the car? But it glorifies the case. It glorifies
16 it. Jamie Williams sounded real good talking about these
17 guns. He says my guy hands out the guns as they're
18 approaching the house. He gets one from Blaton Smith.
19 Shaheed gets one from Blaton Smith. They start shooting. My
20 guy tells them shoot, shoot, shoot. Really?

21 Willie Bethea testified that the guns -- he never saw
22 them. Then he changes it when Solicitor Clements questions
23 him on it a little bit more and he says, oh, yeah, yeah,
24 Blaton did hand one gun to the back. Just one? It's the
25 inconsistencies. Okay?

1 Now, we heard a lot of testimony from people who say I
2 know Eyebrows' truck. I saw Eyebrows' truck. Blaton saw
3 Eyebrows' truck. Solicitor Clements asked Eyebrows, "Have you
4 got a unique truck?" It's a white Tahoe Suburban, rims and
5 tires. I see a lot of those.

6 That's what started this whole thing -- seeing a truck
7 parked behind a trailer. You've heard different testimony.
8 It's over here. It's over there. Coming in from Latta.
9 Maybe they're coming in from the Marion side. You're looking
10 behind it and this was after midnight in April.

11 Thankfully, somebody took some photographs. I've been
12 waiting to stand up here and talk to y'all about these
13 photographs. Okay? These were taken the night of the
14 shooting with a camera by law enforcement. You're going to
15 have these photos when y'all go back to begin your
16 deliberations here in a little bit. Okay?

17 Take a close look at these. If you can remember State's
18 Exhibit 19, 18, and 20 -- 18, 19, and 20. Okay? There was
19 testimony the top picture is the intersection where the dirt
20 road is at 501 and General. You can see the street sign. Do
21 you see anything else? No. It's not light out. Look how
22 dark it is in this bottom picture. That's showing you 501.
23 Okay? Do you see anything? You see some lights, but they're
24 not illuminating anything.

25 The testimony was this top picture here showed a picture

1 of the trailer that night on 501. And this was taken standing
2 I'm assuming right here on the sidewalk looking at that house.
3 What do you see? You don't see hardly anything. It's pitch
4 black out there. If it's pitch black and you can't see
5 anything, tell me how any of these people saw a truck as
6 they're driving down the road? You're on 501. The speed
7 limit is not 15 miles an hour.

8 You heard about bent shell cases. Cars were driving.
9 You're going to have to be driving on 501. But here's the
10 best picture of them all. Okay? Here's the best picture --
11 20, this bottom picture. Y'all remember? This was a close-up
12 picture on the night of the shooting of Eyebrows' truck. That
13 picture was probably taken two feet away from that truck.
14 Y'all can hardly see that truck.

15 So if you can't see the truck from two feet away, how are
16 you going to see it from down the road? Consider this. This
17 is question. This is doubt. Okay?

18 The State put forth a theory, but that's it. They're
19 going to -- Solicitor Clements claimed Mr. Deberry and I were
20 going to come up here just to blow some smoke up here to try
21 to fog your vision on what it was. References to CSI and TV.
22 No. We're not going to have any fancy forensic examinations.
23 It typically doesn't happen in real life trials.

24 But, ladies and gentlemen, shouldn't we have some
25 evidence? Some evidence instead of two guys who do not want

1 to risk going to prison for the rest of their life to come in
2 here and say yeah, Blaton told me what to do and Shaheed --
3 yeah, he just shot. That's tough to believe.

4 Is our system built to allow law enforcement to build
5 cases without physical evidence and base it solely on the
6 testimony of people who have everything to gain and everything
7 to lose? It isn't. That's why we selected you two -- you
8 twelve two days ago.

9 Willie Bethea and Jamie Williams -- they're liars.
10 They're snitches. They're rats. Whatever you want to call
11 them, that's what they are. The person who comes to mind as
12 the most famous snitch, so to speak, that I could think of as
13 I heard this testimony here over the last two days is Judas.

14 Y'all remember what happened with Judas. He snitched and
15 then he tried to take it back. He got paid 30 pieces of
16 silver and he tried to take it back, but it was too late.
17 Well, we don't have 30 pieces of silver in this -- this
18 courtroom.

19 This isn't about testimony and money. No. Jamie
20 Williams and Willie Bethea -- they don't have money. They
21 can't buy their way out of this, but they have time. They
22 have time hanging over their head. I'll give you whatever you
23 want. Just cut me a deal. It's going to happen. We know it.
24 They can sit up there and say it's not. Jamie Williams, you
25 know, he says I'm not going to -- I'm not going to prison for

1 murder. How do we know if we take his word at it?

2 But we have the chance with this system we have put in
3 place. We can prevent two convictions based on the testimony
4 of two Judases from that stand. We can. And I'm confident
5 that once y'all get back there and you start talking and you
6 look at these pictures, you're going to say there's no way
7 that night that these boys were driving down the road and see
8 that truck parked behind a trailer. No. Ain't going to
9 happen. Reasonable doubt. Not guilty.

10 Consider the evidence. Solicitor Clements asked you to
11 do it. Consider those pictures. Find Blaton Smith not guilty
12 because he is not guilty. Thank you.

13 THE COURT: All right. Ladies and gentlemen, everybody
14 okay? Anybody need a break? If you want to stand up and
15 stretch your legs before I give you the charge on the law,
16 please do so at this time. All right. Do you need a break?
17 Okay.

18 (Whereupon, there is a pause in the proceedings.)

19 CHARGE ON THE LAW BY THE COURT

20 THE COURT: All right. Ladies and gentlemen, it is now
21 my duty as the trial judge under the constitution of this
22 state to charge and instruct you on the law applicable to this
23 case. It is your duty as jurors to accept and apply the law
24 as I will now state it to you.

25 Furthermore, it is your exclusive duty to decide all the

1 issues of fact in this case, and to determine the effect,
2 value, weight, and truth of the evidence. Both the State and
3 the defendants have a right to expect that you will carefully
4 consider and evaluate the evidence and apply the law of this
5 case to it so that in the end both the State of South Carolina
6 and the defendants will receive a fair and impartial trial. I
7 want you to understand that when I use the word defendants, I
8 refer to Mr. Blaton Smith and Mr. Shaheed Hayes.

9 The charges alleged in the indictment are murder,
10 discharging a firearm into a dwelling, possession of a weapon
11 during the commission of a violent crime, and four counts of
12 attempted murder.

13 Now, to these charges, the defendants have entered pleas
14 of not guilty. These pleas of not guilty places the burden of
15 proof on the State to prove the guilt of the defendants to
16 you, the jury, beyond a reasonable doubt.

17 I charge you that there are two defendants in this case,
18 ladies and gentlemen, each of whom is charged with the
19 offenses as previously stated. The case of each defendant and
20 the evidence and the law concerning that defendant should be
21 considered separately and individually. Your verdict does not
22 have to be the same for both defendants. The fact that you
23 may find one defendant guilty or not guilty should not control
24 your verdict as to the other defendant.

25 Where more than one person is charged with a crime, if

1 the evidence warrants it, you may convict one and acquit the
2 other, or you may acquit both, or you may convict both. It
3 will depend upon your view of the testimony and evidence. You
4 must take each defendant and consider the evidence as to that
5 defendant and my instructions to you on the law. You will
6 then write a separate verdict of guilty or not guilty for each
7 individual defendant as to each charge.

8 Now, as I mentioned above, the indictments in this case
9 allege seven separate and distinct offenses against each
10 defendant. You must decide each charge separately on the
11 evidence and the law applicable to it, uninfluenced by your
12 decision as to any other charge. The defendants may be
13 convicted or acquitted on any or all of these offenses. As
14 stated previously, you will be asked to write a separate
15 verdict of guilty or not guilty for each charge alleged in the
16 indictment as to each defendant.

17 Now, I remind you, ladies and gentlemen, that the fact
18 that the defendants were arrested, charged, and indicted in
19 this case is not evidence in this case and cannot be
20 considered by you as evidence of guilt in this case, nor does
21 it create any presumption or inference of guilt. The
22 indictment is simply the formal written instrument which
23 contains the charges made against the defendants. It is the
24 formal document by which this case is brought into this court.

25 It is vital to understand, ladies and gentlemen, that the

1 defendants are presumed under the law to be innocent of these
2 charges. The defendants have no obligation to prove their
3 innocence. It is a fundamental rule of our law that a
4 defendant, irrespective of the seriousness of the charges
5 against him, is always presumed innocent of the crimes for
6 which he is charged, unless and until his guilt has been
7 proven by evidence that satisfies you, the jury, beyond a
8 reasonable doubt.

9 The presumption of innocence is not a mere legal theory
10 or a legal phrase. The presumption of innocence is very
11 important and you need to understand that this presumption
12 accompanies the defendants from the time of their arrest and
13 appearances in this court and continues with them even after
14 you retire to the jury room to deliberate. In other words,
15 the defendants receive the benefit of the presumption of
16 innocence until the very end of this trial when you, the jury,
17 will deliberate upon the evidence and decide whether the State
18 has proven their guilt beyond a reasonable doubt.

19 Now, what is a reasonable doubt in the law? A reasonable
20 doubt is the kind of doubt that would cause a reasonable
21 person to hesitate to act. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the defendants'
23 guilt.

24 Now, there are very few things in this world, ladies and
25 gentlemen, that we know with absolute certainty; so even in

1 criminal cases the law does not require proof that overcomes
2 every possible doubt. However, if, based on your
3 consideration of the evidence, you are firmly convinced that
4 the defendant is guilty of the crime charged, you must find
5 him guilty. If, on the other hand, you think there is a real
6 possibility that he is not guilty, you must give him the
7 benefit of the doubt and find him not guilty.

8 Please understand that reasonable doubt may arise from
9 evidence which has been presented in the case or from the lack
10 of evidence in the case. It is your responsibility to
11 determine whether or not reasonable doubt exists as to the
12 guilt of the defendants.

13 I charge you that the defendants are entitled to every
14 reasonable doubt arising in the whole case. If, upon any
15 issues of fact essential to conviction and a verdict of
16 guilty, you have a reasonable doubt as to how that issue
17 should be resolved, it would be your duty to resolve that
18 reasonable doubt in favor of the defendant.

19 Now, during this trial, ladies and gentlemen, you and I
20 have had separate duties to perform. As the trial judge, it
21 is my responsibility to preside over this trial, and I also
22 have the duty to rule upon the admissibility of evidence
23 offered during the process of this trial. In that regard, you
24 are to consider only the competent evidence before you, and
25 you are all -- you are to disregard from your mind any

1 testimony that was ordered stricken from the record of this
2 case during the progress of the trial, if there was any. And
3 you are to consider only the testimony which has been
4 presented from this witness stand, together with any exhibits
5 admitted into the record of this case and any stipulations of
6 counsel made into the record.

7 Furthermore, I have the additional duty to charge you on
8 the applicable law of this case and, in that regard, I am the
9 sole judge of the law of this case. It is your duty to accept
10 and apply the law as I state it to you. If you have any
11 preconceived ideas as to what the law is, or what the law
12 ought to be, and it does not agree with what I tell you the
13 law is, you are obligated under your oath to abandon these
14 preconceptions, because you are sworn to accept the law
15 precisely as I state it to you.

16 In this trial, you are the sole and exclusive judge of
17 the facts, and I am the judge of the law. Do not infer that I
18 have any opinion about the facts in this case from anything I
19 have said during the course of this trial in ruling upon the
20 admissibility of evidence or otherwise, or from anything that
21 I say during the course of this charge to you. In this
22 regard, the law simply does not permit me to have an opinion
23 about the facts. As jurors, it is your duty alone to
24 determine the effect, value, weight, and truth of the evidence
25 presented during the course of this trial.

1 In determining what the facts in this case are, you must
2 judge the credibility, which simply means the believability,
3 of the witnesses and the value of weight to be given to their
4 testimony. You alone must decide the force, effect, and truth
5 of the testimony. Now, in making this decision there are many
6 things that you may, and should, take into consideration, such
7 as the appearance and manner of the witness on the stand, a
8 characteristic often referred to as the demeanor of the
9 witness.

10 Was the witness forthright or hesitant? Was the
11 witness's testimony consistent or did it contain
12 discrepancies? What was the ability of the witness to know
13 the facts about which he or she testified? Did the witness
14 have a cause or reason to be biased and prejudiced in favor of
15 the testimony he or she gave? Was the testimony of the
16 witness corroborated or made stronger by other testimony and
17 evidence or was it made weaker or impeached by such other
18 testimony and evidence?

19 As jurors, please understand you have the right to
20 believe a small portion of a witness's testimony and discard
21 the larger portion or vice versa. You may believe all of a
22 witness's testimony or none. You may believe the testimony of
23 a single witness against that of many witnesses or the other
24 way around.

25 In exercising your mental processes and attempting to

1 decide the truth, the law simply requires that you exercise
2 your good judgment, your common sense, your sense of logic and
3 reason, and your experiences in life. You then apply these
4 attributes to the evidence and apply the law as I state it to
5 you, and thus arrive at a verdict.

6 Now, there are two types of evidence which are generally
7 presented during a trial: direct evidence and circumstantial
8 evidence.

9 Direct evidence is the testimony of a person who claims
10 to have actual knowledge of a fact, such as an eyewitness. It
11 is evidence which immediately establishes the main fact to be
12 proved.

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It is
15 evidence which immediately establishes collateral facts from
16 which the main fact may be inferred. Circumstantial evidence
17 is based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between the
20 weight or value to be given to either direct or circumstantial
21 evidence. Nor is a greater degree of certainty required of
22 circumstantial evidence than of direct evidence. You should
23 weigh all of the evidence in the case. If, after weighing all
24 the evidence, you are not convinced of the guilt of the
25 defendants beyond a reasonable doubt, you must find the

1 defendants not guilty.

2 Now, there has been evidence presented during the course
3 of this trial that witnesses have made prior statements which
4 are not consistent with the witnesses' present testimony. You
5 may use this evidence to decide whether to believe the
6 witness. You may also use evidence of the earlier
7 contradictory statements to determine the truth of those
8 statements. It is up to you to decide whether to believe the
9 earlier statements or the testimony given at trial.

10 If a witness is shown to have knowingly testified
11 untruthfully concerning any material matter, you may consider
12 this in determining whether to trust the witness -- witness's
13 testimony as to other matters. You may reject all testimony
14 of that witness or give all or part of the testimony the
15 weight that you think it deserves.

16 Is there a problem?

17 AUDIENCE MEMBER: No, sir.

18 THE COURT: Please sit down.

19 A person who has a past criminal record, ladies and
20 gentlemen, is competent to testify during a trial. A past
21 record does not affect the ability of that witness to testify.
22 The past record may only be considered by you, if at all, in
23 determining the witness' believability. Remember, you are the
24 sole judges of the facts in the case and of the believability
25 of any and all of the witnesses.

1 Ladies and gentlemen, now during the course of the trial,
2 you heard the testimony of police officers. Please understand
3 that the testimony of a police officer is not entitled to more
4 weight than that of any other witness. You are the sole judge
5 of the credibility of a witness, and you are not to give more
6 weight to a police officer's testimony solely because he or
7 she is a police officer. Rather, you should judge an
8 officer's testimony by the same standard that you apply to all
9 other witnesses.

10 In this case, you also heard the testimony of individuals
11 who were qualified as experts. The rules of evidence
12 ordinarily do not permit witnesses to testify to opinions or
13 conclusions. An exception to this rule exists for witnesses
14 we call expert witnesses. A witness who, by education and
15 experience, has become an expert in some art, science,
16 profession, or calling may state an opinion as to a relevant
17 and material matter in which the witness claims to be an
18 expert and may also state the reasons for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case and, like any other evidence, give it
21 the weight you think it deserves. If you decide that the
22 opinion of an expert witness is not based on sufficient
23 education and experience, or if you conclude that the reasons
24 given in support of the opinion are not sound, or that the
25 opinion is outweighed by other evidence, you may disregard the

1 opinion entirely.

2 Furthermore, an expert witness's testimony is to be given
3 no greater weight than that of other witnesses simply because
4 the witness is an expert. Further, you are not required to
5 accept an expert's opinion, even though it is not
6 contradicted.

7 Now, ladies and gentlemen, I instruct you and I emphasize
8 to you that the fact that the defendants did not testify is
9 not a factor to be considered by you in any way in your
10 deliberation and in your consideration on the question of
11 their guilt or innocence. It must not be considered by you in
12 any manner whatsoever.

13 A defendant has the constitutional right to remain
14 silent, and the assertion of this right must not be considered
15 by you in your deliberations. I repeat, under your oath, you
16 are to draw no conclusion whatsoever from the fact that the
17 defendants in this case did not testify. The fact that the
18 defendants did not testify should not even be discussed in the
19 jury room.

20 The burden of proof, as I have stated to you, is on the
21 State. The defendants are not required to prove their
22 innocence. The burden of proof remains on the State to prove
23 guilt beyond a reasonable doubt.

24 Now, in order to establish criminal liability, criminal
25 intent is required. For example, the mental state required to

1 be proven by the State for a particular crime might be
2 purpose, intent, knowledge, recklessness, or criminal
3 negligence. Criminal intent must be proven by the State
4 beyond a reasonable doubt. Criminal intent is always a matter
5 that must be determined by the jury from the circumstances
6 surrounding the situation.

7 There is no way to prove intent to a mathematical
8 certainty. There is no way that medical science can dissect a
9 person's brain and determine what the person had in mind; so
10 the law says that criminal intent may be inferred from the
11 circumstances shown to have existed. This is how you make a
12 determination of whether or not the element requiring intent
13 was present.

14 It is not necessary to establish intent by direct and
15 positive evidence, but intent may be established by inference
16 in the same way as any other fact by taking into consideration
17 the acts of the parties and all the facts and circumstances of
18 the case. Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what each defendant
20 intended to do based on the circumstances shown to have
21 existed.

22 Criminal intent can arise from action or a failure to
23 act. It may arise from negligence, recklessness, or an
24 indifference to duty or to consequences that is considered by
25 the law to be the equivalent of criminal intent.

1 I will tell you that if the defendant, ladies and
2 gentlemen, with malice aforethought, attempts to kill another
3 person, but by mistake injures or kills a different person,
4 the defendant still has the intent to kill. The intent to
5 kill is merely transferred from the original person the
6 defendant attempted to kill to the actual person killed or
7 injured.

8 Now, if a crime is committed by two or more people who
9 are acting together in committing a crime, the act of one is
10 the act of all. A person who joins with another to commit an
11 unlawful act is criminally responsible for everything done by
12 the other person which happens as a probable or natural
13 consequence of the acts done in carrying out the common plan
14 or purpose.

15 For example, two people can be guilty of a larceny or
16 stealing of farm equipment valued at more than \$2,000 when two
17 go to the scene and only one drives the equipment away. If
18 two or more people are together, acting together, assisting
19 each other in committing the offense, the act of one is the
20 act of all or, as it is sometimes said, the hand of one is the
21 hand of all.

22 Prior knowledge that a crime is going to be committed
23 without more is not sufficient to make a person guilty of that
24 crime. Mere knowledge that another person is going to commit
25 a crime, even if the defendant is present when the crime is

1 committed, is not sufficient to convict the defendant as a
2 principal.

3 Guilt as a principal is shown by actual or constructive
4 presence at the scene as a result of prior arrangement.
5 Therefore, a finding of a prior arranged plan or a common
6 scheme is necessary for a finding of guilt as a principal.
7 The State must prove beyond a reasonable doubt by competent
8 evidence that the theory of the hand of one is the hand of
9 all.

10 A principal in a crime is one who either actually commits
11 the crime or who is present aiding, abetting, or assisting in
12 committing the crime. When a person does an act in the
13 presence of and with the assistance of another, the act is
14 done by both. Where two or more, acting with a common plan or
15 intent, are present at the commission of a crime, it does not
16 matter who actually commits the crime. All are guilty. The
17 hand of one is the hand of all.

18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the commission
20 of the crime. However, mere presence at the scene of a crime
21 is not sufficient to convict one as a principal on the theory
22 of aiding and abetting. Intent is also necessary as a
23 necessary element, for there must have been a common design or
24 intent to commit the crime and the crime must have been
25 committed pursuant thereto with the person aiding and abetting

1 by some overt act.

2 Intent means intending the result which actually occurs;
3 not accidentally or involuntary. Intent may be shown by acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent. The
6 State must prove these elements beyond a reasonable doubt.

7 Now, the defendants, ladies and gentlemen, are charged
8 with the murder of Christian Drawhorn. The State -- the State
9 -- the State must prove beyond a reasonable doubt that the
10 defendants killed Mr. Christian Drawhorn with malice
11 aforethought.

12 Malice is hatred, ill will, or hostility toward another
13 person. It is the intentional doing of a wrongful act without
14 just cause or excuse and with an intent to inflict an injury
15 or under circumstances that the law will infer an evil intent.

16 Malice aforethought does not require that malice exists
17 for any particular time before the act is committed, but
18 malice must exist in the mind of the defendant just before and
19 at the time the act is committed. Therefore, there must be a
20 combination of the previous evil intent and the act.

21 Malice aforethought may be express or inferred. These
22 terms, "express" and "inferred", do not mean different kinds
23 of malice but merely the manner in which malice may be shown
24 to exist, that is either by direct evidence or by inference
25 from the facts and circumstances which are proved.

1 Express malice is shown when a person speaks words which
2 express hatred or ill will for another or when the person
3 prepared beforehand to do the act which was later
4 accomplished; for example, lying in wait for a person or any
5 other act of preparation going to show that the deed was
6 within the defendant's mind would be express malice. Malice
7 may be inferred from conduct showing a total disregard for
8 human life.

9 The defendants are also charged with discharging a
10 firearm at or into a dwelling. The State must prove beyond a
11 reasonable doubt that the defendants discharged or caused to
12 be discharged unlawfully a firearm at or into a dwelling.

13 A dwelling, ladies and gentlemen, is any building or
14 portion of a building in which a person ordinarily sleeps. A
15 building constructed as a dwelling that has never been
16 occupied cannot be considered a dwelling. However, a building
17 is a dwelling even if the residents are temporarily absent
18 from the building.

19 Now, the defendants are also charged with possession of a
20 weapon during the commission of a violent crime. The State
21 must prove beyond a reasonable doubt that the defendants were
22 in possession of a firearm or visibly displayed what appeared
23 to be a firearm during the commission of a violent crime.

24 Now, there are two types of possession, ladies and
25 gentlemen, actual possession and constructive possession.

1 Actual possession means that the weapon was in the actual
2 physical custody of the defendant, while constructive
3 possession means that the defendant had dominion and control
4 or the right to exercise dominion and control over the weapon.

5 A firearm means any machine gun, automatic -- automatic
6 rifle, revolver, pistol, or any weapon which will, is designed
7 to, or may be readily converted to expel a projectile.

8 In order to find the defendants guilty of possession of a
9 weapon during the commission of a violent crime, you must
10 first find the defendants guilty of either committing a
11 violent crime or attempting to commit a violent crime. I will
12 tell you that murder and attempted murder are violent crimes.
13 The State must prove beyond a reasonable doubt that the weapon
14 furthered, advanced, or helped in the commission of the crime.

15 The defendants are also charged with four counts of
16 attempted murder: one count of attempted murder of Derrick
17 Lamont Wilson, one count of attempted murder of Darrell
18 Antonio Davis, one count of attempted murder of Gavin Graves,
19 and one count of attempted murder of Christopher Kollock.

20 In order to prove this crime, the State must prove beyond
21 a reasonable doubt that the defendants attempted to kill
22 Derrick Lamont Wilson, Darrell Antonio Davis, Gavin Graves,
23 and Christopher Kollock with malice aforethought, either
24 express or implied.

25 Now, as I stated to you previously and I will say again,

1 while the defendants are charged with four counts of attempted
2 murder, in addition to murder, discharging a firearm into a
3 dwelling, and possession of a weapon during the commission of
4 a violent crime, you must decide each charge separately on the
5 evidence and the law applicable to it, uninfluenced by your
6 decision as to any other charge. The defendants may be
7 convicted or acquitted on any or all of the offenses charged.

8 Now, malice as I explained to you earlier, ladies and
9 gentlemen -- malice is as I have explained to you earlier.
10 Furthermore, malice aforethought again may be express or
11 inferred.

12 If facts are proved beyond a reasonable doubt sufficient
13 to raise an inference of malice to your satisfaction, this
14 inference would be simply an evidentiary fact to be considered
15 by you, the jury, along with the other evidence in the case,
16 and you may give it the weight you decide it should receive.

17 A specific intent to kill is not an element of attempted
18 murder, but there must be a general intent to commit serious
19 bodily injury. Intent means intending the result which
20 actually occurs; not accidentally or involuntary. Intent may
21 be shown by acts and conduct of the defendants and other
22 circumstances from which you may naturally and reasonably
23 infer intent.

24 Evidence of the character of the act, the character of
25 the instrument used, the manner in which it was used, the

1 purpose to be accomplished, and the resulting wounds or
2 injuries, if any, may be considered in determining the intent
3 with which the act was committed. Intent may also be inferred
4 when it is demonstrated that the defendants voluntarily and
5 willfully commit an act, the natural tendency of which is to
6 destroy another's life.

7 Now, ladies and gentlemen, I am now drawing near the end
8 of my charge and I want you to clearly understand that you are
9 not partisans or advocates for the State of South Carolina or
10 the defendants. It is your duty by your joint deliberations
11 to determine the truth in this case, giving to the defendants
12 the benefit of every reasonable doubt on each and every issue.

13 Then, to the facts which you determine to be true, you
14 should take and apply the law which has been given to you by
15 this Court and thus arrive at a verdict which speaks the truth
16 in this case. In fact, the word verdict, which has a Latin
17 derivative, means a true saying. Thus, when you have
18 accomplished these responsibilities, you will have satisfied
19 your oath as jurors and you will have discharged your duty to
20 this Court.

21 Now, once you retire to the jury room, the bailiff will
22 give the verdict form to the foreman. When you, the jury,
23 arrive at a verdict as to the offenses charged in this case,
24 the foreman will select the verdict as to the charge on the
25 verdict form.

1 If the State has failed to prove the guilt of the
2 defendant beyond a reasonable doubt, your verdict will be "not
3 guilty." Likewise, if the State has proven the guilt of the
4 defendant beyond a reasonable doubt, your verdict will be
5 "guilty." Now, once a decision has been made as to each
6 charge, the foreman will check whichever choice is the verdict
7 of the jury -- which is the verdict of the jury as to the
8 charge.

9 The verdict that you render, ladies and gentlemen, must
10 be the verdict of each and every juror. It must be your
11 unanimous verdict. All twelve jurors must agree on the
12 verdict which you authorize the foreman to write for the jury.

13 Ladies and gentlemen, I want you to further understand
14 that the order in which the choices of verdict appear on the
15 verdict form are not suggestive of any verdict on the part of
16 the Court. The verdict in this case is to be determined by
17 you, the jury, not the Court.

18 Furthermore, please understand that even though I will
19 give the verdict form to the foreman, it is not his verdict
20 alone. It is the verdict of all twelve of you and I emphasize
21 again that it must be unanimous.

22 I will now ask you to retire to the jury room, but do not
23 begin your deliberations until you are told to do so. The law
24 requires that I consult with the attorneys to make sure that I
25 have not left anything out of these instructions.

1 Now, after I have checked with the attorneys, the bailiff
2 will bring in the items which have been introduced into
3 evidence along with the verdict form and instruct you to begin
4 your deliberations. Now, during your deliberations should you
5 have any questions, you, Mr. Foreman, must reduce them to
6 writing, knock on the door and let my bailiff know and he'll
7 get the question to me and I'll answer it however the Court
8 deems appropriate.

9 Once you have reached a verdict, please knock on the door
10 again and let the bailiff know that you all have reached a
11 unanimous verdict as to each charge and I will get you back
12 into the courtroom as quickly as possible.

13 You all may -- let me ask you this before I have you step
14 to the jury room. Does everybody feel okay on the jury?
15 Anybody not feeling well? All right. If you all will, step
16 to the jury room, but do not begin deliberations until you're
17 told to do so.

18 (Whereupon, the jury exits the courtroom at 2:49 p.m.)

19 THE COURT: While the jury is exiting the courtroom, can
20 the lawyers come up and look at the items of evidence and make
21 sure everything is there?

22 (Whereupon, there is a pause in the proceedings.)

23 THE COURT: All right. Hold on a second. Any exception
24 -- before we go any further, any exception or objection to the
25 charge by the State?

1 MR. CLEMENTS: No, Your Honor.

2 THE COURT: Mr. Deberry?

3 MR. DEBERRY: No, Your Honor.

4 MR. BAILEY: No, Your Honor.

5 THE COURT: Okay.

6 (Whereupon, there is a pause in the proceedings as the
7 evidence is checked by counsel and the alternate jurors
8 are released by the Court.)

9 THE COURT: Please take in the items of evidence, Mr.
10 Lewis, along with the verdict forms. Where are the verdict
11 forms? The verdict forms are over here. Take those items of
12 evidence in and tell them they can begin their deliberations,
13 please, sir.

14 (Whereupon, jury deliberations begin at 2:50 p.m.)

15 THE COURT: All right. We'll stand at ease. We'll stand
16 at ease.

17 (Whereupon, there is a break in the proceedings from 2:50
18 p.m. until 4:10 p.m.)

19 THE COURT: All right. It is my understanding that the
20 jury has reached a verdict on the charges. And I will remind
21 everybody in the courtroom to keep your emotions in check
22 whatever the verdict may be. Your failure to do so could
23 result in you being held in contempt of court and sentenced to
24 a period of incarceration. If you do not believe that you can
25 keep your emotions in check, now is your time to leave this

1 courtroom. Anything from the State before I bring the jury
2 out, Mr. Clements?

3 MR. CLEMENTS: No, Your Honor.

4 THE COURT: Mr. Deberry?

5 MR. DEBERRY: No, Your Honor.

6 THE COURT: Mr. Bailey?

7 MR. BAILEY: Nothing, Your Honor.

8 THE COURT: Bring me the jury, please.

9 (Whereupon, the jury enters the courtroom at 4:11 p.m.)

10 THE COURT: Madam Clerk?

11 THE CLERK: Ladies and gentlemen of the jury, have you
12 reached a verdict?

13 THE FOREMAN: We have.

14 THE CLERK: Thank you, sir.

15 (Whereupon, the verdict forms are delivered to the
16 Court.)

17 THE COURT: The verdicts appear to be in order. Madam
18 Clerk, you may --

19 THE CLERK: Thank you, Your Honor.

20 THE COURT: -- publish the verdicts. If the defendants
21 will stand for the verdicts.

22 VERDICTS OF THE JURY

23 THE CLERK: The State of South Carolina, County of
24 Marion, versus Shaheed Hayes. Verdict Form. Indictment
25 Number 2013-GS-33-0097.

1 As to the -- as to the charge of the murder of Christian
2 James Drawhorn, we, the jury, unanimously find the defendant,
3 Shaheed Hayes, guilty.

4 As to the charge of attempted murder of Derrick L. --
5 Derrick Lamont Wilson, we, the jury, unanimously find the
6 defendant, Shaheed Hayes, guilty.

7 As to the charge of attempted murder of Darrell Antonio
8 Davis, we, the jury, unanimously find the defendant, Shaheed
9 Hayes, guilty.

10 As to the charge of attempted murder of Gavin Graves, we,
11 the jury, unanimously find the defendant, Shaheed Hayes,
12 guilty.

13 As to the charge of attempted murder of Christopher
14 Kollock, we, the jury, unanimously find the defendant, Shaheed
15 Hayes, guilty.

16 Is this your verdict, say you one, say you all?

17 (Whereupon, the jury indicates in the affirmative.)

18 THE CLERK: Thank you.

19 MR. CLEMENTS: There's a second page.

20 THE CLERK: I'm sorry. As to the charge of discharging a
21 firearm into a dwelling, we, the jury, unanimously find the
22 defendant, Shaheed Hayes, guilty.

23 As to the charge of possession of a weapon during the
24 commission of a violent crime, we, the jury, unanimously find
25 the defendant, Shaheed Hayes, guilty.

1 Signed, James Michael Cullipher, Foreperson. Dated
2 8/8/2014.

3 Now, is this your verdict, say you one, say you all?

4 (Whereupon, the jury indicates in the affirmative.)

5 THE CLERK: State of South Carolina, County of Marion,
6 versus Blaton Smith. Indictment Number 2013-GS-33-0097.
7 Verdict Form.

8 As to the charge of the murder of Christian James
9 Drawhorn, we, the jury, unanimously find the defendant, Blaton
10 Smith, guilty.

11 As to the charge of the attempted murder of Derrick
12 Lamont Wilson, we, the jury, unanimously find the defendant,
13 Blaton Smith, guilty.

14 As to the charge of the attempted murder of Darrell
15 Antonio Davis, we, the jury, unanimously find the defendant,
16 Blaton Smith, guilty.

17 As to the charge of the attempted murder of Gavin Graves,
18 we, the jury, unanimously find the defendant, Blaton Smith,
19 guilty.

20 As to the charge of the attempted murder of Christopher
21 Kollock, we, the jury, unanimously find the defendant, Blaton
22 Smith, guilty.

23 As to the charge of discharging a firearm into a
24 dwelling, we, they jury, unanimously find the defendant,
25 Blaton Smith, guilty.

1 As to the charge of possession of a weapon during the
2 commission of a violent crime, we, the jury, unanimously find
3 the defendant, Blaton Smith, guilty.

4 Signed, James Michael Cullipher, Foreperson. Dated
5 8/8/2014.

6 THE COURT: Madam --

7 THE CLERK: Is this your verdict, say you one, say you
8 all?

9 THE COURT: Madam, let me see the verdict form? You said
10 -- as to the charge of discharging a firearm into a dwelling
11 the jury found him unanimously not guilty.

12 THE CLERK: I'm sorry.

13 THE COURT: Found him not guilty -- not guilty on that
14 charge. Okay. Now you can ask the question of them about the
15 verdict.

16 THE CLERK: Is this your verdict, say you one, say you
17 all as to Blaton Smith?

18 (Whereupon, the jury responds in the affirmative.)

19 THE CLERK: Thank you.

20 THE COURT: All right. All right. Anything from the
21 State at this time?

22 MR. CLEMENTS: Sir?

23 THE COURT: Anything from the State at this time?

24 MR. CLEMENTS: No, sir, Your Honor.

25 THE COURT: Mr. Deberry?

1 MR. DEBERRY: Your Honor, can I ask that the jury be
2 polled?

3 THE COURT: All right. Madam Clerk, if you would, come
4 around to poll the jury, please.

5 THE CLERK: James Michael Cullipher, is this your verdict
6 on Blaton Smith and Shaheed Hayes? Was this your verdict and
7 is this still your verdict?

8 THE FOREMAN: What was the question again?

9 THE CLERK: Is this your verdict and is it still your
10 verdict?

11 THE FOREMAN: Yes, it is.

12 THE CLERK: Thank you.

13 THE CLERK: Diamond A. Brown.

14 THE COURT: You can be seated, Mr. Cullipher. Go ahead.

15 THE CLERK: Diamond A. Brown, was this your verdict and
16 is this still your verdict on both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. Janice M. Weeks, was this your
19 verdict and still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: On both defendants?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Thank you. Billy W. Coleman Jr., was this
24 your verdict and is this still your verdict?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: On both defendants?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Thank you. Takesa S. Owens, was this your
4 verdict and still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: On both defendants?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Thank you. Amy Thomas Stroud, was this your
9 verdict and still your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: On both defendants?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Thank you. Rosetta D. Brooks, was this your
14 verdict and still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: On both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. Rosa Ann Weaver, was this your
19 verdict and still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: On both defendants?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Thank you. Russell L. Rodes, was this your
24 verdict and still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: On both defendants?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Reginald Doyle Jr., was this your
4 verdict and still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: On both defendants?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Thank you. Pecolia Legette, was this your
9 verdict and still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: On both defendants?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Rachel Williams, was this your
14 verdict and still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: On both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you.

19 THE COURT: All right. Anything else from defense
20 counsel, Mr. Deberry, at this time?

21 MR. DEBERRY: No, Your Honor.

22 THE COURT: Mr. Bailey?

23 MR. BAILEY: Nothing.

24 THE COURT: All right. Mr. Solicitor, do you have
25 sentence sheets?

1 MR. CLEMENTS: Your Honor, I have to go downstairs and
2 get them.

3 THE COURT: All right. The defendants can be seated at
4 this time.

5 MR. CLEMENTS: I want to be sure I got it all straight.
6 It's guilty on everything but discharging a firearm by Mr.
7 Smith?

8 THE COURT: Correct. All right. Ladies and gentlemen of
9 the jury, you all have fulfilled your responsibilities this
10 week as jurors. Throughout the trial of this case I told you
11 that you -- I instructed you not to talk about the case -- not
12 to talk about the case. Now that the case is concluded, you
13 may talk about the case. However, you cannot be made to talk
14 about the case if you don't want to.

15 I tell you that to say this. If anybody approaches you
16 to talk about the case and you tell them you don't want to
17 talk about it and they don't leave you alone, you let the
18 Clerk's Office here know and we will handle it. Okay?

19 Now, you all have fulfilled, as I said, your
20 responsibilities as jurors this week. Carrying out your
21 responsibilities as jurors is not an easy task. It is not an
22 easy task. But I want to thank you for your service this
23 week. Your service as jurors is invaluable. It is
24 invaluable.

25 You all having carried out your responsibilities as

1 jurors, what will take place now is sentencing. Sentencing
2 will be carried out by the Court. That will be my
3 responsibility. You all are free to stay if you so desire to
4 watch or to observe, but if you do not want to, you can leave
5 as well. Now is your time to leave if you so desire to leave.

6 The solicitor has gone downstairs to get sentence sheets
7 as to each of the charges that these defendants were convicted
8 on. That may take a -- I don't know how long that may take.
9 It may take a few minutes to do that. If you want to stay,
10 you may certainly stay, but you don't have to.

11 So at this time I will give you an opportunity to leave
12 if you so desire. Okay? If you all want to stay -- if you
13 want to leave, go ahead and leave. If you want to stay, you
14 can step into the jury room and I'll bring you back out here
15 when I get ready to sentence.

16 (Whereupon, the jury is released and exits the courtroom
17 at 4:20 p.m.)

18 THE COURT: Make sure, deputies, that they get safely to
19 their cars and are out of here. Everybody else remain in this
20 courtroom while this jury exits the courtroom.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: All right. While the solicitor is retrieving
23 the sentence sheets, I'm going to step down for just a minute.

24 (Whereupon, there is a pause in the proceedings.)

25 THE COURT: All right. Mr. Clements has provided me with

1 sentence sheets as it relates to Mr. Blaton Wakeem Smith and
2 Mr. Shaheed Hayes. Before I turn it over to defense counsel
3 to hear from them, I am going to hear from Mr. Clements along
4 with any comments from the victims. Mr. Clements, you're so
5 recognized.

6 MR. CLEMENTS: Thank you, Your Honor, if it please the
7 Court. In regards to Mr. Blaton Smith, AKA Nukie, he has a
8 conviction for carrying weapons on school property. He has an
9 armed robbery that was reduced down to a common law strong-
10 armed robbery, which he did a sentence of 13 months with
11 probation for 18 months, and it was five years suspended to
12 that, Your Honor.

13 He has a conviction for manufacture and possession of
14 other substances in Schedule I, II, or III with intent to
15 distribute, first offense. He got 30 months upon service of
16 two days, two years' probation. He also had an assault and
17 battery by a mob with bodily injury, third degree, which I do
18 not have a disposition on from March of 2012.

19 Your Honor, we met in the preparation for this case with
20 Investigator Gary Street from the Solicitor's Office and
21 myself and met with a lot of members of law enforcement of
22 Latta, Dillon County, Marion County, SLED, and an assistant
23 U.S. attorney and agents with Alcohol, Tobacco and Firearms,
24 and Chief Kristal Moore of Latta was going to be very happy if
25 we were able to get a conviction in this case. She's had lots

1 and lots of problems emanating from Adrian "Duke" Smith, who
2 we believe is the head of this situation, and these gentlemen
3 that did a lot of his bidding. And that bled over from Dillon
4 County into Marion County and thankfully we were able to try
5 this case in Marion County.

6 THE COURT: All right.

7 MR. CLEMENTS: The victims would wish -- some of them I
8 believe wish to speak at the appropriate time, Your Honor.

9 THE COURT: Well, before that, give me -- what about Mr.
10 Hayes' record?

11 MR. CLEMENTS: All right, Your Honor. I apologize. I
12 was trying to take them one at a time.

13 Your Honor, Mr. Hayes has got convictions. In 2008, he
14 had an armed robbery, which he got a common law strong-armed
15 robbery conviction under the Youthful Offender Act not to
16 exceed six years. And in 2010, he had assault -- simple
17 assault and battery, three counts, conviction, and a malicious
18 injury to personal property conviction. He had other charges
19 in 2011 regarding armed robbery and firearms, which there is
20 no convictions on. And also January 2012, a pointing and
21 presenting a firearm and discharging a firearm into a dwelling
22 where there's no conviction on those, Your Honor.

23 I think he has charges pending in Dillon County. I'm not
24 sure what they are, but I know that he has pending charges in
25 Dillon County.

1 THE COURT: All right. All right. Now, anything else
2 concerning either one of the defendants before I hear from the
3 family members or victims?

4 MR. CLEMENTS: Your Honor, there's no need for me to
5 recite any of the facts. You heard everything under oath that
6 we presented. These are dangerous individuals, Your Honor,
7 and I wish that you would consider a maximum sentence under
8 the statute.

9 THE COURT: All right. Thank you, Mr. Clements. All
10 right. Ms. Vicky, I'll be happy to hear from any of the
11 victims. If they wish to speak, please make sure you direct
12 any comments to the Court -- to the Court.

13 MR. CLEMENTS: Your Honor, Ms. Drawhorn told me she
14 didn't wish to speak. She wanted me to thank everybody for
15 all their hard work and she's very relieved that this day has
16 reached us.

17 THE COURT: Okay.

18 MR. DERRICK WILSON: I just want to say thank you --

19 THE COURT: State -- state -- tell me your name. I know
20 who you are, but to make the record clear, please state your
21 name again for the record.

22 MR. DERRICK WILSON: My name is Derrick Wilson. I just
23 want to thank you for justice being served for my friends.

24 THE COURT: Yes, sir? Tell me your name again for the
25 record.

1 MR. GAVIN GRAVES: Gavin Graves. I want to thank
2 everybody for working with this case and I ask for the respect
3 for Chris Drawhorn for the maximum sentence you can give them.

4 THE COURT: All right. Anything else? All right. Mr.
5 Deberry, I'd be happy to hear from you at this time.

6 MR. DEBERRY: Thank you, Your Honor. We heard the
7 verdict and understand the verdict and we respect the verdict.
8 We do take exception to the verdict obviously, Your Honor. We
9 think, you know, that it could have gone either way and that's
10 always a risk that you take when you decide to go for a jury
11 trial.

12 Judge, I think given the State's theory on the case and
13 that there is absolutely a player involved here that's not
14 been charged and still -- that still remains free today and
15 given, you know, all the State's case and their theory, I
16 believe that he's probably more -- more culpable than anybody
17 in the entire situation, Your Honor.

18 You know, given all that I said and the facts that are in
19 the record before you, I just ask, you know, that you consider
20 a 30-year sentence and that everything run concurrent.

21 THE COURT: All right. Mr. Bailey -- well, before I hear
22 from you, Mr. Bailey, does your client wish to say anything?
23 He doesn't have to and I don't want him to say anything that
24 may affect his appellate rights, but I'll certainly give him
25 an opportunity. If you wish to say anything, Mr. Hayes,

1 please direct any comments to the Court.

2 THE DEFENDANT HAYES: I ask that you show a little mercy
3 and sympathy. Thank you.

4 THE COURT: All right. Thank you, sir. All right. Mr.
5 Bailey, I'd be happy to hear from you, sir.

6 MR. BAILEY: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. BAILEY: Your Honor, regarding these circumstances
10 that brought us here today, I would incorporate Mr. Deberry's
11 comments regarding that. My client is young, 22 years today.
12 He has had family with him in court. On behalf of Mr. Smith,
13 we would ask that you take his age in consideration, along
14 with his family, and incorporate a sentence in this Court's
15 order in the amount of 30 years with all charges to be run
16 concurrently.

17 THE COURT: All right. Thank you, Mr. Bailey.

18 MR. BAILEY: And that -- and, Your Honor, my client -- he
19 does want to address the Court.

20 THE COURT: I'll be happy to hear from you, Mr. Smith.

21 THE DEFENDANT SMITH: Sir, like Ed Clements said, you
22 heard there are things that they really don't have no facts
23 against me and I ask that you just be lenient on your
24 sentencing. And I have a family back there that I really love
25 and want to get back to and I ask that you just be lenient on

1 the sentence.

2 THE COURT: Thank you. Let me give -- the victim's
3 family certainly had an opportunity to speak. Anybody here on
4 behalf of Mr. Hayes' family that wishes to speak, Mr. Deberry?

5 MR. DEBERRY: No, Your Honor.

6 THE COURT: All right. Anybody here on behalf of Mr.
7 Smith that wishes to speak?

8 MR. BAILEY: It will be his mother, Your Honor.

9 THE COURT: All right. She can stand right there. Tell
10 me your name for the record, please. You're good. Tell me
11 your name for the record.

12 MS. JEANNIE SMITH: My name is Jeannie Smith. Blaton is
13 my youngest son.

14 THE COURT: All right. Tell me your name -- I'll be
15 happy to hear from you. I'm sorry.

16 MR. JEANNIE SMITH: On behalf of the Drawhorn family,
17 that's also as part of my family also, I would like to say I'm
18 sorry for your loss, and the fact that I've been with this
19 case for the whole time and I didn't understand a lot of
20 things. This was my first time coming to trial with anyone,
21 the first time ever being in a courtroom like this. So I wish
22 that everyone that was involved will show a little bit of
23 mercy towards my son and Shaheed, since I do know him as well.

24 THE COURT: All right. Thank you, ma'am.

25 (Whereupon, there is a pause in the proceedings.)

1 THE COURT: All right. Anything else from the State?

2 MR. CLEMENTS: Your Honor, the only thing I can say is
3 that one thing Mr. Deberry said I agree with -- there's
4 somebody else that's very culpable. Unfortunately, they're
5 not in my jurisdiction and we're -- that's why we've called
6 the federal authorities who are going to pursue that at a
7 later date, Your Honor, but other than that I don't have
8 anything else to say.

9 THE COURT: All right. Well, it's very unfortunate what
10 brings everybody who is in this courtroom today and it's
11 tragic what I see from the position that I hold week in and
12 week out. The terrible decisions people make bring them into
13 this courtroom.

14 I listened to this case over the last two-and-a-half days
15 and it's just -- it's a tragedy for everybody involved, for
16 the loss of your son to what these young men face here today.
17 Unfortunately, nobody wins. Nobody wins.

18 Each decision we make has a consequence, some greater
19 than others. Listening to the records of Mr. Smith and Mr.
20 Hayes indicates they're no stranger to the -- the criminal
21 justice system, even at their young age. The criminal justice
22 system tries to -- and our rules of evidence are put into
23 place to believe that people can -- can change and get on the
24 right path if they so desire. That's why you have probation.
25 That's why you have pre-trial intervention.

1 MR. DEBERRY: No, Your Honor.

2 THE COURT: Mr. Bailey?

3 MR. BAILEY: Nothing, Your Honor.

4 THE COURT: Thank you. That will conclude the trial.

5 Please make sure that the victims and victims' family get out
6 of here safely.

7 (Whereupon, the proceedings end at 4:56 p.m.)

8

9 --- END REQUESTED TRANSCRIPT ---

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1	STATE OF SOUTH CAROLINA	)	
2		)	CERTIFICATE
3	COUNTY OF FLORENCE	)	

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 709 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Marion County, South Carolina, on the 6th
13 through 8th days of August, 2014.

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

17 S/ Krystal J. Smith

18	Court Reporter
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20	Florence, South Carolina
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21	January 3, 2015
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAHEED HAYES,

APPELLANT

APPELLATE CASE NO. 2014-001837

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow cross-examination of a witness, who had been diagnosed with schizophrenia, concerning the witness smoking marijuana immediately prior to giving a statement inculcating Appellant to police and the witness admitting to a psychiatrist that marijuana made him delusional?

STATEMENT OF THE CASE

On January 31, 2013, a Marion County grand jury indicted Appellant and three others for murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-00097). R. 546 - 548. The state, represented by Ed Clements, called Appellant and one co-defendant, Blaton Wakeem Smith, to trial on August 6, 2014 before the Honorable D. Craig Brown and a jury. Joshua Bailey represented Smith, and Steven DeBerry represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 542, line 1 – R. 543, line 1. The jury found Smith guilty on all counts, except the jury found he was not guilty of discharging a firearm into a dwelling. R. 543, line 5 – R. 544, line 15. Judge Brown sentenced Appellant to life imprisonment for murder, five years' imprisonment for possession of a weapon during the commission of a violent crime, ten years' imprisonment for discharging a firearm into a dwelling, and thirty years' imprisonment on each count of attempted murder. He ordered the sentences to be served consecutively for a total of life plus one hundred and thirty-five years. Judge Brown imposed identical sentences for Smith, except as to the discharging a firearm charge. R. 545, lines 7-22; R. 549 - 555.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF THE FACTS

On the evening of April 12, 2012, Gavin Graves, Derrick “Eyebrows” Wilson, Christopher “Juice Man” Kollock, Darrell “Goo” Davis, and Christian “Murder” Drawhorn were playing cards, drinking beer, smoking marijuana, and looking at Facebook in Graves’s single-wide trailer. R. 264, line 1 – R. 265, line 9; R. 266, lines 11-20; R. 271, lines 12-19; R. 292, line 25 – R. 293, line 7; R. 307, line 12 – R. 308, line 21; R. 309, lines 10-23; R. 311, line 23 – R. 312, line 1. Graves ran an illegal gambling and drug operations out of the trailer.¹ R. 265, lines 17-20. Over the course of the evening, several of Graves’s clients stopped to purchase drugs. R. 265, lines 10-13; R. 266, lines 8-10; R. 287, lines 17-24; R. 292, lines 1-5; R. 298, line 23 – R. 299, line 10; R. 312, lines 2-8; R. 334, lines 11-25. One gentleman even stopped to sell stolen underwear and socks. R. 299, lines 11-23; R. 334, lines 6-10.

Shortly after midnight, they heard a soft knock at the back door; however, Davis found no one at the door when he checked. R. 271, line 20 – R. 272, line 5. Within minutes, gunshots were being fired at the trailer. R. 272, lines 5-25; R. 313, line 24 – R. 315, line 22. When the shooting stopped, Kollock ran out the back door and around the house, but returned. R. 273, lines 18-22; R. 316, lines 1-13. The group realized that Drawhorn had been shot. R. 273, line 24; R. 316, line 13 – R. 317, line 7. Graves and Wilson called for help and the group, along with Drawhorn, went outside to await emergency assistance. R. 274, line 5 – R. 276, line 17; R. 317, line 9 – R. 318, line 22. Although an ambulance transported Drawhorn to the hospital, he later died as a result of a

¹ During the investigation, the police found marijuana and crack cocaine in the trailer. R. 153, line 25 – R. 154, line 18; R. 279, line 19 – R. 280, line 19.

gunshot wound. R. 67, lines 19-20; R. 276, lines 18-19; R. 261, lines 1-2; R. 318, line 23 – R. 319, line 17.

Law enforcement's investigation of the crimes was flawed from the beginning. The responding officers testified inconsistently regarding the number of people present, the number of cars present, who interviewed whom, the scope of the crime scene, the delegation of duties, whether there was blood in the house, and which officers went into the trailer and when. R. 22, lines 10-17; R. 23, lines 11-13; R. 25, lines 24-25; R. 26, lines 10-14; R. 28, lines 14-20; R. 291, lines 9-14; R. 30, lines 2-5; R. 31, lines 3-4; R. 32, lines 19-21; R. 33, lines 17-19; R. 49, lines 12-15; R. 62, lines 15-24; R. 67, lines 10-13; R. 72, lines 5-9; R. 74, lines 19-23; R. 81, lines 3-5; R. 81, line 22 – R. 82, line 2; R. 108, lines 13-18; R. 147, line 21 – R. 148, line 8; R. 198, lines 18-24; R. 207, lines 4-24.

One officer, Marion Richardson, claimed he saw shell casings in the roadway, but he stated repeatedly that he did not go near the shell casings. R. 39, line 16 – R. 50, line 15; R. 56, lines 16-17. However, the other law enforcement officers present testified that Richardson not only went near the shell casings, but that he moved the shell casings. R. 23, lines 17-24; R. 68, line 22 – R. 69, line 25; R. 80, lines 10-21; R. 83, lines 11-21; R. 95, line 1 – R. 96, line 1; R. 96, lines 5-25; R. 109, line 18 – R. 111, line 17; R. 151, lines 13-24. Investigator Martin Bell was the lead detective on the case and, therefore, in charge of collecting notes, preparing reports, order tests, and conducting interviews. R. 107, lines 11-18; R. 201, lines 16-19; R. 207, lines 10-13. However, Bell never testified, despite his presence in the courtroom during the entirety of the trial. R. 508, line 21 – R. 509, line 15.

ARGUMENT

The trial judge erred in refusing to allow cross-examination of a witness, who had been diagnosed with schizophrenia, concerning the witness smoking marijuana immediately prior to giving a statement inculcating Appellant to police and the witness admitting to a psychiatrist that marijuana made him delusional.

Relevant facts

The individuals inside the trailer were unable to provide any information regarding the possible shooter because they did not see or hear anything. The flawed investigation revealed no physical evidence connecting anyone to the crime. The police never recovered the guns used in the shooting and gathered no useful physical evidence. R. 140, line 1 – R. 141, line 16; R. 142, lines 5-10; R. 241, line 7 – R. 243, line 25. Thus, the state’s entire case boiled down to the testimony of two cooperating witnesses – Jamie “Lil’ Boosie” Williams and Willie “Boo Boo” Bethea. Williams and Bethea were charged with the same offenses as Appellant and Smith. R. 547 - 555.

Williams claimed that on April 12, 2012, he, Smith, Bethea, and Appellant were riding down Highway 501 when they saw Wilson’s white SUV parked behind a trailer. According to Williams, Smith was the driver, Bethea was in the front passenger seat, Appellant was in the back passenger seat, and Williams was in the back seat behind the driver. R. 344, line 7 – R. 347, line 25. Williams claimed the group passed the trailer, then turned around to pass by again. Smith slowed down in front of the trailer. Williams and Appellant then fired shots toward the trailer. R. 349, line 2 – R. 350, line 25. Williams claimed that he sat on the window portion of the car door in order to shoot over the car. R. 351, lines 18-25. He claimed Appellant shot directly toward the trailer from the car’s

window. R. 351, lines 1-15. However, Williams' testimony that they turned around would place the car in a different direction and place Williams on the side with the trailer. Williams could not explain this anomaly in his testimony. R. 369, line 17 – R. 370, line 21; R. 371, lines 12-19.

According to Bethea, the group drove directly to the trailer and stopped in front of it. He denied turning around after seeing Wilson's SUV. R. 399, lines 16-21; R. 404, lines 2-8; R. 406, lines 5-13. Bethea claimed Williams and Appellant shot toward the trailer. R. 406, lines 19-21. Weeks after the shooting, Bethea learned the police were looking for him. His mother convinced him to turn himself in to the police. R. 399, line 16 – R. 422, line 9. Bethea told the police "everything that happened." He told the police "the same thing then" that he told the jury during the trial. The prosecutor made this improper bolstering point twice – that Bethea told the police the same story on the day of his arrest that he told the jury. R. 422, line 10 – R. 424, line 12.

On cross-examination, Bethea admitted he had been diagnosed with schizophrenia, but he was not familiar with the term psychosis. In fact, he understood his diagnosis, but stated he did not "really know what it means." However, he had received mental health treatment, including being institutionalized. R. 449, line 13 – R. 450, line 9. When asked if he recalled telling doctors that people were jealous of his lifestyle, he responded, "I don't know what was going on during that time." R. 450, lines 23-25. The state then objected to the line of questioning as irrelevant. R. 451, lines 2 – 3.

During a proffer, it was revealed that Bethea "made statements in the past to two doctors about visual hallucinations when he smokes marijuana." R. 454, lines 2-3; R. 455, lines 3 – 5. Further, "when he went for his psychiatric evaluation in connection with

this case, he told that physician that he smoked marijuana [thirty] minutes before he got arrested.” R. 454, lines 8 – 11. The trial judge refused to allow this cross-examination, finding “[i]t doesn’t go to his ability to tell the truth.” R. 455, lines 18 – 22.

During his closing argument, the prosecutor admitted the investigation was flawed and that the state had presented very little evidence, other than testimony. R. 477, line 7 – R. 480, line 11. According to the prosecutor, the case “boil[ed] down” to Williams and Bethea. He told the jury, “I’ll admit to you right now if you don’t believe them, the state doesn’t have much of a case, but I’m going to tell you they’re believable. They’re credible. Just as I know that y’all know they were credible.” R. 483, lines 8-13. Just a few paragraphs later, the prosecutor again told the jurors that Williams was “telling the truth.” R. 485, lines 4-6. And yet again, the prosecutor argued to the jury, “I submit to you, ladies and gentlemen, Jamie [Williams] was telling the truth.” R. 486, lines 20-21. In fact, the prosecutor told the jury “I think he told the truth absolutely clear, you know, getting it off his conscience and putting himself there and putting himself in and owning up to what he did.” R. 488, lines 18-20. Near the end of his closing, the prosecutor told the jurors they could believe Williams and Bethea:

So don’t get caught up in that smoke. Weigh it. Compare it. All these pieces of the puzzle fit together and you can believe Jamie and you can believe Boo Boo. I’m sure they’re hoping - - you know, we’ve all been told all our lives the truth will set you free. The truth is your friend. You’ve got to be truthful. And if you’re truthful, good things happen to you. You know, no deals have been made. They testified to that. Nothing has been offered, but they know. They’re not stupid. They know the best thing they can do is tell the truth and hope for the best, and they told the truth. They told the truth.

R. 493, lines 5-15.²

Discussion

The Sixth Amendment to the United States Constitution guarantees an accused the right to be confronted with the witnesses against him. U.S. Const. Amend. VI. The Confrontation Clause “requires a witness to testify under oath and submit to cross-examination so that the jury can observe the witness’s demeanor and assess his credibility.” State v. Dinkins, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000) (citing State v. Cooper, 291 S.C. 351, 354, 353 S.E.2d 451, 453 (1987)). Although the Sixth Amendment encompasses various trial rights – notice, compulsory process, the orderly introduction of evidence – the primary interest secured is the right to cross-examination. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (2004), *aff’d* on other grounds, State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). “The right to meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accuser.” State v. Cheeseboro, 346 S.C. 526, 544, 552 S.E.2d 300, 309 (2001) (emphasis added).

In State v. Turner, 373 S.C. 121, 131, 644 S.E.2d 693, 698 (2007), the South Carolina Supreme Court held a trial court’s limitation on the cross examination of a witness was reasonable “[b]ecause the victim was taking her medication at the time of the

² There was no objection to the prosecutor’s closing argument. However, the argument runs afoul of state and federal constitutional law prohibiting vouching for a witness’ credibility by a prosecutor. A prosecutor’s closing argument must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72 (2004); *see also* Smith v. State, 375 S.C. 507, 522, 654 S.E.2d 523, 531 (2007); Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002); Gilchrist v. State, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002); State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996); State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

robbery and at the time of the trial, her schizophrenia diagnosis and the types of medications she was taking were irrelevant to her ability to truthfully recall the events.” Notably, the Court did not hold that a witness’s schizophrenia diagnosis and compliance with a medication regimen was never relevant on cross-examination. Instead, the Court relied upon the trial judge’s determination that due to the witness’s compliance with her medication, “there would be very little that would assist the jury in evaluating her ability to recall what happened or her credibility.” *Id.* at 130, 644 S.E.2d at 698. Further, the Court explained the “gist” of what the defendant sought to elicit was elicited because the judge permitted questioning regarding the witness’s use of medication and what happened when the witness did not take her medicine as directed. *Id.* at 131, 544 S.E.2d at 698.

Although there was no challenge to Bethea’s competency as a witness, the rules and case law concerning competency of witnesses provide insight and guidance regarding cross-examination of a witness who suffers from a mental illness as that mental illness bears on the witness’s ability to perceive accurately and convey that perception accurately. According to South Carolina’s Rules of Evidence, “[e]very person is competent to be a witness except as otherwise provided by statute or these rules.” Rule 601(a), SCRE. Thus, there is a presumption of competency. The policy supporting such a presumption is the function of cross examination so that bias, prejudice or other defects in a witness’s testimony, and as a result, the witness’s credibility, will be revealed and weighed by the jury. *State v. Needs*, 333 S.C. 134, 142, 508 S.E.2d 857, 861 (1998). “The purpose of Rule 601(b) is to provide a minimum standard for the competency of a witness.” *Needs*, 333 S.C. at 143, 508 S.E.2d at 861.

Although there is a presumption of competency, the Rules also provide “[a] person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury ..., or (2) the proposed witness is incapable of understand the duty of a witness to tell the truth.” Rule 601(b), SCRE. The Court adopted a four-part test to test for competency: “in order to be competent to testify a witness must have the ability (1) to perceive the event with a substantial degree of accuracy, (2) remember it, (3) communicate about it intelligibly, and (4) be mindful of the duty to tell the truth under oath.” *Id.* (citing Commonwealth v. Goldblum, 447 A.2d 234, 239 (Pa. 1982)); see also TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 627-628, 503 S.E.2d 471, 480 (1998) (holding that “[a] witness has to be capable of expressing himself and has to understand the obligation to tell the truth to be qualified to testify”). Questions of competency require a careful examination of the witness, including age, capacity, and moral and legal accountability. State v. Pitts, 256 S.C. 420, 430, 182 S.E.2d 738, 743 (1971).

A witness’s struggle with mental illness requires an examination for competency. The South Carolina Supreme Court has held “[a] witness’s mental illness is not enough to rebut the presumption” of competency. Sellers v. State, 362 S.C. 182, 190, 607 S.E.2d 82, 86 (2005). However, the Court affirmed a finding of incompetence of a witness where the witness’s psychiatrist testified she did not believe the witness “would be a reliable witness because he suffering from major depression and the stress of testifying would render him unable to speak.” The psychiatrist said the witness could not speak in stressful situations and would say anything to get out of the stressful situation. TNS Mills, Inc., 331 S.C. at 480, 503 S.E.2d at 628.

Although the Court decided Abbott v. Columbia Mills Co., 110 S.C. 298, 96 S.E. 556 (1918) before the promulgation of the Rules of Evidence, the principles announced remain good law and provide guidance for the instant matter. The Court held the fact that a witness “had been adjudged a lunatic” did not incapacitate her as a witness. Id. at 298, 96 S.E. at 556. However, if at the time of the examination, the witness is “so under the influence of his malady as to be deprived of that share of understanding which is necessary to enable him to retain in memory the events of which he has been witness, and gives him a knowledge of right and wrong,” then the witness is not competent to testify. Id. (internal citations omitted). The Court explained the question is whether the witness can “distinguish between right and wrong, to appreciate the nature and obligation of an oath, to remember events correctly, and to answer questions intelligently.” Id. (internal citations omitted).

Although having a mental illness is not enough to rebut the presumption of competency, the type of mental illness and its manifestations may disqualify a witness if the mental illness affects the ability of the witness to perceive the event with a substantial degree of accuracy or affects the person’s ability to recall and/or communicate those perceptions during testimony. Similarly, here, Appellant had the right to cross-examine Bethea on his use of drugs prior to giving a statement to police and the effect of those drugs on his brain in light of his mental illness. Unlike the witness in Turner, there was no evidence that Bethea was complying with a medicine regimen to control his schizophrenia; in fact, the evidence was that Bethea engaged in criminal conduct that caused his delusions – smoking marijuana. Also, unlike the witness in Turner, there was evidence that Bethea’s delusions were relevant to his ability to truthfully recall the events because his statement to law enforcement, which were given closer in time to the

criminal acts and on which Bethea and the prosecution relied, were tainted by Bethea's use of marijuana and his consequent delusions. The prosecution's entire case depended upon whether the jury believed Bethea and Williams as the prosecutor freely admitted in his closing and evidenced by the prosecutor's improper vouching. Williams' testimony was susceptible to impeachment because he gave multiple conflicting statements to police and his trial testimony was internally inconsistent based upon his claim that the car was turned in the opposite direction when the shooting occurred. However, Bethea's statement and testimony were identical; thus, his testimony was not subject to impeachment based on inconsistencies.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

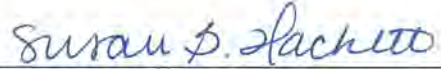
ATTORNEY FOR APPELLANT

This 18th day of November, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

November 18, 2015



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAHEED HAYES,

APPELLANT

CERTIFICATE OF SERVICE

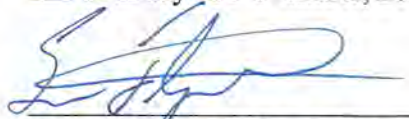
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of November, 2015.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of November, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

Respondent,

V.

SHAHEED HAYES,

Appellant

Appellate Case No. 2014-1837

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IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

Respondent,

V.

SHAHEED HAYES,

Appellant

Appellate Case No. 2014-1837

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow cross-examination of a witness, who had been diagnosed with schizophrenia, concerning the witness smoking marijuana immediately prior to giving a statement inculcating Appellant to police and the witness admitting to a psychiatrist that marijuana made him delusional?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in limiting Appellant's co-defendant's cross-examination of a fact witness after the Appellant had completed unrestricted his cross-examination where Appellant and the co-defendant failed to proffer the cross-examination testimony and where the court found the evidence was not relevant based on the information presented by Appellant.

RESPONDENT'S STATEMENT OF THE CASE

A Marion County Grand Jury indicted Appellant, Shaheed Hayes, in February 2013 for the murder of Christian James Drawhorn (Victim), as well as for discharging a firearm into a dwelling, for possession of a weapon during the commission of a violent crime, and for four counts of attempted murder. (Indictment Number 2013-GS-33-00097).

On August 6, 2014, Appellant's case was called to trial before the Honorable D. Craig Brown. (R.p. 1, Tr. p. 1). Appellant was represented by Steven DeBerry, Esquire, during the three-day trial. (R.p. 1, Tr. p. 1). Appellant was tried along with his co-defendant, Blaton Wakeem Smith, who was represented by Joshua Bailey, Esquire. (R. 1, Tr. p. 1). Solicitor Ed Clements represented the State. (R. 1, Tr. p. 1). The jury returned verdicts of guilty on all counts as charged for Appellant. (R.p. 541-43, Tr. p. 692, line 22–p. 694, line 4). As to Smith, the jury returned verdicts of guilty on all counts as charged, except that they found him not guilty of discharging a firearm into a dwelling. (R.p. 543-44, Tr. p. 694, line 5–p. 695, line 18). Judge Brown sentenced Appellant to life imprisonment for murder, to thirty years imprisonment for each count of attempted murder, to ten years imprisonment for discharging a firearm into a dwelling, and to five years of incarceration for possession of a weapon during the commission of a violent crime. (R.p. 545, Tr. p. 708, ll. 6–22). Judge Brown set the sentences to run consecutively. (R.p. 545, Tr. p. 708, l. 22).

Thereafter, Appellant served a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF THE FACTS

On the night of April 12, 2012, Gavin Graves,¹ Victim,² Derrick Wilson,³ Christopher Kollock,⁴ and Darrell Davis⁵ were sitting in a home off of North Highway 501 in Marion County. (R.p. 263-65, Tr. p. 359, l. 2–p. 361, l. 13). The home belonged to Graves, but Wilson lived there, too. (R.p. 264-66, 305, Tr. p. 360, l. 1–p. 362, l. 10; Tr. p. 428, ll. 11–21). The group had started the evening playing cards, but then they hooked Graves's computer up to his television to browse Facebook. (R.p. 266, Tr. p. 362, ll. 11–20). They were also drinking beer and smoking marijuana. (R.p. 271, Tr. p. 367, ll. 12–19). A little after midnight they thought they heard a knock at the back door. (R.p. 266-272, 309-12, Tr. p. 362, l. 11–p. 368, l. 5; Tr. p. 432, l. 10–p. 435, l. 8). Davis got up to check, but there was no one there. (R.p. 272, Tr. p. 368, ll. 1–7).

About three minutes later, a number of bullets were fired into the home from somewhere outside. (R.p. 272-73, Tr. p. 368, l. 1–p. 369, l. 15). According to Graves, “[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop.” (R.p. 273, Tr. p. 369, ll. 11–13). Inside the trailer, “[t]he sheetrock was busting up. It was smoky. The cabinets [were] opening up. Glass that was sitting out that the bullet must have went through. You could hear the glasses breaking.” (R.p. 272, Tr. p. 368, ll. 20–22). Wilson testified that “it sounded like at least 20–25” gunshots, but there might have been more. (R.p. 315, Tr. p. 438, ll. 16–22). When the gunfire stopped, the men realized that Victim had been hit. (R.p. 273-74, 316-17, Tr. p. 369, l. 16–p. 370, l. 7; Tr. p.

¹ Also known as “Bullet” or “G.” (R.p. 307, Tr. p. 430, ll. 16–19).

² Also called “C-Murder” because his favorite rapper was C-Murder Master P. (R.p. 307-08, Tr. p. 430, l. 24–p. 431, l. 6).

³ Also known as “Eyebrows.” (R.p. 308, Tr. p. 431, ll. 7–13).

⁴ Also known as “O.J.” or “Juice Man.” (R.p. 307, Tr. p. 430, ll. 20–23).

⁵ Also called “Goo Baby.” (R.p. 307, Tr. p. 430, ll. 12–15).

439, l. 13–p. 440, l. 7). They immediately called 9-1-1 and then tried to care for Victim, who was gasping for breath. (R.p. 274-76, 317-18, Tr. p. 370, l. 1–p. 372, l. 5; Tr. p. 440, l. 8–p. 441, l. 18). They took Victim outside because he said he was hot, and then the group waited for emergency responders to arrive. (R.p. 274-76, 318-19, Tr. p. 370, l. 8–p. 372, l. 19; Tr. p. 441, l. 13–p. 442, l. 17). EMS came and took Victim away, but he later died from a gunshot wound. (R.p. 259-262, 276-77, Tr. p. 354, l. 23–p. 357, l. 15; Tr. p. 372, l. 14–p. 373, l. 14). The other men stayed at the house and talked to police officers who had arrived to investigate the shooting. (R.p. 321-22, Tr. p. 444, l. 8–p. 445, l. 11).

The police were unable to recover any physical evidence from the scene that pointed to any particular suspects. However, Wilson provided the officers with information that helped them to develop potential suspects. Wilson told police that Victim had never had any problems with “the Smith boys” or anybody that Wilson knew of. (R.p. 323-24, Tr. p. 446, l. 23–p. 447, l. 6). Wilson, on the other hand, had had problems with Adrian Smith, Blaton Smith’s cousin, and he told police about that. (R.p. 324, Tr. p. 447, ll. 7–11). Detectives Charlie Watson and Martin Bell with the Marion County Sheriff’s Department followed up on those leads. (R.p. 132-39, Tr. p. 224, l. 17–p. 231, l. 18). The detectives contacted Blaton Smith’s mother, and she brought him to Marion County for an interview with police, but Smith was uncooperative. (R.p. 136, Tr. p. 228, ll. 2–15).

Through their investigation, Detectives Watson and Bell also learned that a man named Willie Bethea⁶ may have been involved in the shooting. (R.p. 135, Tr. p. 227, ll. 4–11). Bethea also met with police, and he admitted his involvement in the shooting. (R.p. 136-38, Tr. p. 228, l. 16–p. 230, l. 17). As a result of their conversation with Bethea, the police arrested Blaton

⁶ Also called “Boo Boo.” (R.p. 394, Tr. p. 531, ll. 11–14).

Smith, Appellant, Bethea, and Jamie Williams.⁷ (R.p. 137-38, Tr. p. 229, l. 6–p. 230, l. 25). Adrian Smith was not arrested because he was out of their jurisdiction, and police could not pinpoint anything that Adrian Smith had done in Marion County. (R.p. 139, Tr. p. 231, ll. 1–18).

At trial both Jamie Williams and Willie Bethea testified about what happened the night of the shooting. Williams testified that Appellant, Smith, and Bethea picked him up from his home on April 12, 2012. (R.p. 344-46, Tr. p. 472, l. 7–p. 474, l. 17). Smith was driving Adrian Smith's car, and Bethea was in the front passenger seat. (R.p. 344-46, Tr. p. 472, l. 20–p. 474, l. 1). Appellant was sitting in the back seat on the passenger's side, and Williams took the seat beside him on the driver's side. (R.p. 346, Tr. p. 474, ll. 2–13). According to Williams, they drove past a home on Highway 501, and Appellant saw Wilson's SUV parked out back. (R.p. 346-49, Tr. p. 474, l. 18–p. 477, l. 7). Smith turned around and slowly drove back by the home⁸ while Appellant and Williams shot at the house. (R.p. 349-52, Tr. p. 477, l. 2–p. 480, l. 25). Williams testified that Smith told him to shoot. (R.p. 352, Tr. p. 480, ll. 16–21). Appellant was shooting directly out of the rear, passenger window, and Williams had to hang out of the car and shoot over the top of the car. (R.p. 351, Tr. p. 479, ll. 3–22). Williams testified that he only shot three to five bullets because he "froze up." (R.p. 351-52, Tr. p. 479, l. 23–p. 480, l. 7). But Appellant emptied a clip into the home. (R.p. 352, Tr. p. 480, ll. 8–15). They then drove back to Latta where Smith stopped at a house and took the guns inside while the others waited in the car.

⁷ Also known as "Lil Boosie." (R.p. 138, 340-41, Tr. p. 230, ll. 20–25; Tr. p. 468, l. 20–p. 469, l. 2).

⁸ Williams was very unsure of the roads in that area. At the time of the shooting, he did not even know they were on Highway 501, but he found out that information afterwards. (R.p. 346-47, Tr. p. 474, l. 18–p. 475, l. 1). Williams testified that before the shooting began "we turned around, I don't know how it happened. Like, I don't know the roads or nothing like that. We turned back around and slowed down." (R.p. 349, Tr. p. 477, ll. 8–11).

(R.p. 352-54, Tr. p. 480, l. 22–p. 482, l. 9). After that, they dropped off Williams back at his house. (R.p. 354-55, Tr. p. 482, l. 19–p. 483, l. 4).

Two days after the shooting, Williams received a call from Smith, who told him that someone had died and warned him that he better not say anything. (R.p. 355, Tr. p. 483, ll. 5–20). Williams went to Adrian Smith's house later that day. (R.p. 355, Tr. p. 483, ll. 21–24). Williams testified that “they were kind of mad that they hit the wrong person” (R.p. 355-56, Tr. p. 483, l. 25–p. 484, l. 2). According to Williams, “Eyebrows” was the person who was supposed to have gotten hit—“they wanted him dead.” (R.p. 356, 361, Tr. p. 484, ll. 3–8; Tr. p. 489, ll. 1–8). Williams did not know Wilson (Eyebrows). (R.p. 362, Tr. p. 490, ll. 9–19). Williams testified that he was scared of Adrian Smith because though Adrian Smith is a paraplegic, “[h]e got people too.” (R.p. 356-57, Tr. p. 484, l. 20–p. 485, l. 5).

Williams testified that when he first spoke with police, he lied and said that Appellant and Smith were the shooters, but he later admitted that he was one of the shooters and that Smith was driving the car instead. (R.p. 357-59, Tr. p. 485, l. 20–p. 487, l. 21).

Bethea's testimony regarding the shooting was largely consistent with Williams's. Bethea testified that he and Smith were cousins. (R.p. 394, Tr. p. 531, ll. 15–25). He also identified Appellant as “[o]ne of my people from Latta.” (R.p. 395, Tr. p. 532, ll. 1–13). Bethea testified that he and Smith were together all day on April 12, 2012. (R.p. 398-99, Tr. p. 535, l. 10–p. 536, l. 18). They picked up Williams and Appellant later that evening. (R.p. 399-401, Tr. p. 536, l. 16–p. 538, l. 10). Bethea believed they were going to a club in Latta on Old Ebenezer Road, which is not far from Highway 501. (R.p. 401, Tr. p. 538, ll. 11–24). But they passed that club, so he assumed they were headed to Fusion in Marion. (R.p. 403, Tr. p. 540, ll. 4–17). Smith, who was driving, then stopped in front of a trailer that Bethea identified as “Eyebrows’

trailer.” (R.p. 403-04, Tr. p. 540, l. 25–p. 541, l. 8). Smith said, ““This is the house right here. That’s the car in the back.”” (R.p. 404, Tr. p. 541, ll. 9–14). Appellant and Williams then started shooting. (R.p. 406-10, Tr. p. 543, l. 19–p. 547, l. 3). After they finished, Appellant said he hoped he hit somebody in the house. (R.p. 410, Tr. p. 547, ll. 5–10). They then drove back to Latta, and Smith dropped the guns off at “Karen[’s] house.” (R.p. 410-13, Tr. p. 547, l. 11–p. 550, l. 6).

According to Bethea, afterwards, “[w]e just said don’t say nothing about it and just keep your mouth closed.” (R.p. 413-14, Tr. p. 550, l. 25–p. 551, l. 3). Smith later told Bethea, ““Keep your cool”” and advised him not to say anything about what had happened. (R.p. 415-16, Tr. p. 552, l. 7–p. 553, l. 5). Bethea learned that Victim had been killed in the shooting. (R.p. 416, Tr. p. 553, ll. 9–25). Bethea testified that it was Wilson, not Victim, who was the intended target of the shooting because Wilson and Smith had bad blood. (R.p. 417, Tr. p. 554, ll. 1–15). Bethea left town because he was “worried something crazy was going to happen. That somebody was going to get shot or something.” (R.p. 417-18, Tr. p. 554, l. 16–p. 555, l. 20). When asked if he left town because he was worried about Smith or Appellant, Bethea responded, “They just told me—they kept calling me, like, don’t say nothing or we’re going to do something to you.” (R.p. 418, Tr. p. 555, ll. 21–24). Nevertheless, Bethea eventually turned himself in after his mother told him “the police kept coming to her house and she wasn’t going to have it” (R.p. 421-22, Tr. p. 558, l. 16–p. 559, l. 14). After the police spoke with Bethea, they arrested him. (R.p. 422, Tr. p. 559, ll. 10–22).

ARGUMENT

Appellant's issue is not preserved because he did not proffer the testimony he believes the trial court erroneously excluded and the Appellant had already completed his cross-examination of the witness before the co-defendant raised this concern in his cross-examination.

The trial court did not err in prohibiting Appellant's co-defendant from questioning a fact witness about his mental health history, including an alleged statement to a psychiatrist about drug use two weeks after the crime shortly before his arrest, where that information was not relevant or, if it was relevant, it was only marginally so and would have confused the issues.

Introduction

Appellant argues that the trial court [subsequent to the completion of his own examination] erred in limiting his cross-examination of a witness by the co-defendant regarding statements allegedly made to doctors that the witness had visual hallucinations when he smoked marijuana and further that he had smoked marijuana thirty minutes before he was arrested. This issue has not been properly preserved for direct appeal since Appellant's counsel failed to proffer the witness's testimony on these statements and his own cross-examination was not limited in any manner. R.p. 424-439, Tr.p. 561-576. Additionally, there was no error where the trial court concluded that such evidence was not relevant. In the alternative, the cross-examination was properly limited under Rule 403, SCRE where any minimal relevance was far outweighed by the danger of unfair prejudice or of confusing the jury.

How the Issue Was Raised at Trial

Appellant's counsel cross-examined Willie Bethea before Smith and had no questions about Bethea's mental health or drug use. R.p. 424-439, Tr.p. 561-576. However, during co-defendant Smith's subsequent cross-examination of Bethea, Smith's counsel – for the first time – asked a series of questions about Bethea's mental health and whether he would be able to get adequate mental health treatment in prison. (R.p. 449-50, Tr. p. 586, l. 13–p. 587, l. 22). Bethea

admitted that he had been diagnosed as schizophrenic and further affirmed that he had received mental health treatment in prison but that that treatment was not the best. (R.p. 450, Tr. p. 587, ll. 2–22). Smith’s counsel then asked Bethea, “Do you recall telling any doctors that people were jealous of your lifestyle?” (R.p. 450, Tr. p. 587, ll. 23–24). Bethea responded, “I don’t know what was going on during that time.” (R.p. 450, Tr. p. 587, l. 25). The solicitor objected on relevance grounds. (R.p. 451, Tr. p. 588, ll. 2–3).

A short conference was held out of the presence of the jury where the trial court informed the parties that “his mental health treatment is absolutely objectionable . . . Unless you can tie—tie that together with his inability to tell the truth, it’s not admissible.” (R.p. 451, Tr. p. 588, ll. 5–10). The trial court then dismissed the jury from the courtroom, and the discussion about Bethea’s mental health continued. (R.p. 451, Tr. p. 588, ll. 20–25).

Smith’s counsel asserted that Bethea’s mental health treatment went to his credibility as a witness and towards his bias and motive to testify. (R.p. 452, Tr. p. 589, ll. 6–13). The trial court then asked Smith’s counsel if he had any case law that said cross-examination of a witness regarding their mental health was admissible without some connection to that witness’s ability to tell the truth. (R.p. 452, Tr. p. 589, ll. 14–21). Smith’s counsel responded that he did not have any cases to that effect. (R.p. 452, Tr. p. 589, ll. 22–24).

The trial judge stated that he had recently researched the issue for another case, and he recalled that the case law did not allow questioning on mental health where it was not relevant to the witness’s ability to tell the truth. (R.p. 452–53, Tr. p. 589, l. 25–p. 590, l. 5). The trial court then ruled as follows:

Now, I understand what you’re saying is that it is your intention to put out there that he doesn’t want to go to prison because he can’t get the mental health treatment that he needs. I’ve heard nothing that would indicate—and maybe you have it. I just want to hear it and I’ll allow you to proffer it, but nothing that he

had ongoing mental health treatment and that there is a need for ongoing mental health treatment that would tie it in.

You've established through your cross examination that jail ain't a good place. I've allowed you to do that and that certainly goes to bias or whatever you want to call it as to his testimony for that jury to make a decision on, but as far as this mental health stuff, I mean it's just—it's not relevant at this point unless you can give me some more information as to its relevancy.

(R.p. 453, Tr. p. 590, ll. 6–20). Smith's counsel then noted his objection, and the trial court stated, "I want you to proffer whatever you want. If you want to proffer something" (R.p. 453, Tr. p. 590, ll. 21–24).

Smith's counsel stated, "I just have one question for him." (R.p. 453, Tr. p. 590, l. 25).

He then went on to provide the following information:

He has made statements in his past to two doctors about visual hallucinations when he smokes marijuana.

. . . .

And number two, Judge, when he went for his psychiatric evaluation in connection with this case, he told that physician that he smoked marijuana 30 minutes before he got arrested.

. . . .

Am I allowed to bring those up?

(R.p. 454, Tr. p. 591, ll. 2–13). The solicitor replied that Bethea had not smoked marijuana thirty minutes before taking the witness stand at trial and further asserted, "I think he's gone far afield and what he's attempting to do is not admissible at all." (R.p. 454, Tr. p. 591, ll. 21–23).

The trial court asked if there was any evidence that every time Bethea smoked marijuana he had delusions. (R.p. 454–55, Tr. p. 591, l. 24–p. 592, l. 2). Smith's counsel answered that Bethea's statement to the doctor did not say that every time he smoked marijuana he had delusions—it was just that he saw visual hallucinations when he smoked marijuana. (R.p. 455,

Tr. p. 592, ll. 3–17). The trial court ultimately ruled that defense counsel could not go into that area because such cross-examination did not go to Bethea’s ability to tell the truth. (R.p. 455, Tr. p. 592, ll. 18–22).

Appellant’s counsel then noted that he joined in Smith’s objection (although he had not attempted the same line of inquiry during his own cross-examination). (R.p. 455, Tr. p. 592, ll. 23–24).

Before the jury came back into the court room, the trial court asked if Bethea had been declared incompetent, had an inability to know right from wrong, or had been shown not to know the difference between the truth and a lie. (R.p. 456, Tr. p. 593, ll. 9–21). The solicitor responded, “No, Your Honor” to each of those questions. (R.p. 456, Tr. p. 593, ll. 9–22). The trial court then affirmed its earlier ruling. (R.p. 456, Tr. p. 593, ll. 23–24).

Standard of Review

The Confrontation Clause of the Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI.

The right to a meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accusers. This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness’ safety, or interrogation that is repetitive or only marginally relevant.

State v. Aleksey, 343 S.C. 20, 33–34, 538 S.E.2d 248, 255 (2000) (internal quotations and citations omitted). Generally, “[t]he admission or exclusion of evidence is left to the sound discretion of the trial court, and the court’s discretion will not be reversed absent an abuse of discretion.” *State v. Morris*, 376 S.C. 189, 205–06, 656 S.E.2d 359, 368 (2008) (citing *State v.*

Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). And even where a court errs in limiting a defendant's cross-examination of a witness, that error is subject to a harmless error analysis. *See State v. Starnes*, 340 S.C. 312, 326 n.11, 531 S.E.2d 907, 915 n.11 (2000).

Analysis

This Issue Is Not Preserved.

As an initial matter, Respondent asserts that this issue has not been properly preserved since neither Appellant's counsel nor Smith's counsel proffered Bethea's testimony regarding his prior statements to doctors about what happens to him when he smokes marijuana and whether he smoked marijuana shortly before he was arrested. Instead, counsel merely stated what he believed Bethea's testimony would be. In Respondent's view, that proffer was not sufficient.

More importantly, the Appellant never sought to use this same or similar information during his own earlier cross-examination of Bethea. Simply put, he was not limited because he never sought to introduce this information during his own inquiry of Bethea. It is not preserved. The State argues this issue is not preserved for appeal because an "appellant may not use the objection of another defendant to gain review." *See State v. Nichols*, 325 S.C. 111, 123, 481 S.E.2d 118, 124 (1997); *accord State v. Carriker*, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977). In *Carriker*, the appellant did not object at trial to the matter he later appealed. 269 S.C. at 555, 238 S.E.2d at 678. In *Nichols*, an issue was not preserved for appeal because the appellant failed to object during trial or join in his co-defendant's objections. 325 S.C. at 123, 481 S.E.2d at 124. Here, the Appellant asserts his right to cross-examination was limited but the record defeats the claim. When he was examining the witness, no attempt was made to impeach the witness through this type of testimony. R.p. 424-439, Tr.p. 561-576. It was only after his co-defendant's later failed attempt to assert the use the mental health records that Appellant Hayes'

counsel tried to bootstrap the issue, albeit belatedly. If co-defendant had gone first, the analysis would have been different. Here, since his own cross-examination was not limited, his request for relief was not preserved.

Further, there is no evidence from the witness as to the subsequent proffer as to what Bethea would have stated if questioned about his conversations with the psychiatrist apparently during a competency evaluation. “Ordinarily, [South Carolina appellate courts] will not review the alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record.” *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402–03 (1986) (citing *State v. Roper*, 274 S.C. 14, 260 S.E.2d 705 (1979)). In order for the proffer to be proper, the record should “fairly [show] what the rejected testimony would have been.” *Roper*, 274 S.C. at 20, 260 S.E.2d at 708. Nevertheless, “[t]he rule regarding proffers has been relaxed where the trial court refuses to allow a proffer and the record clearly demonstrates prejudice, or where the appellate court is able to determine from the record what the testimony was intended to show and that prejudice clearly exists.” *State v. Jackson*, 384 S.C. 29, 34 n.3, 681 S.E.2d 17, 20 n.3 (Ct. App. 2009).

Respondent submits that the record does not fairly show what the rejected testimony would have been in this case—it is unclear whether Bethea would have admitted to making those statements or would have denied making them. In *State v. Jenkins*, 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996), this Court found that counsel’s representations of what a witness’s testimony would have been (as opposed to the actual testimony) were adequate to preserve the issue where, according to the Court, counsel had made a sufficient attempt to proffer and where the Court could discern prejudice even without the proffer. However, *Jenkins* is distinguishable from the instant case because in *Jenkins* “defense counsel’s frustration with the limits placed

upon his cross-examination by the trial judge was apparent at every turn; additionally, the trial judge continued to assure him his position was protected for the record.” *Id.* at 368, 474 S.E.2d at 817. In contrast, here, the trial court did not refuse to allow the proffer of Bethea’s testimony, nor did it frustrate counsel’s attempts to do so. Indeed, the record reflects that the trial judge told counsel that he wanted him to proffer the testimony. (R.p. 453, Tr. p. 590, ll. 6–24). Nevertheless, Appellant failed to proffer Bethea’s actual testimony. And, unlike *Jenkins*, Appellant did not even attempt to proffer Bethea’s actual testimony.

Respondent urges this Court to find Appellant’s proffer insufficient in this case. Judge Goolsby’s dissent in *Jenkins* identifies the problems with merely summarizing the anticipated testimony as opposed to presenting the testimony itself. Judge Goolsby explained that the rule requiring a proffer necessarily

requires an appellant to proffer *testimony*, not mere questions. Without showing [appellant’s] disallowed questions would have elicited testimony that was both favorable and material to her case, [appellant] cannot show she was prejudiced by the trial court’s ruling. Explaining the answers she *hoped* her questions would elicit is not sufficient.

Jenkins, 322 S.C. at 370, 474 S.E.2d at 818 (Goolsby, J., dissenting) (emphasis in original) (internal citation omitted). The proffer offered by Appellant (through Smith’s counsel) is insufficient because it does not fairly show what Bethea’s testimony would have been—it only indicates what Appellant *hopes* Bethea’s testimony would have been. And this Court should not overlook the failure to make a proper proffer where the trial court did not disallow or inhibit Appellant from proffering Bethea’s testimony.

Furthermore, this court should not overlook the failure to proffer where, even assuming Bethea would have testified consistently with counsel’s assertions, there was no prejudice to Appellant in excluding that testimony as explained in further detail below.

The Evidence Was Not Relevant.

The trial court correctly concluded that the testimony that Appellant sought to introduce was not relevant. And the court did not abuse its discretion in prohibiting cross-examination on whether Bethea had visual hallucinations when he smoked marijuana and whether he smoked marijuana shortly before he was arrested. Appellant cannot articulate the relevance of the evidence based on the paltry record before this Court without engaging in speculation.

Smith's counsel informed the trial court that he wanted to cross-examine Bethea about some previous statements he had made to medical professionals, namely that

He has made statements in his past to two doctors about visual hallucinations when he smokes marijuana.

. . . .

And . . . when he went for his psychiatric evaluation in connection with this case, he told that physician that he smoked marijuana 30 minutes before he got arrested.

(R.p. 454, Tr. p. 591, ll. 2–11). The subject matter of that cross-examination was not relevant. See Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). The shooting occurred in the early morning hours of April 13, 2012, but Bethea did not turn himself in to police, give his statement, and get arrested until over two weeks later on April 30, 2012. (R.p. 457–58, Tr. p. 594, l. 17–p. 595, l. 5). There was no evidence (or any representation to the court) that Bethea smoked marijuana around the time of the shooting. Thus, Appellant's proposed cross-examination of Bethea was not relevant to Bethea's ability to perceive events the night of the murder. Similarly, there was no evidence (or any representation to the court) that Bethea smoked marijuana around the time of his testimony. Thus, Appellant's proposed cross-examination of Bethea was not

relevant to Bethea's ability at trial to recall the night of the murder and to testify truthfully to those events.

The Fourth Circuit has held that a trial court did not abuse its discretion in excluding cross-examination testimony by a co-defendant regarding statements he made to nurses that he had seen hallucinations of dead people. *United States v. Barnes*, 480 F. App'x 231, 236–37 (4th Cir. 2012). The Fourth Circuit acknowledged that

Mental defect can be a proper basis by which to attack a witness's credibility if the alleged mental defect was "at a time probatively related to the time period about which he was attempting to testify," and it "go[es] to the witness' qualification to testify and ability to recall," and does "not introduce into the case a collateral issue which would confuse the jury."

Id. at 237 (quoting *United States v. Lopez*, 611 F.2d 44, 46 (4th Cir. 1979)⁹). However, the Fourth Circuit found that there was no suggestion that the co-defendant was unable to perceive or recall the details of the crime because he was experiencing hallucinations at or around the time of the crime. *Id.* Nor was there any evidence that the co-defendant "was experiencing hallucinations at the time of trial or that they affected his ability to recall and testify accurately at trial." *Id.* Because "the evidence did not reflect that [the co-defendant's] hallucinations occurred

⁹ In *Lopez*, the Fourth Circuit noted,

One's psychiatric history is an area of great personal privacy which can only be invaded in cross-examination when required in the interests of justice. This is so because cross-examination of an adverse witness on matters of such personal privacy, if of minimal probative value, is manifestly unfair and unnecessarily demeaning of the witness. Moreover, such cross-examination will generally introduce into the case a collateral issue, leading to a larger amount of testimony substantially extraneous to the essential facts and issues of the controversy being tried. Because of the obvious unfairness of such a cross-examination and its needless waste of judicial time, it has been posited in an authoritative text that, "Courts should have the power to protect witnesses against cross-examination that does little to impair credibility but that may damage their reputation, invade their privacy, and assault their personality."

Lopez, 611 F.2d at 45 (quoting 22 Wright & Graham, Federal Practice & Procedure § 5215).

‘at a time probatively related to the time period about which he was attempting to testify,’” the trial court did not abuse its discretion in excluding that evidence. *Id.*

Appellant concedes that there was no challenge to Bethea’s competency as a witness. Thus, Appellant’s proposed cross-examination could only conceivably be used to impeach Bethea’s April 30th statement to police. That is to say, the cross-examination could only have been used to challenge Bethea’s ability, at the time he made his statement to police, to recall and communicate what happened the night of the murder. This is where Appellant’s failure to proffer Bethea’s testimony becomes problematic. If Bethea denied making both or either of the statements that counsel attributed to him,¹⁰ then there is no relevance to that testimony. If Bethea never stated that he had visual hallucinations when he smoked marijuana, and if he did not smoke marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting. If Bethea told doctors that he had visual hallucinations when he smoked marijuana, but he denied stating that he smoked marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting. If Bethea never told doctors that he had visual hallucinations when he smoked marijuana, but he admitted that he told a doctor that he had smoked marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting.

Even assuming that Bethea would have affirmed on cross-examination that he had visual hallucinations when he smoked marijuana and that he smoked marijuana thirty minutes before he

¹⁰ If he denied making those statements, and Appellant sought to introduce the prior inconsistent statement under Rule 613, SCRE, then Appellant would presumably have had to call the doctors to whom Bethea made the alleged statements, to make a relatively minor point of impeaching Bethea’s first statement to police. This scenario exemplifies Respondent’s arguments that to allow the cross-examination had a great possibility of introducing a collateral issue that could have confused the jury.

was arrested, that limited bit of evidence is insufficient to impeach Bethea's April 30th statement to police. The case *State v. Turner*, 373 S.C. 121, 644 S.E.2d 693 (2007), is instructive on that point. In *Turner* the South Carolina Supreme Court found that a trial court did not err in limiting the defense's cross-examination of a victim on her schizophrenia diagnosis. The victim in *Turner* testified during a proffer that she had been diagnosed with schizophrenia and that she took Prozac and Risperdal for her condition, and when she did not take her medications, she would become confused, hear voices, and have problems with her memory. 373 S.C. at 129, 644 S.E.2d at 698. The victim further testified that she had not been without her medication either during the time of the crimes or anytime recently. *Id.* The trial court disallowed cross-examination on the victim's mental health, finding

[T]here would be very little that would assist the jury in evaluating her ability to recall what happened or her credibility. The court felt it would require speculation on the jury's part to connect the medical testimony to her ability to testify truthfully. The court stated there was a significant potential for unfair prejudice because it may cause the jury to decide the case on an improper basis.

Id. at 130, 644 S.E.2d at 698. The Supreme Court affirmed, finding that where the victim was taking her medication during the crime and at the time of trial, her specific diagnosis and medication regimen "were irrelevant to her ability to truthfully recall the events." *Id.* at 131, 644 S.E.2d at 698. The Supreme Court further pointed out that the appellant had failed to show a nexus between the victim's medications and any alleged misidentification of the appellant. *Id.* Here, too, because Appellant failed to develop Bethea's testimony, he also failed to show a nexus between the alleged visual hallucinations and Bethea's ability to truthfully recall and communicate the events of April 13, 2012. And like in *Turner*, it would require speculation on the jury's part to connect the visual hallucination evidence to Bethea's ability to give a truthful

statement to police.¹¹ Thus, the trial court correctly determined that the evidence was relevant based on the information presented to the court, and the court properly limited the cross-examination.

Based on the record, the information that Appellant sought to elicit through cross-examination was not relevant. Thus, the trial court did not abuse its discretion in excluding it.

If Relevant, the Evidence Was Properly Excluded Under Rule 403, SCRE.

Even if this Court finds that the testimony that would have been elicited through the proposed cross-examination would have been relevant, Respondent submits that the trial court did not abuse his discretion in limiting Appellant's co-defendant's cross-examination where there was reason to limit it under Rule 403, SCRE. If Bethea denied making the statements, then Smith would presumably have had to call the doctors to testify, and the presentation of that testimony on such a relatively minor point would have been a waste of time and likely confusing to the jury. *See* Rule 403, SCRE. Furthermore, even if Bethea admitted making the statements, like in *Turner*, the slight probative value of that evidence would be outweighed by unfair prejudice (particularly without further development on the nature of the visual hallucinations or whether they were present on April 30th).

Appellant Was Not Prejudiced.

Moreover, Appellant was not prejudiced by the trial court's limitation on his co-defendant's cross-examination of Bethea where there were other ways in which Appellant could and did impeach Bethea. Importantly, Appellant Hayes never attempted to present the material

¹¹ Appellant has failed to articulate how visual hallucinations could have impacted Bethea's statement to police on April 30th. Presumably, the visual hallucinations would be present (if at all) at the time Bethea was giving his statement to police, but there has been no showing that the visual hallucinations impaired Bethea's memory of the shooting or his ability to communicate what he remembered. There has been no showing of what the visual hallucinations even were.

during his own cross-examination of Bethea and was not limited during his examination in any manner. R.p.424-439, Tr.p. 561-576.

Further, for example, both Appellant and Smith questioned and attempted to impeach Bethea about his motive to testify and the potential sentence he was facing for his participation in the shooting. (R.p. 426-25, 445-48, Tr. p. 563, l. 8-564, l. 8; Tr. p. 582, l. 2-p. 585, l. 6). Bethea was also questioned during the subsequent examination by Smith's counsel about his experience in prison. (R.p. 448-50, Tr. p. 585, l. 9-p. 587, l. 22). Bethea admitted to the jury that he had been diagnosed with schizophrenia and that he had been institutionalized in the past. (R.p. 449-50, Tr. p. 586, l. 13-p. 587, l. 22). Smith questioned Bethea regarding inconsistencies in his testimony about what happened the night of the shooting. (R.p. 462-63, Tr. p. 599, l. 17-p. 600, l. 19). Smith also questioned Bethea about his past drug use, and Bethea admitted that he smoked marijuana and had snorted cocaine "a couple times." (R.p. 475, Tr. p. 612, ll. 17-21).

There were a number of other ways in which Appellant and his co-defendant could, and did, impeach Bethea, including his schizophrenia diagnosis and his drug use. Thus, Appellant was not prejudiced by the trial court's limitation of his co-defendant's subsequent cross-examination of Bethea. *See State v. Stokes*, 381 S.C. 390, 401-02, 673 S.E.2d 434, 439-40 (2009) ("[T]he Confrontation Clause 'guarantees only an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" (quoting *United States v. Owens*, 484 U.S. 554, 559 (1988))).

Any Error Was Harmless.

Even had Appellant's co-defendant established that Bethea had made statements to doctors that he had visual hallucinations when he smoked marijuana and that he smoked marijuana thirty minutes before he was arrested, and had Appellant further established that such

evidence was relevant and should not have been excluded by the trial court, any error was harmless.

“Whether such an error is harmless in a particular case depends upon a host of factors The factors include the importance of the witness’s testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.”

State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)).

Though Bethea’s testimony was important to the State’s case due to the lack of physical evidence connecting Appellant and his co-defendants to the crime scene, Bethea’s story was not the sole evidence relied upon by the State. The State also presented the testimony of Williams, whose testimony was largely consistent with Bethea’s.¹² Furthermore, as discussed earlier, the evidence that Appellant’s co-defendant sought to elicit only went to impeach Bethea’s statement to police on April 30th—it was not relevant to Bethea’s testimony about what he recalled from the night of the shooting. Appellant and Smith were able to cross-examine Bethea on a wide

¹² Respondent considers the testimonies to be largely similar because Williams and Bethea testified consistently to a number of facts, including the people in the car, where those people were sitting, who fired guns, the way that the gunmen fired (Williams out the window, over top of the car and Appellant directly out of the window), what they did with the guns afterward, and what warnings they received from Appellant and Smith.

Appellant claims that Williams’s and Bethea’s versions of the shooting have the car facing in opposite directions at the time of the shooting. However, Williams made it clear during his testimony that he was not familiar with the roads in the area. (R.p. 346-49, 369-374, Tr. 474, l. 18–p. 477, l. 11; 497, l. 9–p. 502, l. 5). On the other hand, he was sure of where he was sitting in the car and in what direction he and Appellant were shooting. (R.p. 370, 374, Tr. p. 498, ll. 11–14; Tr. p. 502, ll. 1–5). Williams testified that they turned around after passing the house once and drove by again—it is possible, particularly in light of the fact that Williams was admittedly unknowledgeable about the roads, that rather than making a U-turn and driving back by the house in the opposite direction, they somehow turned around and drove back by the house in the same direction as they had before. Were that the case, Williams’s testimony would be both internally consistent (except that he would have been incorrect that the car was facing Latta at the time of the shooting) and consistent with Bethea’s testimony.

range of matters, including that he was facing charges for his involvement in the drive-by shooting and that he had been diagnosed with schizophrenia and had received treatment for it. In their closing arguments, both Appellant and Smith referenced Bethea's motive to testify, and Smith specifically noted inconsistencies in Bethea's testimony. (R.p. 504-05, 514-15, Tr. p. 655, l. 3–p. 656, l. 11; Tr. p. 665, l. 17–p. 666, l. 25). Accordingly, the *Van Arsdall* factors indicate that any error in limiting the cross-examination of Bethea was harmless.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

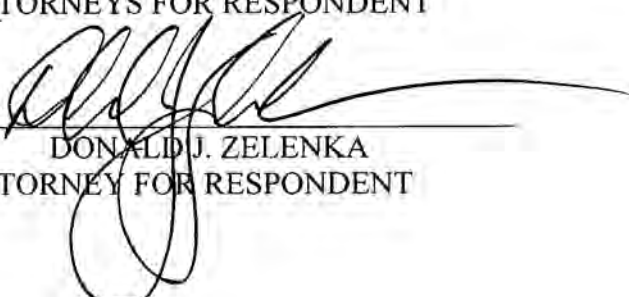
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Solicitor, Twelfth Circuit

ATTORNEYS FOR RESPONDENT

By: 

DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

November 20, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
D. Craig Brown, Circuit Court Judge

RECEIVED

NOV 20 2015

SC Court of Appeals

THE STATE,

Respondent,

v.

SHAHEED HAYES,

Appellant

Appellate Case No. 2014-1837

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

November 20, 2015

STATE OF SOUTH CAROLINA
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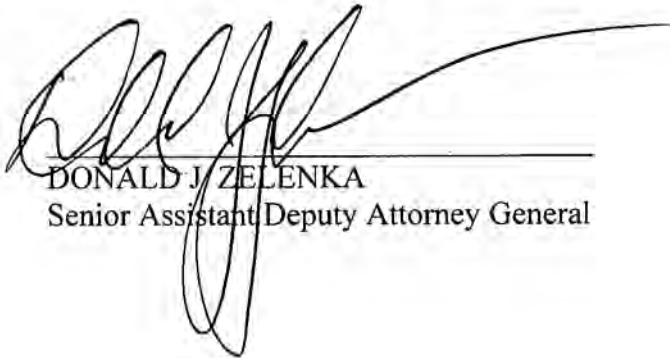
CERTIFICATE OF SERVICE

I, Donald J. Zelenka, counsel for Respondent, certify that I have served the within Final Brief of Respondent by depositing two (2) copies of the same in the InterAgency Mail to:

Susan Hackett
Appellate Defender
SCCID/Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 20th day of November, 2015.



DONALD J. ZELENA
Senior Assistant Deputy Attorney General

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Shaheed Hayes, Appellant.

Appellate Case No. 2014-001837

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2016-UP-317
Submitted April 1, 2016 – Filed June 22, 2016

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Donald J. Zelenka, all
of Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) ("It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402-03 (1986) ("Ordinarily, this [c]ourt will not review alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record."); *id.* at 303, 342 S.E.2d at 403 ("However, where the trial court refuses to allow the proffer, but [this court] can determine from the record . . . what the testimony was intended to show, we will address the merits."); *State v. Jenkins*, 322 S.C. 360, 367-68, 474 S.E.2d 812, 816-17 (Ct. App. 1996) (declining to find the trial court's decision excluding cross-examination testimony was not preserved when "it was very clear what testimony defense counsel hoped to elicit on cross-examination," "the proffer was not necessary to enable [this court] to discern prejudice," and "defense counsel made a sufficient attempt to proffer the disputed testimony"); *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19-20 (Ct. App. 2009) (finding the defendant's failure to proffer excluded testimony about the victim's violent history rendered the trial court's exclusion of that testimony unpreserved).

AFFIRMED.¹

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of Marion)

#329512)

Shahood Hayes)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Attorney General
Office)2017-CP-33-219
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Inst 386 Redemption Way McCormick, SC 29849
2. Name and location of Court which imposed sentence Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Blaton Wakeem Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-33-97
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 8, 2014
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. SC Court of Appeals affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 1 - 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No. 2016-4P-317
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) No
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 5th
- (b) 6th
- (c) 14th
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment memorandum of Law
- (b) In support Post-Conviction Relief
- (c) Application
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NO
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NO
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NO

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Steven Deberry
512 South Walnut St

ii. Pampliey, S.C. 29583
Susan Barber Hackett

iii. S.C. Appellate Defender - 1330 Lady St
Suite 401 G1, S.C. 29201-3332

(b) the proceedings at which each such attorney represented you:

i. Jury trial

ii. Direct Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

vacate conviction and sentences

20. Are you now under sentence from any other court that you have not challenged?

NA

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Shahed Hayes, 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.

Shahed Hayes

SWORN to and subscribed before me this 17th
day of March, 2017.

Michael Carmine (L.S.)
Notary Public

My Commission Expires: July 09, 2026

2017 MAR 24 PM 10:24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Shahneel Hayes, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Shahneel Hayes
Applicant

SWORN or affirmed to and subscribed before me this

17th day of March, 2017.
Michael Canare
Notary Public

My Commission Expires: July 09, 2026

State of South Carolina
 County of Marion
 Shaheed Hayes
 Applicant
 Vs
 State of South Carolina
 Respondents

In The Court of Common
 Pleas
 C/A 2017-CP-33-219
 Summons

To Respondents

You are summoned and required to required to answer the allegations in post-conviction Relief Application within (30) days from the first day after receipt of this summons. Your answer must be received by the Applicant at located 386 Redemption Way McCormick S.C. 29071

If you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached PCR, plus interest and costs.

By Place in United States mail, this
17 day of March, 2017

Shaheed Hayes
 Shaheed Hayes

State of South Carolina
County of Marion

Shaheed Hayes

Applicant

vs

State of South Carolina
Respondent's

) IN The Court of Common
Pleas
C/A _____

) Memorandum of Law
) In support of Post-
Conviction Relief
Application

To Respondent's

Now comes the applicant Moves before
this Honorable Court pursuant to S.C.
of Law Ann 17-27-10 § 17-27-20
Post-conviction Relief Application.

History of Case

on April 13th 2012, A shooting occurred
in the county of Marion it alleges
several co-defendants was charge-
with discharging a firearm into a
dwelling, co-defendant's Blaton W. Smith
And Shaheed Hayes did in Marion
county on or about April 13th 2012,
discharge or cause to be discharged
unlawfully a firearm at or into the
dwelling cause death Christian James.

Argument 4

trial counsel prejudice applicant by failure
request for mistrial tamper alter evidence
move at crime scene shell casing.

Applicant receive effective assistance of counsel in violation of my 6th Amendment right and Due process of Law 14th Amendment at time of my trial whereby counsel performance fell below standard failure request for mistrial tamper alter evidence move at crime scene shell casing tainted evidence that was move by corporal Richardson tamper and alter evidence at crime scene shell casing tainted evidence constituted error, in violation of my Due process of Law and fundamentally miscarriage of Justice unfair trial.

"see trial transcript pg 153 By sergeant clemson Legette - Direct by Mr. Clements Line(1) was anything moved? Line(12) well according to patrolman Pike I found after the fact Line (13) that corporal Richardson moved-- moved the shellings, Line(14) from where to where? Line(15) from the road-- I want

to say from the road probably to line (16)
 the -- Line (17) out of the roadway? Line (18)
 out of the roadway Line (19) so they wouldn't
 get run over? Line (20) yes, sir. (see) Applicant
 trial transcript Pg (162) By Sergeant Clemson
 Legette - cross By Mr. Deberry Line (24) - (25)
 All I know is they was removed from the --
 from the Line (25) actual location. (see) trial
 transcript Pg (164) By Sergeant Clemson Legette -
 cross By Deberry Line (7) Is there very
 much traffic out there ~~after~~ midnight?
 Line (8) you might not have that much
 traffic, but still -- you Line (9) still --
 you Line (10) okay, is it standard proced-
 ure would you say to move Line (11) that
 evidence line that? Line (12) you don't
 move evidence, Line (13) so that was a
 mistake? Line (15) and because it was
 moved, then we don't have any way to
 Line (16) know where it was fair? Line
 (17) if they moved it yes.

To obtain reversal of a conviction, the defendant must prove: (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding.

"See cite at Judge v State 321 S.C. 554, 471 SE2d 146 (1976) in order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. cite at Strickland.

Argument 2

Trial counsel prejudice applicant by failure to prepare and to conduct a proper pre-trial investigation to interview Adrian Smith.

During closing argument by Mr. Bailey on behalf of the Defendant Smith at trial transcript pg (663) Line (10) why didn't they go interview Adrian Smith?

Applicant submit that he received ineffective assistance of counsel prior to and during his trial. The six Amendment to the United States Constitution guarantees that every criminal defendant is entitled to effective assistance of counsel in presenting their defense. See Also, S.C. Const., ART. I, Section 14. The Supreme Court has stated, "The right to counsel is a fundamental right of criminal defendants;

it assures the fairness, And thus the Legitimacy of our adversary process."

Kimmelman v Morrison, 477 U.S. 365 (1986).

Furthermore, The Supreme Court has recognized that "The right to counsel is the right to effective assistance of counsel." McMann v Richardson, 397 U.S.

759, 771 (1970). To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth Amendment to the constitution, A two prong test must be met. In Strickland v Washington 466 U.S. 668, 688-694 (1984). The Supreme Court held that A Determination of ineffective assistance of counsel would be conditioned on two factors:

- (1). Counsel's Performance must have fallen below an objective standard of Reasonableness; And (2) There must be A Reasonable Probability that but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland standard, see, e.g. Cherry v State 386 S.E.2d 624 (1980). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrie, 477 U.S. 478 (1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." Fraser v United States, 18 F.3d 778, 785 (9th Cir 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequate, and professionally for trial; conduct

the trial to the best his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States ex Rel Parlee v Lane, 926 694, 702 (7th Cir. 1991).

(A) Counsel prejudice applicant by failure to prepare and to conduct a proper pre-Trial investigation to interview Adrian Smith.

As the Supreme Court also recognized in Strickland "counsel bears a duty to make a reasonable investigation of the law and facts in his client's case." Strickland 466 U.S. At 691 additionally, the A.B.A standards relating to the administration of criminal justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case, and the penalty in the event of conviction. The investigation should always

include efforts to secure information in the possession of the prosecutor and Law Enforcement Authorities. The duty to investigate exist regardless of the accused admissions, or statements to the lawyer of facts constituting guilt or the accused stating desire to trial.

A Defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. when a lawyer fails to conduct a substantial investigation into any of his clients plausible lines of defense, the lawyer has failed to render effective assistance of counsel.

Cobb v. State, 408 S.E.2d 223 (1991) Pre-trial preparation, principally because it provides a basis upon which most of the defense case must rest, is, perhaps, the most critical stage of lawyer's preparation. Id. failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

Argument(3)

Applicant allege after discovered evidence
S.C. Rule Civil procedure Rule 29(b) Exhibits
(A) §(B) Affidavits by two slept juror
members Diamond A Brewster, And Rachel Williams.

Applicant discovery after discovered evidence on July 12, 2016, Receive written affidavit by both slept Juror members that was not pay full attention during my August 6-8; 2014 jury trial which I was convict of murder receive a life sentences without parole.

Rule 29 Post ^(Trial) motions (b) New trial
 Based on After-Discovered Evidence.
 A motion for a New trial based on after discovered evidence must be made with a reasonable period of time after the discovery of the evidence provided, however, that a motion for a New trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion.

see, e.g., Clark v. State, 315 S.C. 385, 434 SE2d 266 (1993). Clark provides:

To obtain a New trial based on after evidence, that party must show that the evidence:

- (1) Would probably change the result if a New trial is had;
- (2) has been discovered since trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching

Id. at 387-88; 434 SE2d at citing Hayden v. State 278 S.C. 610, 299 SE2d 884 (1983)).

Argument 4

Trial counsel prejudice applicant by
Failure Request for written Notice
seek Life without Parole.

Applicant receive ineffective assistance counsel and Due process of Law counsel Failure Request written Notice seeks life without Parole in violation S.C. Code of Law Ann Subsection (H) where the solicitor is required ~~to~~ to seek or determines to seek sentencing of a defendant under this section, Written Notice must be given the solicitor to the defendant and defendant's counsel Not less than ten days before trial.

Fact that armed Robbery defendant had actual Notice of

state's intention to seek a life sentence was not sufficient to meet notice requirements of recidivist sentencing statute; under the statute state was required to provide defendant and his counsel written notice "see, State v Johnson S.C. App 2001, certiorari denied.

Argument 5

Trial Counsel Prejudice Applicant by failure request a jury charge in compliance with State v Logan. Also trial counsel prejudice applicant by failure object to judge charged jury that specific intent to kill is not required to prove attempted murder.

According to State v King the state must prove a specific intent to kill.

charge on the law by the court

Pg(687)

Line (17) A specific intent to kill
is not an element of at-
tempted

Line (18) murder, but there must be
a general intent to commit serious

Line (19) bodily injury.

To prove ineffective assistance
of counsel, a criminal defendant initially
must show that his attorney's perform-
ance was deficient. Strickland v Washing-
ton, 466 U.S. 668, 687 104 S.Ct. 2052, 2064,
80 L.Ed. 2d 674 (1984). The proper measure
of attorney performance is reasonableness
under prevailing professional norms. Id.
at 688, 104 S.Ct. at 2064. A criminal defen-
dant also must show that he was pre-
judiced because but for counsel's un-
professional errors, the result of the
proceeding would have been different.
Id. at 694, 104 S.Ct. at 2068.

CONCLUSION

Wherefore Applicant conviction sentences require vacate set-aside.

s. Shaheed Hayes
Shaheed Hayes #329512

Date 3/17 2017

2/17/18 22:19:25

Exhibit A

Affidavit of Diamond A. Brown

My name is Diamond A. Brown. I am 21 years old, currently working as a deli service worker and currently residing at 2614 Green Ct. Mullins, SC 29574.

I was a juror in a Marion County, SC trial. The trial started on August 06, 2014. The case was State of South Carolina vs. Shaheed Hayes and Blaton Wakeem Smith. I was a juror on this case for the entire trial. I was in and out of sleep and had periods of my eyes opening and closing. I also witnessed another juror, Rachel Williams was completely asleep and had her head down, eyes closed, and arms tucked in her sweatshirt. This took place for a good bit of the trial. I do understand that perjury is a crime and I declare this statement true.



Diamond A. Brown

Date 4-1-16

I hereby declare that I witnessed this and
it was sworn and subscribed before me

7/1/16

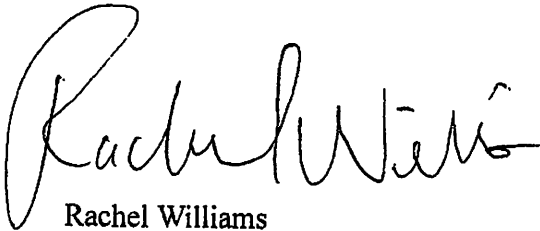


Exhibit (B)

Affidavit of Rachel Williams

My name is Rachel Williams. I am 22 years old, currently working as a cashier and currently residing at 137 Louise Miles Rd Marion, SC 29571.

I was a juror in a Marion County, SC trial. The trial started on August 06, 2014. The case was State of South Carolina vs. Shaheed Hayes and Blaton Wakeem Smith. I was a juror on this case for the entire trial. I was wearing a sweatshirt/jacket. I slept a lot during the trial on both days and repeatedly had my head down. The judge even had to ask me to get up, set up, and take my arms out of my sweatshirt, when he noticed me sleeping. Due to my sleeping during the trial, I missed a lot of important information during the trial. I do understand that perjury is a crime and I declare this statement true.

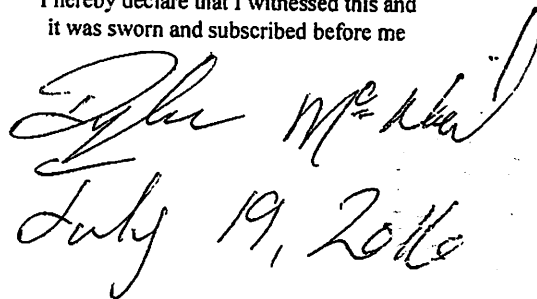


Rachel Williams

Date

7/19, 2014

I hereby declare that I witnessed this and
it was sworn and subscribed before me



July 19, 2014

DYLAN N. MCNEIL
Notary Public, State of South Carolina
My Commission Expires 8/19/2025

FILED

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Shaheed Hayes, #329512,

Applicant,

v.

State of South Carolina,

Respondent.

2017 JUN 26 AM 8:15
) IN THE COURT OF COMMON PLEAS
) IN THE TWELFTH JUDICIAL CIRCUIT
) MARION COUNTY
) CHRISTY H. GRAY
) CLERK OF COURT
) Case No.: 2017-CP-33-0219

**RETURN AND PARTIAL MOTION
 TO DISMISS AND MOTION TO
 STRIKE**

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on March 22, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In February 2013, the Marion County Grand Jury indicted Applicant for murder, discharging a firearm in a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). Steven DeBerry, Esquire, represented Applicant. Solicitor Ed Clements, Esquire, prosecuted the case. On August 6-8, 2014, Applicant proceeded to trial before the Honorable D. Craig Brown. The jury found Applicant guilty as indicted on all charges. Judge Brown sentenced Applicant to imprisonment for consecutive terms of life without parole for murder, ten years for discharging a firearm in the dwelling, five years for possession of a weapon during the commission of a violent crime, and thirty years for each count of attempted murder.

Applicant filed a timely notice of appeal. Susan Barber Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's

conviction on June 22, 2016. State v. Hayes, Op. No. 2016-UP-317 (S.C. Ct. App. filed June 22, 2016). The remittitur was returned to the circuit court on July 15, 2016.

Attached to this Return and incorporated herein by reference are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel prejudiced applicant by failing to request for mistrial for tampering and altering evidence at the crime scene."
 - b. "Trial Counsel prejudiced Applicant by failing to prepare and to conduct a proper pre-trial investigation to interview Adrian Smith."
 - c. "Trial Counsel prejudiced Applicant by failing to request written notice to seek life without parole."
 - d. "Trial Counsel prejudiced Applicant by failing to request a jury charge in compliance with State v. Logan. Trial counsel failed to object to the judge charging the jury that specific intent to kill is not required to prove attempted murder."
2. Newly Discovered Evidence
 - a. Applicant alleges after discovered evidence of affidavits by two jurors who were sleeping during the trial and were not paying full attention

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only person authorized to file

amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 689. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also seeks relief on the basis of “newly discovered evidence” that two jurors were asleep during portions of his trial. Pursuant to the rule of McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), Respondent interprets this allegation as a claim of juror misconduct rather than newly discovered evidence.¹ McCoy explained, “[w]here a PCR applicant alleges juror misconduct. . . application of the. . . five-pronged newly discovered evidence standard” is inappropriate “as it does not lend itself to properly evaluating a claim of juror misconduct.” 401 S.C. at 370, 737 S.E.2d at 627.

¹ Even if this allegation is interpreted under the newly discovered evidence standard, the allegation must be dismissed for failing to make a *prima facie* showing Applicant is entitled to relief. A party making a motion for a new trial or for relief from judgment based on newly discovered evidence must show the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979). Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougal, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Under S.C. Code § 17-27-45(c), a newly discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. Applicant alleges he has obtained affidavits from two jurors who were sleeping during portions of the trial. However, such evidence is not material to Applicant’s guilt or innocence, nor has Applicant set forth with any specificity why such alleged evidence was not readily discoverable at the time of trial.

Furthermore, the affidavits submitted by Applicant are inadmissible and should be stricken from the record pursuant to Rule 12(f), SCRCP. Rule 606(b) of the South Carolina Rules of Evidence governs the admissibility of juror testimony in attacking the validity of a verdict:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. (emphasis added).

The comments to the rule note that “[s]ubsection (b) is consistent with the general rule that a juror may not present testimony as to the deliberations in the jury room; as to any mistake, irregularity, or misconduct on the part of the jurors; or which would impeach the verdict or contradict the record.” Additionally, the South Carolina Supreme Court has repeatedly held “a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial.” State v. Aldret, 333 S.C. 307, 314 509 S.E.2d 811, 814 (1999). “Unless the misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict.” State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). Applicant has failed to allege that any misconduct affected the jury’s impartiality or any facts tending to show how he was prejudiced by the alleged misconduct.

Because Applicant has not properly alleged a claim of either newly discovered evidence or juror misconduct, Respondent submits Applicant is not entitled to an evidentiary hearing in the matter, and the allegation should be dismissed as a matter of law. Furthermore, the affidavits submitted by Applicant along with his application should be stricken from the record pursuant to Rule 12(f), SCRCP, and Rule 606(b), SCRE.

FILED

V.

2017 JUN 26 AM 8:15

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

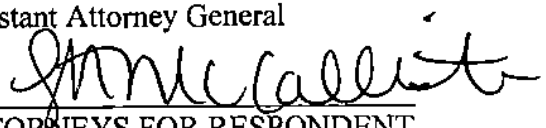
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

6/21, 2017

FILED

2017 JUN 26 AM 8:15

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
MARION COUNTY
CHRISTY M. GRAY
CLERK OF COURT
2017-CP-33-219

SHAHEED HAYES, #329512

Applicant,

vs

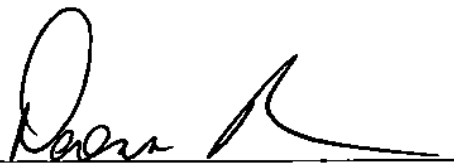
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss and Motion to Strike** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 21st day of June, 2017.


Deonna Rogers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	
Shaheed Hayes, #329512,	)	Case No.: 2017-CP-33-0219
	)	
Applicant,	)	
	)	ORDER OF CONTINUANCE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's post-conviction relief application. This matter was originally scheduled to be heard on February 2, 2018, at the Florence County Courthouse.

Applicant requests additional time to investigate and prepare his case. Respondent has no objection to the continuance. Therefore, this Court finds this matter should be continued until the next appropriate term of court for post-conviction relief matters in the Twelfth Judicial Circuit.

IT IS THEREFORE ORDERED:

That this post-conviction relief matter shall be continued and re-scheduled for the next appropriate term of post-conviction relief hearings.

AND IT IS SO ORDERED

This 25 day of Jan, 2018.


 D. CRAIG BROWN
 Chief Administrative Judge
 Twelfth Judicial Circuit

Florence, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF Marion

Shaheed Hayes, # 329512,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2017-CP-33-0219

ORDER FOR CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief filed March 22, 2017. This matter was originally scheduled to be heard on April 6, 2018, at the Florence County Courthouse.

Prior to the hearing, counsel for Applicant informed the Court he had received a document purporting to be an affidavit of Applicant's co-defendant, Jamie Williams, wherein Mr. Williams avers he gave perjured testimony at Applicant's trial. Counsel for Applicant requested a continuance for counsel to be appointed for Mr. Williams. Counsel for Respondent did not take a position on the appointment of counsel.

Therefore, this Court finds that this matter should be continued until the next appropriate term of court for post-conviction relief matters in the Twelfth Judicial Circuit. Additionally, this Court finds Mr. Williams should be appointed counsel and directs counsel for Applicant to secure an order to that effect from the Honorable William H. Seals, Jr, who can appoint the next attorney on the civil appointment list in Marion County.

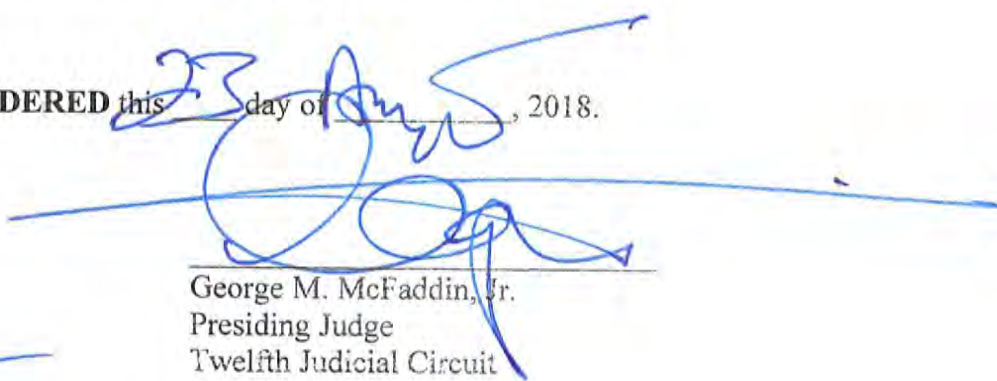
IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and rescheduled for the next

regularly scheduled term of court for post-conviction relief for the Twelfth Judicial Circuit; and

2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 23 day of Aug, 2018.


George M. McFaddin, Jr.
Presiding Judge
Twelfth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Shaheed Hayes, 329512,

Applicant,

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUITAMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF

Case No. 2017-CP-33-0219

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed March 22, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

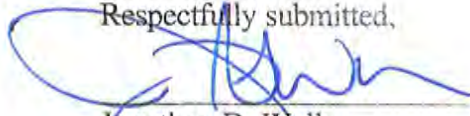
1. After discovered evidence:

- a. Applicant's co-defendant, Jaime Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.

[SIGNATURE PAGE TO FOLLOW]

FILED
2018 DEC -4 AM 9:54
MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

December 1, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
Shaeed Hayes, #329512,	)	
Applicant,	)	C/A No.:2017-CP-33-0219
	)	
vs.	)	MOTION TO RECUSE JUDGE
	)	
State of South Carolina,	)	
Respondent.	)	

FILED
2019 JUN 18 AM 8:24
MARION COUNTY SC
CLERK OF COURT

Counsel for the Applicant in the above-captioned case hereby moves before the court for an Order recusing Judge Seals from the trial of this matter. Counsel would rely on Canon 3(E)(1)(a) of Rule 501, SCACR as well as the particulars to the situation as the basis for this motion.

Applicant is currently confined to the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's orders of commitment. Applicant was indicted by the February 2013 term of the Marion County Grand Jury for one count each of murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). Steven DeBerry, Esquire, represented Applicant who proceeded to trial on August 6-8, 2014 before the Honorable D. Craig Brown and a jury. Applicant was found guilty as indicted of all charges. Judge Brown sentenced Applicant to life in prison for murder, thirty years for each count of attempted murder, and five years for possession of a weapon during the commission of a violent crime, and ten years for discharging a firearm into a dwelling, with all sentences to be run consecutively.

Upon Applicant's arrest, he and his codefendant came before the Honorable William H. Seals, Jr. for a bond setting. Immediately following the hearing on bond, a bomb threat was made to the courthouse and to Judge Seals specifically that if a bond wasn't given that the courthouse would be blown up as well as Judge Seals. This threat was attributed or associated with this Applicant and his codefendants. Given that making such a threat is a felony and that Judge Seals is a victim of such a crime, Applicant respectfully contends that it would be inappropriate for him to preside over any proceeding involving Applicant, but specifically over a proceeding that has a direct link to the threats made.

Therefore, the Applicant respectfully requests that this Court issue an Order recusing Judge Seals from presiding over this matter.

Respectfully,



Jonathan D. Waller
SC Bar No.: 76290
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201
(803) 520-7278
Attorney for Applicant

This 15th day of June, 2019

FILED
2019 JUN 18 AM 8:23
HAMILTON COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA

2020 MAR 10 AM 9:55

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

COUNTY OF MARION

MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

Case No. 2017-CP-33-0219

Shaheed Hayes, #329512,

Applicant,

vs.

ORDER FOR CONTINUANCE

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed March 22, 2017. An evidentiary hearing into the matter is scheduled for March 2, 2020, at the Florence County Courthouse. Applicant's counsel moves to continue this matter to the next regularly scheduled term of court for post-conviction relief for the Twelfth Judicial Circuit, as he and his wife are expecting the birth of twins with an expected due date that potentially conflicts with the date of this hearing. Applicant's counsel has conferred with Respondent's counsel, who does not object to this continuance request.

This Court finds that this matter should be continued until the next regularly scheduled term of court for post-conviction relief matters in the Twelfth Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and rescheduled for the next regularly scheduled term of court for post-conviction relief for the Twelfth Judicial Circuit; and
2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 26 day of Feb, 2020.



William H. Seals, Jr.
Chief Administrative Judge
Twelfth Judicial Circuit



, South Carolina

I SO MOVE:



JONATHAN WALLER
Counsel for Applicant

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Shaheed Hayes, 329512,

Applicant,

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

Case No. 2017-CP-33-0219

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed March 22, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

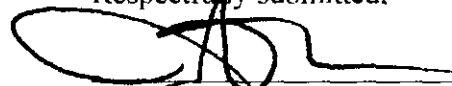
1. As to representation rendered by H. Steven Deberry, IV, Esquire:

- a. Applicant's co-defendant, Jaime Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.
- b. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.

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MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

- c. Counsel was ineffective for failing to properly object to impermissible testimony and argument during the course of Applicant's trial, allowing the jury to hear impermissible testimony and thus failing to preserve the issues for direct appeal.
- d. Counsel was ineffective for failing to object to the incorrect instruction on the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.
- e. Counsel was ineffective for failing to object to improper vouching testimony during the testimony of Investigator Charlie Watson.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1821 Hampton Street
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

August 27, 2021

Columbia, South Carolina

FILED
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CLERK OF COURT
CHRISTY M. GRAY
CHARLESTON COUNTY SC

State of South Carolina	)	
	)	Court of General Sessions
County of Florence	)	2017CP330219

Shaheed Hayes	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina	)	

April 18, 2022
Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge.

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

John Waller, Esq.
Attorney for the Applicant

Joshua Edwards, AAG
Russell Barlow, AAG
Attorneys for the State

Michael Drake
Transcriber



1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Hon. Steven DeBerry				
4	Mr. Waller	5			
5	Mr. Edwards		14		
6	Shaheed Hayes				
7	Mr. Waller	17			
8	Mr. Edwards		28		
9	Rachel Williams				
10	Mr. Waller	29			
11	Mr. Edwards		32		
12	Jamie Williams				
13	Mr. Waller	35, 37			
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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
A-1	Applicant's Number 1, signed affidavit		32
A-3	Affidavit of Jamie Williams		40



1 THE COURT: Ready?

2 MR. EDWARDS: State is ready.

3 THE COURT: Proceed, sir.

4 MR. EDWARDS: Your Honor, this is Shaheed Hayes versus
5 state of South Carolina, Case Number 2017CP33219. My name is
6 Josh Edwards. I'm from the Attorney General's Office. With
7 me is Russ Barlow. And Mr. Waller was representing Mr. Hayes.
8 And I'll let him --

9 THE COURT: Mr. Waller?

10 MR. WALLER: Thank you, Your Honor. May it please the
11 Court.

12 Judge, this case was filed back in 2017, March 22nd,
13 2017. Mr. Hayes was convicted at trial, along with a
14 codefendant, of murder, four counts of attempted murder, and
15 some other various charges. He filed an appeal of that action
16 and then ultimately, as I said, in March of 2017, filed, a
17 post-conviction relief application.

18 Judge, we have filed with two separate amendments, which
19 you should have in your file. The one -- the second one filed
20 August 31st of 2021 contains the first -- the information in
21 the first -- the allegations in the first amendment as well as
22 subsequent ones.

23 And so, Your Honor, we would proceed based on his
24 application as originally filed as well as the amendments.
25 There are some -- my amendment was to clarify some of the

1 issues alleged in his original application, but it's not in
2 lieu of those.

3 So, Your Honor, we would call, Steven DeBerry.

4 THE DEPUTY COURT: All right, sir.

5 HON. STEVEN DEBERRY, after being duly sworn,
6 testified as follows:

7 THE COURT: All right, sir.

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 Q Good morning.

11 A Good morning.

12 Q Judge DeBerry, how are you today?

13 A Good. All right.

14 Q I say Judge DeBerry. How long have you been on the
15 bench?

16 A Since June of last year.

17 Q Okay. And prior to being elected to the circuit court,
18 what type of work did you do?

19 A Well, I was a law clerk. And I came out of law school in
20 2006, so I did that for a year. And then I went to
21 solicitor's office and was a prosecutor until 2010. 2010, I
22 opened my own solo law practice and continued that until
23 elected to the bench last year.

24 Q Okay. How did you come to represent Shaheed Hayes?

25 A I was appointed to represent Shaheed Hayes, indigent

1 defense contractor.

2 Q Okay. And so you weren't working with the Public
3 Defender's Office. You had a contract if there were conflicts
4 with that office?

5 A That's right.

6 Q Okay. If you could, what were the allegations of -- that
7 the State made in this case?

8 A Well, there was a murder charge, four counts of attempted
9 murder, discharging a firearm into a dwelling, and possession
10 of a weapon during a violent crime.

11 Q But specifically what do you remember -- what did the
12 State say happened?

13 A Well, the some individuals -- if my recollection is
14 right, there was four individuals. My client was in the
15 backseat of a car, drove by a mobile home that was in Marion
16 County, and they shot into -- or the allegations were that
17 they shot into the house. So that's what that -- that's what
18 it was alleged to have happened.

19 Q Okay. About how long after the incident took place where
20 you appointed to represent Mr. Hayes?

21 A I don't recall.

22 Q Okay. The trial was in 2016. Do you recall if you were
23 on the case for a year, if you were on the case for six
24 months? Do you recall?

25 A I was on the case for at least a year, I would think. I

1 mean, I can remember that they moved Mr. Hayes over to
2 Marlboro County for detention at one point. And I remember
3 meeting with him in Marion several times and in Marlboro
4 several times. So, I mean, it I know it was quite a while
5 leading up to trial.

6 Q Okay. The trial was with -- two codefendants were tried
7 at the same time. When did you -- I guess, when did you first
8 learn that that two of the codefendants were going to testify
9 against Mr. Hayes as well as Mr. Smith?

10 A Well, early on in my representation, I can remember
11 talking to Mr. Hayes about, you know, to see if he -- if he
12 wanted to cooperate with the State. We even met with
13 Solicitor Clements personally, the three of us and maybe
14 Solicitor Clements' investigator or either another attorney,
15 you know, in his office to see, you know, if Mr. Hayes wanted
16 to cooperate. But, you know, ultimately, he didn't do that.
17 And we knew at some point that somebody was going to
18 cooperate. And so I can't tell you exactly when I determined
19 that but certainly wasn't a surprise to me.

20 Q Okay. When you're trying a case with cocounsel or
21 counsel of a codefendant, do you -- obviously, you're trying
22 your own case, but do you work with them at all in
23 preparation, or how does that work for you specifically?

24 A Certainly, I think we have duties to our own clients. I
25 mean, you know, if there are no issues between the two

1 defendants, and then certainly they can be tried together. I
2 mean, I certainly discuss the matters with Mr. Bailey. You
3 know, I'm not going to say that -- I mean, we didn't prepare
4 together. We didn't have the same -- we certainly didn't have
5 the same defenses or anything along those lines. But, you
6 know, we weren't contrary to each other either. So --

7 Q Okay. At what point did you -- at what point did you
8 become aware that some of the shell casings had been moved out
9 of the roadway by one of the first responding officers? Was
10 that known to you in discovery, or was that something that
11 came up just at the trial?

12 A If I remember correctly, that came up at trial.

13 Q Okay. It seemed from the transcript that that several of
14 the officers and investigators discussed it, and it was
15 something known to law enforcement at the time. Was it in any
16 reports or supplemental reports or anything that you saw?

17 A And I'm going off of memory. I've got a whole banker's
18 box full of files because, you know, my file is inside a
19 banker's box. So, you know, I'm not as familiar now with
20 discovery as I would have been then. But I again, I remember
21 that being -- just coming to light at trial.

22 Q Okay. When that came to light, did you -- what did you
23 do? What was your response?

24 A I remember we made a big deal out of it. I mean, I tried
25 to do everything I could on behalf of Mr. Hayes about that.

1 Certainly, you know, I remember it just coming down to more or
2 less being an argument for the jury at the end of the trial.

3 Q Okay. Did that have any effect on how you dealt with
4 some of the -- with evidence being admitted in the case?

5 A I don't recall.

6 Q There were 18 pictures of shell casings that were
7 admitted to -- admitted without objection. Do you have any
8 recollection whether any of those were ones that have been
9 moved or any ones that had not been moved?

10 A I don't recall.

11 Q Okay. The shell casings themselves were admitted into
12 evidence without objection. Was there a strategic reason for
13 not objecting to those shell casings being entered into
14 evidence?

15 A Well, I don't specifically recall, but I -- you know,
16 nobody was contesting the fact that somebody went by there and
17 shot the house and, you know, they shot from the roadway.

18 Q Okay. So what -- and I'll circle back to this in a
19 second, but that brings a point. What was your -- what was
20 your defense strategy? I

21 A I mean, when I think back on this case, and it's been
22 pending as a PCR for quite some time so I've looked at and
23 thought about it, it was one of the most difficult trials I've
24 ever tried because I couldn't -- I didn't have much defense,
25 other than, you know, it wasn't him. I was basically trying

1 to pick up defenses as we went through the trial, which, you
2 know, some things came up but nothing that was substantial.

3 Q Okay. And so is it a situation where if someone
4 maintains they had -- they had no involvement, there's nothing
5 they can assist you with as far as defense or nothing -- no
6 information can be provided because they maintain they weren't
7 there?

8 A That's right.

9 MR. WALLER: Okay. Your Honor, back to -- Your Honor,
10 Judge McFadden, I apologize, the pictures of the shell
11 casings, it was State's Exhibits 1 through 18, were admitted
12 on page 209 to 212.

13 THE COURT: Yes, sir.

14 MR. WALLER: And then the actual shell casings themselves
15 were. Page 322, line 1, were admitted to evidence without
16 objection.

17 THE COURT: All right.

18 MR. WALLER: All right. Begged the Court's indulgence,
19 please.

20 THE COURT: Yes, sir.

21 Q Judge DeBerry, if you recall, what type of forensic
22 testing was done in the investigation of this case?

23 A I don't recall.

24 Q Okay. Obviously, there was an autopsy done. Do you
25 recall if there was any testing done on the shell casings

1 themselves or the projectiles in the mobile home? Just do you
2 recall what all was done by law enforcement?

3 A Well, I remember making -- trying to make a defense out
4 of the trajectory of the bullet holes into the house and
5 trying to even suggest that maybe some of the bullets were
6 fired from behind the house. I can remember that. There was
7 one investigator that came and, testified that he did some
8 testing as far as the bullet trajectory, how they traveled
9 through the house. But other than that, I don't recall.

10 Q Okay. What is your experience as far as cases out of
11 Marion County, who would do their forensic testing of shell
12 casings or something like that?

13 A I would think SCLED. I mean, every time I've ever seen
14 it.

15 Q Okay. Is that something that -- how does that work if
16 you recall for either from your time as a defense counsel or
17 your time with the Solicitor's Office?

18 A How does it work?

19 Q How does it work as far as, you know, a piece of evidence
20 comes into law enforcement's hands, they send it off to SCLED?
21 What's the -- what's the timeline or what's the protocol from
22 your experience?

23 A I mean, certainly there's -- you know, they're required
24 to keep up with chain of custody. And the timeline is
25 anybody's guess. I mean, you might get something back or you

1 might not get it back for a long time. I don't know if
2 it's -- that's always been my experience.

3 Q Okay. So it could be something that comes back much
4 later after they send it?

5 A Sure.

6 Q Okay. And obviously they are required to keep a chain of
7 custody the entire time it's in SCLED custody as well?

8 A Uh-huh.

9 Q Okay.

10 A That's right.

11 Q Okay. All right. Did you consider -- was there a
12 strategic reason behind not filing any motions to suppress any
13 of the physical evidence based on chain of custody?

14 A Not that I recall.

15 Q Okay.

16 MR. WALLER: Your Honor, may I approach the witness?

17 THE COURT: Yes, sir.

18 Q When were you first made aware of the -- Willie Bethea
19 and Jamie Williams cooperating and giving statements to law
20 enforcement?

21 A I don't recall.

22 Q Was it well in advance of the trial or was it days
23 preceding?

24 A I mean, at some point. I don't -- I don't know when.

25 Q Okay. If I could get you to turn to page 230, please,

1 the trial transcript. Now if you can take a look at line 11.
2 Was there a strategic reason for not objecting to that answer
3 by Mr. -- or Investigator Watson?

4 A No.

5 Q Okay. All right. What is your -- I guess, what's your
6 policy, what's your strategy in making objections during
7 arguments, opening arguments or closing arguments by
8 Solicitor's Office?

9 A During openings and closings, I mean, only in extreme
10 circumstances. I mean, I think you run the risk of offending
11 the jury. But, you know, if somebody's going afoul, then
12 certainly something you have to consider.

13 Q Okay. If I can get you to turn to page 483.

14 MR. WALLER: I will just tell you, Judge McFadden, for
15 the record, I'm looking at -- I'm sorry, Judge DeBerry. I've
16 given you the wrong page number. I'm working off a
17 different -- working off the record on appeal for that in
18 opposed to the trial transcript which you have.

19 Judge, it's in the record, page 43, lines 8 through 13;
20 485, lines 4 through 6; 486, lines 20 through 21; 488, line 18
21 through 20; and 493, lines 5 through 15 during the closing
22 arguments of the solicitor -- what we allege is impermissible
23 vouching argument.

24 Q And I would just ask if you have any recollection of that
25 and any strategic reason for not making an objection to

1 comments.

2 A I don't have any recollection of that.

3 MR. WALLER: Okay. Beg the Court's indulgence, please.

4 THE COURT: Sure.

5 Q Judge DeBerry, do you recall any issues with the jury
6 during the trial?

7 A You know, the only thing that stands out to me -- I mean,
8 at this point, it's been, what, seven years ago. I remember
9 that when the alternate was released, he hung around and told
10 everybody that he couldn't have convicted those guys. But
11 certainly the other 12 are -- thought otherwise.

12 Q Okay. Do you recall any of the members of the jury
13 nodding off or falling asleep or anything like that?

14 A Not specifically.

15 Q Okay. Do you recall whether Mr. Hayes mentioned to you
16 that any of the jurors was falling asleep?

17 A Not specifically, no.

18 MR. EDWARDS: Okay. Judge DeBerry, I don't have any
19 further questions from you. Please answer any questions the
20 State has.

21 THE COURT: State, sir?

22 MR. EDWARDS: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. EDWARDS:

25 Q Judge DeBerry, just regarding the shell cases, was there

1 any meritorious objection that you saw to these shell casings
2 coming into evidence?

3 A Not that I can recall.

4 Q So even if the shell casings were moved, would that not
5 have been a matter for the jury of -- the weight to get that
6 evidence?

7 A That's ultimately what -- what it became was a matter for
8 the jury.

9 Q And it certainly wouldn't have been a basis for a
10 directed verdict, correct?

11 A No.

12 Q Or a mistrial?

13 A I wouldn't think so.

14 Q And your theory of this case was essentially that the
15 police did not do a good investigation and that they didn't
16 deserve a conviction, correct?

17 A Well, that's all I had to go on. I mean, I met with Mr.
18 Hayes on I don't know how many occasions, but a lot. And we
19 tried, you know -- the facts were, is that, you know, they
20 were going to -- the codefendants were going to come and tell
21 the jury what they ultimately told them. And it was going to
22 be up for the jury to either to believe them or not believe
23 them.

24 Q So it came down to the credibility of the codefendants?

25 A Yeah. And throughout the trial, I just picked up any

1 defense that I could, it was -- like the shell casings, the
2 trajectory. And, you know, there was something about a pair
3 of shoes. I mean, it was -- it was a difficult proposition
4 for me to try to do what I could for my client because there
5 just -- you know, there wasn't a lot to work with.

6 Q And one of these, testifying codefendants was named Jamie
7 Williams. Is that correct?

8 A Yeah.

9 Q Do you recall cross-examining Mr. Williams about prior
10 inconsistent statements that he had given to police?

11 A You know, I assume I did. I don't recall. I haven't
12 reread the transcript.

13 MR. EDWARDS: Okay. That's all I had, Your Honor.

14 THE COURT: All right. Mr. Waller?

15 MR. WALLER: Nothing further, Your Honor.

16 THE COURT: Thank you, Judge.

17 THE WITNESS: Thank you.

18 THE COURT: Have a good day.

19 THE WITNESS: Yes, sir.

20 MR. WALLER: Judge, I have no objection to Judge DeBerry
21 being released from his subpoena.

22 THE COURT: All right. Have a good day, sir.

23 THE WITNESS: Thank you. Y'all take care.

24 MR. WALLER: Your Honor, the applicant will call Shaheed
25 Hayes.

1 THE COURT: Okay.

2 THE DEPUTY CLERK: Mr. Hayes, if you'll put your left
3 hand on the Bible and raise your right hand as much as you
4 can.

5 SHAHEED HAYES, after being duly sworn, testified as
6 follows:

7 THE DEPUTY CLERK: All right. Have a seat.

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 Q Good morning, Mr. Hayes. How are you today?

11 A Fine. And yourself?

12 Q Doing well. If you could, make sure you speak loudly
13 enough for -- our court reporter can take down everything you
14 say. Just make sure you're close enough to that microphone
15 where she can hear you.

16 A Okay.

17 Q All right. Mr. Hayes, I want to kind of take you back in
18 time to when you were first arrested on these charges. Do you
19 recall that day?

20 A Yes, sir.

21 Q Okay. When you were first arrested, what all were you
22 charged with?

23 A I was charged with a lot of charges.

24 THE COURT: Sir, I can't hear a word you're saying.

25 A Murder, attempted murder, four counts of attempted



1 murder, shooting in dwelling, and a possession of a firearm.

2 Q Okay. So everything that you went to trial with, you
3 were charged with on day 1?

4 A Yes, sir.

5 THE COURT: Hold on, sir. Can you move that microphone
6 closer? I'm having trouble hearing now. Better. Much
7 better. I'm sorry, Mr. Waller.

8 MR. WALLER: No. Thank you, Your Honor.

9 Q All right. So, Mr. Hayes, when you were -- when you were
10 first arrested, who was your lawyer?

11 A Ms. DeBerry.

12 Q Okay. So he was your lawyer for the entire time you were
13 awaiting trial?

14 A Uh-huh.

15 Q Okay. Is that a yes?

16 A Yes, sir.

17 Q Okay. Were you -- did you make bond or were you denied
18 bond in the detention center the entire time?

19 A I finally got a bond, like, a couple years later.

20 Q Okay. So how long were you in the detention center
21 before you were able to bond out?

22 A No, I didn't get -- my bond was August 1st.

23 Q Okay.

24 A Yeah.

25 Q Were you able to make that bond or were you --

1 A No. They took it back from it because they said, hey,
2 trial is next week.

3 Q Okay. So your bond was right before trial, so it didn't
4 even make any sense to come out?

5 A Uh-huh.

6 Q Okay. All right. All right. When you and Mr. DeBerry
7 were able to meet about your case, how long after you'd been
8 arrested were you all able to first meet?

9 A On my first bond hearing, like, six months later.

10 Q Okay. At that point in time, do you know if he had
11 discovery in your case or was he still waiting on things or
12 what did he have as far as evidence?

13 A He was still waiting.

14 Q Okay. What did y'all talk about?

15 A Basically telling me I wouldn't get no bond, I might as
16 well go ahead and wait.

17 Q Okay. And that was based on the charges or do you know
18 what that was based on?

19 A Based on my charges.

20 Q Okay. Did y'all have a chance to talk about your
21 constitutional rights?

22 A No.

23 Q Okay. Did y'all have a chance to discuss, you know,
24 going to trial or any of the evidence in your case at that
25 point?

- 1 A Yeah, the week before.
- 2 Q The week before?
- 3 A My trial.
- 4 Q The week before your trial?
- 5 A Uh-huh.
- 6 Q Okay. When were you able to see some of the evidence in
- 7 your case?
- 8 A When I got my motion, my Rule 5.
- 9 Q Okay. And when was that?
- 10 A I don't remember, like, probably, like, a year before
- 11 trial or something like that.
- 12 Q Okay. So did y'all have a chance to discuss any of that?
- 13 A Like sit down and top?
- 14 Q Yes, sir.
- 15 A No, sir.
- 16 Q Okay. How many times do you think you met with, Mr.
- 17 DeBerry?
- 18 A About six times.
- 19 Q Okay. What did y'all talk about when you met?
- 20 A Been court -- I'm going to court every time we met except
- 21 for the week before trial and one time in Marlboro County.
- 22 Q Okay. So y'all met when you were brought over to the
- 23 courthouse for something?
- 24 A Yeah.
- 25 Q Okay.

1 A For bond hearings and stuff.

2 Q Okay. All right. At what point did you make the
3 decision that you were going to go to trial?

4 A I've been asking for a speedy trial. I've been wanting
5 to --

6 Q Okay. So from basically the beginning?

7 A Day 1, yeah.

8 Q Okay. All right. What did you and Mr. DeBerry talk
9 about as far as what a trial would consist of or what your
10 strategy was? You know, what did y'all talk about as far as
11 getting ready for trial?

12 A That week he had asked me, like, where I was and what I
13 was doing. I told him. And he told me his strategy. And
14 that was it.

15 Q Okay. What was his strategy?

16 A He -- I don't remember. I don't remember.

17 Q Okay. What did you think the strategy was going to be
18 when you went to trial?

19 A Him telling them where I was.

20 Q Okay. He thought you had an alibi defense?

21 A Yes.

22 Q Okay. Did you -- what information did you give him as
23 far as to investigate that out by defense?

24 A I told him everything, like, what I was doing that day
25 and who I was with that day.

1 Q Okay. What did he -- what was his response?

2 A I told him to call him to call me for a witness or
3 putting me on -- on the stand, but he said he'd rather have
4 his closing arguments. He felt like it was the best that he
5 have a closing arguments for me to take the stand.

6 Q Okay. So did y'all talk about if you don't put any
7 evidence in, then you would get to have the last closing
8 argument? Is that what you're referring to?

9 A Something like that.

10 Q Okay. At what point did you learn that Mr. Williams and
11 Mr. Bethea were going to testify against you and Mr. Smith?

12 A I always knew that, but they was -- but Mr. Williams, me
13 and him was supposed to go to trial that week, but they came
14 up with that statement, the notes. And I guess that's when he
15 changed his mind.

16 Q Okay. So you always knew Mr. Bethea was going to testify
17 against everyone else at least?

18 A Uh-huh.

19 Q Okay. Did you have a chance to talk to Mr. DeBerry about
20 that?

21 A About what, about --

22 Q About one of your codefendants testifying against you
23 cooperating with law enforcement.

24 A No.

25 Q Okay. What did y'all -- what did y'all discuss?

1 A I would ask them basically, like, how could they use him
2 to testify on me because he got a mental health background and
3 I wanted to see the records. But he told me I couldn't see
4 the record because that's his rights.

5 Q Okay.

6 A So I had to -- left that alone. I just left that alone.

7 Q Okay, so y'all discussed Mr. Bethea's background and
8 fitness to testify?

9 A Yes.

10 Q Okay. All right. When did you first learn that some of
11 the evidence in the case had been mishandled?

12 A Trial.

13 Q At trial?

14 A Uh-huh.

15 Q Okay. You testified a minute ago that you had -- you
16 received a copy of Rule 5 discovery materials about a year
17 before your trial?

18 A Uh-huh.

19 Q Okay. Do you recall -- was that a yes? I'm sorry.

20 A Yes, sir. Yes.

21 Q Do you recall if any of the information that you reviewed
22 in that Rule 5 made any note or made any mention that some of
23 the shell casings had been moved out of the roadway?

24 A No.

25 Q Okay.

1 A No.

2 Q Okay. Did you have a chance during the trial to talk
3 with Mr. DeBerry during breaks or after the day was over?
4 What was that like as it -- as the trial went on?

5 A When I first -- when I first heard about the tampering, I
6 whispered to him, like, you can't do nothing about that. So
7 after -- after he finished with Ofc. Pike, the first officer,
8 I asked him can we do something about it? He was like -- what
9 did he say -- I'm trying to think of what he had said. I
10 don't -- how he said it, but I ain't known about it until that
11 first day.

12 Q Okay. Were you able to -- that was after the first
13 witness, Ofc. Pike. After that, were you able to discuss with
14 Mr. DeBerry how y'all wanted to proceed with that issue?

15 A I mean, had had -- like, I couldn't do nothing.

16 Q Okay. All right. Mr. Hayes, what do you recall about
17 the jurors and the jury I guess as a whole during the trial?
18 Were there any incidents that you recall?

19 A Yeah, sleeping.

20 Q Okay. When you say sleeping, what do you mean?

21 A I mean, at first I thought she was just nodding off,
22 like, maybe, you know, but it was all during my whole trial,
23 the same person --

24 Q Okay.

25 A -- during my whole trial.

1 Q That was -- who was that that was --

2 A Rachel.

3 Q Okay. When you say Rachel, was it one of the jurors?

4 A Yeah.

5 Q Okay. All right. Did you discuss that with Mr. DeBerry?

6 A Yeah. The first thing I -- the judge had put him on
7 point about it.

8 Q When you say -- put who on point?

9 A Mr. DeBerry, everybody.

10 Q Okay. The judge made a mention to everyone?

11 A To everybody.

12 Q Okay. All right. Anybody else that you -- that you
13 noticed having issues?

14 A Yeah. Well. Diamond Brown, but, I thought Rachel's name
15 was Diamond Brown.

16 Q Okay.

17 A So that's how that came about.

18 Q Okay. So you got two people mixed up? Is that --

19 A Yeah.

20 Q Is that right?

21 A I got two people mixed up.

22 Q Okay. All right. Mr. Hayes, what was your
23 understanding -- I guess as the trial progressed, did y'all's
24 strategy change at all?

25 A No.

1 Q Okay. Going into the trial, you weren't aware of any
2 issues with the investigation; is that right?

3 A No. He was aware because I asked him about the tampering
4 that first day we heard about it. Me and my codefendant, he
5 said him and his lawyer got all that information. But he said
6 he knew about it, but he ain't brought to my attention about
7 it.

8 Q Okay. So he told you he knew about it before the trial
9 started?

10 A No. He -- no. After that same day, after Ofc. Pike
11 testified and I mentioned it to him, we had a discussion with
12 my codefendant's lawyer, my codefendant, me, and my lawyer.
13 We were talking about it. They said they knew about it. He
14 said he knew about it, but I didn't know about it.

15 Q Okay. All right. After you realized that there were
16 some potential issues, did your strategy or what you thought
17 the strategy was change at all?

18 A No.

19 Q Okay. Did you know if your lawyer's strategy changed at
20 all?

21 A No, sir.

22 Q Okay. Mr. Hayes, I believe I've asked you all the
23 questions that I have for you this time. Is there anything
24 you think I've left out that Judge McFadden needs to be aware
25 of of Mr. DeBerry's representation of you or how your trial

1 went?

2 A Yeah. I feel like that he was ineffective because he
3 should have asked for a suppression hearing before my trial
4 due to the fact that the only evidence to prove my innocence
5 or guilt wasn't there at the trial as part of my case. They
6 resubmitted it 33 days before my trial. I didn't have a
7 complete chain of custody. I feel like all my rights been
8 broken during the beginning of my trial to the end of the
9 trial, broke.

10 Q Okay. When you say resubmitted, you mean resubmitted for
11 testing, resubmitted for testing?

12 A Yeah, fingerprint analysis.

13 Q Okay. Did you ever have a chance to discuss with Mr.
14 DeBerry the chain of custody for any of the evidence in your
15 case?

16 A No.

17 Q Okay. Was it something you were worried about?

18 A No, I didn't --I figured -- I just found out at trial
19 about all of it.

20 Q Okay.

21 A I ain't know about none of it.

22 Q Okay. Did you all ever discuss a suppression hearing?

23 A No.

24 MR. WALLER: Okay. Okay. Mr. Hayes, please answer any
25 questions the State has for you.

1 THE COURT: Yes, sir.

2 MR. EDWARDS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. EDWARDS:

5 Q Mr. Hayes, I don't really have much for you. I believe
6 you testified a minute ago that you did receive the discovery
7 in this case a year before trial?

8 A Yes, sir.

9 Q And that you discussed the evidence with Mr. DeBerry.
10 Did you discuss the -- how the trial might go with your lawyer
11 leading up to trial?

12 A You're talking about his strategy?

13 Q Well, just what the evidence was against you. You said
14 that you were aware that Mr. Bethea was going to testify?

15 A Yes.

16 Q So you knew about that all along?

17 A Yeah, I knew about that.

18 Q You would agree that that really was the most important
19 evidence of the case, was Mr. Bethea's testimony that you were
20 the one that was doing the shooting?

21 A No. No, sir.

22 Q You don't think that was the most important evidence in
23 the case?

24 A No, sir.

25 Q Okay. Well, regardless, you knew that he gave a

1 statement to police. And that's how y'all got arrested in the
2 first place, right, is because Mr. Bethea gave a statement to
3 police shortly after this happened?

4 A Yes, sir.

5 Q And so you were aware of that all -- the whole time?

6 A That he will testify against me?

7 Q Right.

8 A Yes, sir.

9 Q Okay. And, How many times did you say total you met with
10 your lawyer?

11 A About seven times.

12 MR. EDWARDS: Seven times. That's all I have, Your
13 Honor.

14 THE COURT: Mr. Waller?

15 MR. WALLER: I have nothing further, Your Honor.

16 THE COURT: All right, sir. Thank you very much, sir.
17 Thank you.

18 MR. WALLER: Your Honor, the applicant will call Rachel
19 Williams.

20 THE DEPUTY CLERK: Place your right hand on the Bible and
21 raise your right hand.

22 RACHEL WILLIAMS, after being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. WALLER:

1 Q Good morning, Ms. Williams. How are you today?

2 A I'm good.

3 Q And Ms. Williams, you are under a subpoena to be here
4 today; is that right?

5 A Yes, sir.

6 Q Okay. And thank you for being here. I know you've been
7 subpoenaed before, and I do apologize for that.

8 Ms. Williams, you were a juror at this trial; is that
9 right?

10 A Yes, sir.

11 Q Okay. While you were acting in your capacity as a juror,
12 were you awake for the entire time?

13 A I don't recall.

14 Q You don't recall? Okay. Do you recall being asleep at
15 any point?

16 A I don't -- I don't recall.

17 Q Okay. All right. Ms. Williams, the trial of this case
18 started on August 6th of 2014 and went for a couple days.

19 Where were you working at the time?

20 A At Walmart.

21 Q Okay. What shift did you work?

22 A It was, like, swing shifts.

23 Q Okay. What hours did you work, what time?

24 A Well, I had a open schedule, so it could be anytime.

25 Q Okay. Do you recall whether you worked any night shifts

1 or late shifts during the trial of this case?

2 A I'm not sure.

3 Q Okay.

4 A I don't know.

5 Q Ms. Williams, do you recall signing an affidavit on July
6 19th of 2016?

7 A No, sir.

8 Q You don't recall that?

9 A No, sir.

10 Q Okay.

11 MR. WALLER: Beg the Court's indulgence, Your Honor?

12 THE COURT: Yes, sir.

13 MR. WALLER: And Your Honor, there is an Exhibit B
14 attached to the back of Mr. Hayes' application. I don't have
15 a hard copy of that with me, but I'm going to show it on here
16 and counsel's aware of that.

17 BY MR. WALLER:

18 Q Ms. Williams, is that your signature?

19 A Yes, sir.

20 Q It is your signature?

21 A Yes, sir.

22 Q Okay. Let me -- Ms. Williams, I'm going to ask that you
23 see if -- ask that you read that and see if that refreshes
24 your memory.

25 A (Indiscernible).

1 Q Just read it to yourself.

2 A Okay.

3 Q Sorry. Does that refresh your recollection?

4 A Yes, sir.

5 Q Okay. So after having read that, do you recall saying
6 that you were sleeping during portions of the trial?

7 A Yes, but not the whole trial. Probably was nodding off,
8 but I mean, I wasn't asleep where I couldn't, you know, hear
9 anything.

10 Q Okay.

11 MR. WALLER: Your Honor, I believe it's already part of
12 the record, it's contained in Mr. Hayes' application, but I
13 would just offer the affidavit attached as Exhibit B as
14 Applicant's Number 1. Her recollection is unclear. But it is
15 a self-authenticating document, I believe. So Your Honor, I'd
16 just offer it as Applicant's Number 1.

17 THE COURT: Any objection?

18 MR. EDWARDS: I don't object, Your Honor.

19 THE COURT: Okay. In.

20 (WHEREUPON, Applicant's Exhibit 1 was received into
21 evidence.)

22 MR. WALLER: Nothing further, Ms. Williams. Thank you.

23 THE COURT: All right, sir. Cross?

24 MR. EDWARDS: Just a minute.

25 CROSS-EXAMINATION

1 BY MR. EDWARDS:

2 Q How are you?

3 A Good.

4 Q Can you tell me who contacted you about giving this
5 affidavit?

6 A I think her name was Shelly Williams.

7 Q Shelly Williams?

8 A Yes, sir.

9 Q Do you know who that is or --

10 A I think she's a attorney. I'm not sure what she is.

11 Q Okay. Do you know Mr. Hayes?

12 A I remember. I don't know him, but I --

13 Q Outside of trial. Yu don't know him outside of trial
14 though?

15 A No, sir.

16 MR. EDWARDS: I have no further questions.

17 THE COURT: Mr. Waller?

18 MR. WALLER: Nothing further for this witness, Your
19 Honor.

20 THE COURT: You may step down, ma'am. Thank you.

21 MR. WALLER: Thank you, Ms. Williams.

22 Your Honor, I would -- another witness that I believe was
23 subpoenaed by the Marion County Sheriff's Department, I would
24 call Diamond Brown. I don't believe she's here. I would ask
25 that the, bailiff call her name in the lobby.

1 THE COURT: All right.

2 THE BAILIFF: What was that name?

3 MR. WALLER: Diamond Brown.

4 THE BAILIFF: Diamond?

5 MR. WALLER: Yes, ma'am. Diamond A. Brown.

6 THE BAILIFF: No response.

7 THE COURT: All right, sir.

8 MR. WALLER: Your Honor, as with Ms. Williams, there was
9 Exhibit A to Mr. Hayes' application was an affidavit of
10 Diamond Brown. It is sworn and notarized. Your Honor, I
11 would offer that as Applicant's Number 2. I believe it is a
12 self-authenticating document. So I would just offer that at
13 this time.

14 THE COURT: State?

15 MR. EDWARDS: I object to that. It's hearsay.

16 THE COURT: All right, gentleman. I'll take that
17 objection under advisement. Let us proceed.

18 MR. EDWARDS: All right. Your Honor, the applicant
19 called Jamie Williams.

20 Judge, and if I may, just for the record, as far as the
21 State's objection, I would contend that that Ms. Brown is an
22 unavailable witness. We certainly attempted to serve her with
23 a subpoena and have attempted that on numerous occasions for
24 numerous proceedings. I can -- will be happy to provide the
25 Court with affidavits of nonservice from previous attempts, if

1 the Court would like. But I would contend that she is an
2 unavailable witness and would be an exception as to hearsay
3 statement.

4 THE COURT: Anything from the State?

5 MR. EDWARDS: No, Your Honor.

6 THE COURT: All right. I'll let you know.

7 MR. WALLER: Thank you, Your Honor.

8 THE COURT: Ready, sir?

9 THE DEPUTY CLERK: Place your left hand on the Bible and
10 raise your right hand as much as you can.

11 JAMIE WILLIAMS, after being duly sworn, testified as
12 follows:

13 THE DEPUTY CLERK: Okay. Have a seat.

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q Good morning, Mr. Williams. How are you today?

17 A I'm all right. How are you?

18 Q Doing well. Thank you for asking me. All right. Mr.
19 Williams, you were, charged along with Mr. Hayes, Mr. Smith,
20 and Mr. Bethea. Is that correct?

21 A Yeah, that's correct.

22 Q Okay. And ultimately, you testified at the trial; is
23 that right?

24 A Yeah.

25 Q Okay. One of the things you testified about was any plea



1 offers or anything that had been made to you at the time of
2 the trial?

3 A Yeah.

4 Q Okay. You testified that you had not been made any plea
5 offers at the time?

6 A Yeah.

7 Q Okay. Was that correct?

8 A That's correct.

9 Q Okay. All right. You also testified that Mr. Smith and
10 Mr. Hayes were involved in the offense. Is that correct?

11 A Yeah.

12 Q Okay.

13 A Well, I said what -- what -- all right, what -- what are
14 we speaking of?

15 Q Well, you testified at the trial that Mr. Blaton Smith
16 and Mr. Shaheed Hayes were involved in the shooting.

17 A Okay. So what charges are bringing up on me again?

18 Q No, sir. I'm asking you that -- about your testimony
19 that you gave at that trial.

20 A Oh, okay. All right. Yeah.

21 Q That's -- you recall your testimony?

22 A Yeah.

23 Q Okay. Is that still your testimony?

24 A I mean, what -- what's the delinquency? Why are we here
25 is what I'm asking you. Okay. You say he ain't do nothing or

1 something like that? So -- I mean, because I will -- I mean,
2 what's going on? Y'all ain't even let me know what's going on
3 in the back.

4 Q Mr. Williams, was the testimony that you gave at the
5 trial --

6 A What I'm asking you is what charges will I be picked on
7 upon right here? Like, what I'm going to be charged with,
8 perjury? Like, what am I going to be charged with?

9 Q Mr. Williams, I can't answer questions for you. You
10 have -- you have counsel, okay? You have your own attorney.

11 A All right. I'm asking you. Would I have would I have
12 charges picked up upon this witness testimony or whatever?

13 MR. WALLER: Your Honor, would it be -- would it be
14 appropriate to pause and let him speak with his counsel?

15 THE COURT: Yes.

16 THE WITNESS: Never mind.

17 (Pause.)

18 (Recess.)

19 THE COURT: Mr. Waller?

20 MR. WALLER: Thank you, Your Honor. May it please the
21 Court?

22 RESUMED DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q All right. Mr. Williams, I asked you earlier if the
25 testimony that you gave at the August 2014 trial was true and

1 accurate.

2 A On my. behalf what I did --

3 Q Yes, sir.

4 A -- what I did, what I said I did, yeah, it was true.

5 Q Okay.

6 A I said what I did. Yeah. At the end of the day, right,
7 my case was -- my murder was dropped, the discharge of a
8 firearm into the dwelling, but it goes like this right here.
9 Evidently I will -- you have your client here. I'm in prison
10 also. What I got to do?

11 Q All right. Mr. Williams, you just said your testimony
12 regarding what you did was true. Do you mean your whole
13 testimony? Do you mean your actions? The testimony that you
14 gave regarding Shaheed Hayes, was that true and accurate back
15 in 2014?

16 A Regarding he ain't -- he ain't -- I told y'all
17 (indiscernible) -- I told y'all the whole truth. Y'all act
18 like y'all ain't hear me. So --

19 MR. WALLER: Okay. Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 Q Mr. Williams, I'm showing you -- I'm going to show you
23 that and ask if that is your signature there.

24 A I'm going to read it first now.

25 Q Well, Mr. Williams, I asked if it was your signature.

1 A Oh, yeah. That's me.

2 Q Okay. Do you recall giving and signing this statement?

3 A For perjury, my -- my -- my sister was told that I just
4 have to plead to perjury due to the fact that my murder case
5 is dismissed. I commit perjury and I'll plead perjury. I
6 will plead perjury. I don't care.

7 Q Okay. So you recall signing this statement?

8 A I just said I signed it.

9 Q All right. Do you recall the contents of the statement?

10 A Let me read it again. All right. I'm reading. But
11 explain to me what are the consequences of perjury.

12 Q Mr. Williams, I can't answer any questions for you.

13 A Okay.

14 Q If you need to talk to your lawyer again, we can take
15 another break and you can talk to your lawyer.

16 A I don't understand.

17 THE COURT: Just let him talk to his lawyer again.

18 THE WITNESS: Yeah. You got to break down metaphors or
19 something.

20 MR. RICHARDSON: Sir, I explained to him the consequences
21 of perjury, what perjury entails. I've explained this. This
22 would be the third time now would.

23 THE COURT: I understand.

24 MR. RICHARDSON: It would be my understanding.

25 MR. EDWARDS: Okay? It would be my. I'll explain one

1 more time what perjury is.

2 (Pause.)

3 THE COURT: Mr. Waller?

4 Q All right, Mr. Williams. You testified that you did sign
5 this statement?

6 A Yeah, I signed it. Here you go.

7 Q You've read this now?

8 A Yeah, perjury, yeah. Perjury is a committed -- yeah, I
9 read it.

10 Q Okay. Do you recall the contents of the statement that
11 you just signed?

12 A I mean, all I'm going to do, right, is what that paper
13 says. That's all I'm going to do. That's all I was required
14 to do as a witness on the stand. I am a witness on that
15 paper. So that's what I am on that paper. And you're the
16 lawyer. So I'm a witness. That's what it say on the paper,
17 right? So that's what I am.

18 MR. WALLER: Your Honor, I offer this as Applicant's
19 Number 3. He has acknowledged that he did sign it. He has --

20 MR. EDWARDS: No objection.

21 THE COURT: Without objection. In.

22 (WHEREUPON, Applicant's Exhibit No. 3 was received into
23 evidence.)

24 THE WITNESS: You the lawyer, right? This is witness,
25 right?

1 MR. WALLER: I have no further questions of this witness.

2 THE COURT: Do you need to cross, sir?

3 MR. EDWARDS: No, Your Honor.

4 THE COURT: Okay. Okay. Thank you, sir.

5 Mr. Waller?

6 MR. WALLER: Beg the Court's indulgence?

7 THE COURT: Yes, sir.

8 MR. RICHARDSON: Your Honor, I believe that was -- I've
9 fulfilled my civic duties. That's my B.S. in psychology.
10 Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 Mr. Waller?

13 MR. WALLER: No further witnesses from the applicant,
14 Your Honor.

15 THE COURT: All right. And from the State?

16 MR. EDWARDS: The State has no witnesses, Your Honor.

17 THE COURT: Okay.

18 MR. WALLER: Your Honor, I would just offer some very
19 brief argument.

20 THE COURT: Sure, by all means.

21 MR. WALLER: Certainly, Your Honor has paid close
22 attention here today and has a copy of the trial transcript as
23 well as the other documents filed in the case.

24 Your Honor, I would -- I would cite State v. Hurd. It's
25 H-U-R-D, 480 S.E.2d 94. It's 1996 Court of Appeals case

1 regarding witnesses sleeping.

2 Judge, as it relates to the effectiveness of counsel by
3 Judge DeBerry, I would argue that there were several instances
4 of deficiencies, Your Honor, the first being the issue with
5 the shell casings. Judge, I don't believe that there was
6 proper foundation laid for those. If the shell casings are
7 moved and then photographed in a new location, that's
8 certainly not accurate as to where they were when discovered
9 by law enforcement. If there's not a complete chain of
10 evidence because they were moved, that is certainly grounds
11 for suppression as well. None of those were made. In fact,
12 they were admitted without objection.

13 The second thing, regarding Judge DeBerry's
14 representation revolves around the vouching for witnesses.
15 Certainly we looked at one instance during the testimony of
16 Investigator Watson. I would ask the Court to also look at
17 the solicitor's closing arguments. I believe I cited those
18 page and line numbers as well.

19 Judge, there were one, two, three, four, five, six
20 instances of vouching by either the witness or the solicitor
21 in argument, none of which were objected to. I believe the
22 testimony from Judge DeBerry was that it would need to be, an
23 extreme example during argument to draw an objection. Judge,
24 actually the closing argument was mentioned, was referenced in
25 the, applicant's appeal as a footnote which was on the

1 credibility of Mr. Bethea to testify. But it was -- I believe
2 it was so egregious, the vouching during the argument that it
3 was mentioned as a footnote during the appeal. So I would ask
4 Your Honor to take a look at those two instances. Certainly
5 the shell casings and the vouching were big components of the
6 case.

7 And, Judge, I think really this case came down to two
8 codefendants testified against Mr. Hayes and Mr. Smith.
9 You've seen the testimony of one here today. I don't think
10 that was dissimilar to his testimony at trial. And then, Your
11 Honor, if you look to the transcript as well -- and I believe
12 there was a motion regarding Mr. Bethea -- as well as some of
13 the appellate documents, there were certainly issues with Mr.
14 Bethea's mental health history that may have impacted his
15 credibility or his ability to testify.

16 Your Honor, I think given those things, the likelihood of
17 a different outcome in this case where the investigation was
18 so flawed is certainly very high. And so we'd ask you to
19 consider all those things and vacate Mr. Hayes' conviction for
20 a new trial.

21 THE COURT: And from the State?

22 MR. EDWARDS: Thank you, Your Honor.

23 As to the sleeping witness, Ms. Rachel Williams,
24 testimony that she gave today was very different from what is
25 in that affidavit. The affidavit, she said, you know, she

1 dozed off many times, had her head down. The judge had to
2 tell her to wake up. I didn't see any of that in the
3 transcript. And she didn't testify to any of that today. She
4 said today, I believe, that she basically understood what was
5 going on during trial. And the jury was polled at the end of
6 this case. On page 698 of the record, she was asked is this
7 your verdict. And she said it was. And so I don't think this
8 would rise to the level of after discovered evidence. It's
9 really not prejudicial to Mr. Hayes.

10 As to the claims of ineffective assistance, number 1, the
11 shell casings, these were admissible as evidence. Whether
12 they were moved from their original location in the roadway to
13 the side of the road, that's one thing. That goes to the
14 weight of the evidence. That's for the jury to consider. But
15 there was -- there was no basis for an objection to keep them
16 out entirely, certainly not for a suppression motion.

17 And I will note that Mr. DeBerry brought this issue up
18 many times during trial. He cross-examined the officers very
19 effectively about this. And he argued in his closing argument
20 as well as part of his strategy to show that the investigation
21 was flawed in this case. And I think he provided effective
22 assistance.

23 As far as the -- I believe Mr. Waller referred to it as
24 vouching, the application that's referred to as bolstering on
25 page 230 of the record, I believe, one of the witnesses, one

1 of the police officers says that, Mr. Willie Bethea, who was
2 really the crucial witness in this case, the credible witness
3 in this case, he says that he was apologetic, sincere, and
4 remorseful. And I think that was the extent of the comment
5 that he made. And I don't believe that rises to the level of
6 bolstering. And it certainly doesn't rise to the level of
7 prejudice such that it changed the result of this trial.

8 As far as the vouching during the closing argument, that
9 was not in Mr. Hayes's application. And I don't recall any
10 specific instances that were pointed out to this Court. And
11 so I'm not exactly sure how to argue against that, but I would
12 just have to rest on the transcript in that regard, Your
13 Honor.

14 And finally, as to Mr. Williams's testimony, it'd be hard
15 to imagine a less credible witness than Mr. Williams. And he
16 didn't really testified anything just now. He acknowledged
17 that was his signature on this affidavit. The contents of the
18 affidavit, I would argue, Your Honor, are not admissible
19 because it's at most a prior inconsistent statement. I didn't
20 cross examine Mr. Williams. I haven't -- I didn't argue to
21 this Court ahead of time that he was lying. And I don't think
22 that would be admissible as substantive evidence. But in any
23 case, Mr. Williams is not a credible witness. And this Court
24 should not give any weight to his testimony.

25 And on that same ground, I would just direct the Court to

1 State v. Porter which is 269 S.C. 618. It talks about
2 recantation testimony as being generally unreliable and should
3 always be subject to close scrutiny. And it collects some
4 other cases in that as well, Your Honor. And, I would just
5 rest on the transcript for the rest of the allegations. Thank
6 you.

7 MR. WALLER: Just very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WALLER: I would -- regarding the affidavit of Mr.
10 Williams, I would just point out that there was no objection
11 to it when offered. So I don't know how it wouldn't be
12 admissible.

13 Judge, I don't believe that the line that just read to
14 you of the transcript was the complete line. On page 230 of
15 the transcript, the full answer is Mr. Willie Bethea was very
16 cooperative. Out of all the codefendants involved in this, he
17 was probably the only person that I can give an honest opinion
18 of 18 years of law enforcement to be sincere, apologetic, and
19 remorseful for what happened. That's a far cry from just that
20 very last half of the last sentence.

21 And then the last thing, Your Honor, and myself and the
22 Attorney General's Office will get together because I noticed
23 that they referenced the record -- I think it was 698 of the
24 record. And I think he's looking at the transcript, and
25 that's what I was looking at too. There is a record on appeal

1 that is much shorter than that. So if we could get together
2 and then give you proper page numbers for that -- I'm not sure
3 what copy you have, just to make sure what you're looking at
4 that things we pointed out because I don't believe the record
5 goes beyond sure the high five hundreds.

6 THE COURT: I would appreciate that a lot.

7 MR. WALLER: Yes, sir.

8 THE COURT: It saves me a lot of time.

9 MR. WALLER: Yes, sir. Nothing further, Your Honor.

10 Thank you.

11 THE COURT: All right. Gentlemen, you all have been a
12 pleasure to work with. You always are. I rarely -- well, I
13 have done it, but not on this one. I won't rule from the
14 bench on this because there's what you just said. I need to
15 see those pages and think about it. So bear with me.

16 And now may I ask you all to step in the back so we can
17 discuss the other cases pending this week, please?

18 MR. WALLER: Thank you, Your Honor.

19 (End of Transcript of Record)

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Florence)

I, MICHAEL DRAKE, a court-approved transcriber, 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 Florence County,
South Carolina, on the 18th day of April, 2022.

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

February 9, 2024



Michael Drake, CER-513, CET-513
Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
Shaheed Hayes, #329512,	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

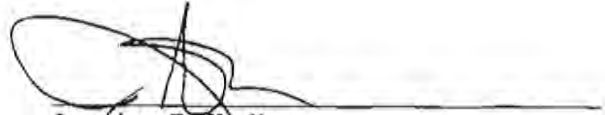
2025 MAR 21 P 1:00 PM
 MARION COUNTY CLERK
 C/A No. 2017-CP-33-029
 MOTION TO BE RELIEVED AS COUNSEL

Counsel for the Applicant requests the Court relieve him as counsel of the above-named Applicant, based upon:

1. The Applicant filed a Post Conviction Relief Application on March 22, 2017, in Marion County following his conviction for Murder, Discharging a Firearm into a Dwelling, Possession of a Weapon During the Commission of a Violent Crime, and four counts of Attempted Murder.
2. Applicant was appointed counsel in this matter pursuant to Rule 608 SCACR of Jonathan D. Waller by this Court.
3. It has come to the attention of Applicant's counsel that a conflict of interest has arisen and that further representation cannot be continued. Counsel was previously appointed and also currently representing Applicant's co-defendant on his own PCR, stemming from the same original criminal charges. While the conflict was initially waived, Mr. Hayes withdrawn his waiver of the conflict of interest. Additionally, he has received information and communication from Mr. Hayes that render his representation compromised as a non-waivable conflict of interest has arisen between the two applicants and it is not possible to continue.

4. Further, the Attorney-Client relationship between the undersigned counsel and Applicant has degraded to the extent that counsel believes that a conflict of interest exists between counsel and Applicant.
5. Counsel for the Applicant requests the Court schedule a hearing on this motion, to relieve him of the Court's earlier order appointing him as counsel in this case, and to appoint substitute counsel to continue the representation of Applicant.

Respectfully,



Jonathan D. Waller
Waller Law Group
SC Bar No.: 76290
P.O. Box C
Aiken, SC 29802
(803) 200-2104
Attorney for Applicant

March 18, 2025

STATE OF SOUTH CAROLINA
COUNTY MARION

Shaheed Hayes, #329512,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2017-CP-33-0219

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED

2026 APR -7 A 7:46

MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:

Hon. George M. McFaddin, Jr.
Jonathan D. Waller, Esq.
Joshua A. Edwards, Esq.
D. Russell Barlow II, Esq.

Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Steven H. DeBerry, IV
April 18, 2022
Michael Drake

This matter comes before the Court by way of Shaheed Hayes's (Applicant) application for post-conviction relief (PCR) filed on March 22, 2017. On June 26, 2017, Respondent filed its Return and Partial Motion to Dismiss and Motion to Strike. On August 31, 2021, Applicant filed amendments to his PCR application.

On April 18, 2022, an evidentiary hearing was held before the Honorable George M. McFaddin, Jr., at the Florence County Courthouse. Applicant was present and represented by Jonathan D. Waller, Esquire (PCR Counsel). Assistant Attorney Generals Joshua A. Edwards and D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on all allegations within his original and amended application. In support of these claims, Applicant testified on his own behalf and presented the testimony of Rachel Williams and his co-defendant, Jamie Williams. Applicant also presented the testimony of the Honorable H. Steven DeBerry, IV (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Marion County Clerk of Court. In February 2013, the Marion County Grand Jury indicted Applicant for Murder, Discharging a Firearm in a Dwelling, Possession of a Weapon During the Commission of a Violent Crime, and four counts of Attempted Murder (2013-GS-33-0097). Trial Counsel represented Applicant. Twelfth Circuit Solicitor E. L. Clements, III, prosecuted the case. Joshua Bailey, Esquire, represented Applicant's co-defendant, Blaton Smith.

On August 6-8, 2014, Applicant proceeded to a joint jury trial before the Honorable D. Craig Brown. The jury found both Applicant and his co-defendant guilty as indicted on all charges. Judge Brown sentenced both Applicant and his co-defendant to life imprisonment for murder, ten (10) years for discharging a firearm in the dwelling, five (5) years for possession of a weapon during the commission of a violent crime, and thirty (30) years for each count of attempted murder to be served consecutively.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense perfected the appeal, raising the following issue:

The trial judge erred in refusing to allow cross-examination of a witness, who had been diagnosed with schizophrenia, concerning the witness smoking marijuana immediately prior to giving a statement inculcating [Applicant] to police and the witness admitting to a psychiatrist that marijuana made him delusional.

The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Hayes, Op. No. 2016-UP-317 (S.C. Ct. App. filed June 22, 2016). The Remittitur was returned to the circuit court on July 15, 2016.

SUMMARY OF THE FACTS ADDUCED AT TRIAL

On the night of April 12, 2012, Gavin Graves,¹ Victim,² Derrick Wilson,³ Christopher Kollock,⁴ and Darrell Davis⁵ were sitting in a home off North Highway 501 in Marion County, (R. pp. 263-265; Trial Tr. pp. 359, l. 2 - 361, l. 13). The home belonged to Graves, but Wilson lived there, too. (R. pp. 264-266, 305; Trial Tr. pp. 360, l. 1 - 362, l. 10; Trial Tr. p. 428, ll. 11-21). The group had started the evening playing cards, but then they hooked Graves's computer up to his television to browse Facebook. (R. p. 266; Trial Tr. p. 362, ll. 11-20). They were also drinking beer and smoking marijuana. (R. p. 271; Trial Tr. p. 367, ll. 12-19). A little after midnight, they thought they heard a knock at the back door. (R. pp. 266-272, 309-312; Trial Tr. pp. 362, l. 11 - 368, l. 5; Trial Tr. pp. 432, l. 10 - 435, l. 8). Davis got up to check, but there was no one there. (R. p. 272; Trial Tr. p. 368, ll. 1-7).

About three minutes later, a number of bullets were fired into the home from somewhere outside. (R. pp. 272-273; Trial Tr. pp. 368, l. 1 - 369, l. 15). According to Graves, "[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop." (R. p. 273; Trial Tr. p. 369, ll. 11-13). Inside the trailer, "[t]he sheetrock was busting up. It was smoky. The cabinets [were] opening up.

¹ Also known as "Bullet" or "G." (R. p. 307; Trial Tr. p. 430, ll. 16-19).

² Also called "C-Murder" because his favorite rapper was C-Murder Master P. (R. p. 307-08; Trial Tr. pp. 430, l. 22 - 431, l. 6).

³ Also known as "Eyebrows." (R. p. 308; Trial Tr. p. 431, ll. 7-13).

⁴ Also known as "O.J." or "Juice Man." (R. p. 307; Trial Tr. p. 430, ll. 20-23).

⁵ Also called "Goo Baby." (R. p. 307; Trial Tr. p. 430, ll. 12-15).

Glass that was sitting out that the bullet must have went through. You could hear the glasses breaking." (R. p. 272; Trial Tr. p. 368, ll. 20–22). Wilson testified that "it sounded like at least 20–25" gunshots, but there might have been more. (R. p. 315; Trial Tr. p. 438, ll. 16–22). When the gunfire stopped, the men realized that Victim had been hit. (R. pp. 273–274, 316–317; Trial Tr. pp. 369, l. 16 – 370, l. 7; Trial Tr. pp. 439, l. 13 – 440, l. 7). They immediately called 9–1–1 and then tried to care for Victim, who was gasping for breath. (R. pp. 274–276, 317–318; Trial Tr. pp. 370, l. 1 – 372, l. 5; Trial Tr. p. 440, l. 8 – 441, l. 18). They took Victim outside because he said he was hot, and then the group waited for emergency responders to arrive. (R. pp. 274–276, 318–319; Trial Tr. pp. 370, l. 8 – 372, l. 19; Trial Tr. pp. 441, l. 13 – 442, l. 17). EMS came and took Victim away, but he later died from a gunshot wound. (R. pp. 259–262, 276–277; Trial Tr. pp. 354, l. 23 – 357, l. 15; Trial Tr. pp. 372, l. 14 – 373, l. 14). The other men stayed at the house and talked to police officers who had arrived to investigate the shooting. (R. pp. 321–322; Trial Tr. pp. 444, l. 8 – 445, l. 11).

The police were unable to recover any physical evidence from the scene that pointed to any particular suspects. However, Wilson provided the officers with information that helped them to develop potential suspects. Wilson told police that Victim had never had any problems with "the Smith boys" or anybody that Wilson knew of. (R. pp. 323–324; Trial Tr. pp. 446, l. 23 – 447, l. 6). Wilson, on the other hand, had had problems with Adrian Smith, Blaton Smith's cousin, and he told the police about that. (R. p. 324; Trial Tr. p. 447, ll. 7–11). Detectives Charlie Watson and Martin Bell with the Marion County Sheriff's Department followed up on those leads. (R. pp. 132–139; Trial Tr. pp. 224, l. 17 – 231, l. 18). The detectives contacted Blaton Smith's mother, and she brought him to Marion County for an interview with the police, but Smith was uncooperative. (R. p. 136; Trial Tr. p. 228, ll. 2–15).

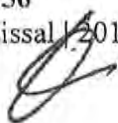
Through their investigation, Detectives Watson and Bell also learned that a man named Willie Bethea⁶ may have been involved in the shooting. (R. p. 135; Trial Tr. p. 227, ll. 4–11). Bethea also met with the police, and he admitted his involvement in the shooting. (R. pp. 136–138; Trial Tr. pp. 228, l. 16 – 230, l. 17). As a result of their conversation with Bethea, the police arrested Blaton Smith, Applicant, Bethea, and Jamie Williams.⁷ (R. pp. 137–138; Trial Tr. pp. 229, l. 6 – 230, l. 25). Adrian Smith was not arrested because he was out of their jurisdiction, and police could not pinpoint anything that Adrian Smith had done in Marion County. (R. p. 139; Trial Tr. p. 231, ll. 1–18).

At trial, both Jamie Williams and Willie Bethea testified about what happened the night of the shooting. Williams testified that Applicant, Smith, and Bethea picked him up from his home on April 12, 2012. (R. pp. 344–346; Trial Tr. pp. 472, l. 7 – 474, l. 17). Smith was driving Adrian Smith's car, and Bethea was in the front passenger seat. (R. pp. 344–346; Trial Tr. pp. 472, l. 20 – 474, l. 1). Applicant was sitting in the back seat on the passenger's side, and Williams took the seat beside him on the driver's side. (R. p. 346; Trial Tr. p. 474, ll. 2–13). According to Williams, they drove past a home on Highway 501, and Applicant saw Wilson's SUV parked out back. (R. pp. 346–349; Trial Tr. pp. 474, l. 18 – 477, l. 7). Smith turned around and slowly drove back by the home⁸ while Applicant and Williams shot at the house. (R. pp. 349–352; Trial Tr. pp. 477, l. 2 – 480, l. 25). Williams testified that Smith told him to shoot. (R. p. 352; Trial Tr. p. 480, ll. 16–

⁶ Also called "Boo Boo." (R. p. 394; Trial Tr. p. 531, ll. 11–14).

⁷ Also known as "Lil Boosie." (R. pp. 138, 340–341; Trial Tr. p. 230, ll. 20–25; Trial Tr. pp. 468, l. 20 – 469, l. 2).

⁸ Williams was very unsure of the roads in that area. At the time of the shooting, he did not even know they were on Highway 501, but he found out that information afterwards. (R. pp. 346–347; Trial Tr. pp. 474, l. 18 – 475, l. 1). Williams testified that before the shooting began, "we turned around, I don't know how it happened. Like, I don't know the roads or nothing like that. We turned back around and slowed down." (R. p. 349; Trial Tr. p. 477, ll. 8–11).



21). Applicant was shooting directly out of the rear, passenger window, and Williams had to hang out of the car and shoot over the top of the car. (R. p. 351; Trial Tr. p. 479, ll. 3–22). Williams testified that he only shot three to five bullets because he "froze up." (R. pp. 351–352; Trial Tr. pp. 479, l. 23 – 480, l. 7). But Applicant emptied a clip into the home. (R. p. 352; Trial Tr. p. 480, ll. 8–15). They then drove back to Latta, where Smith stopped at a house and took the guns inside while the others waited in the car. (R. pp. 352–354; Trial Tr. pp. 480, l. 22 – 482, l. 9). After that, they dropped off Williams back at his house. (R. pp. 354–355; Trial Tr. pp. 482, l. 19 – 483, l. 4).

Two days after the shooting, Williams received a call from Smith, who told him that someone had died and warned him that he better not say anything. (R. p. 355; Trial Tr. p. 483, ll. 5–20). Williams went to Adrian Smith's house later that day. (R. p. 355; Trial Tr. p. 483, ll. 21–24). Williams testified that "they were kind of mad that they hit the wrong person . . ." (R. pp. 355–356; Trial Tr. pp. 483, l. 25 – 484, l. 2). According to Williams, "Eyebrows" was the person who was supposed to have gotten hit—"they wanted him dead." (R. pp. 356, 361; Trial Tr. pp. 484, ll. 3–8; Trial Tr. p. 489, ll. 1–8). Williams did not know Wilson (Eyebrows). (R. p. 362; Trial Tr. p. 490, ll. 9–19). Williams testified that he was scared of Adrian Smith because, though Adrian Smith is a paraplegic, "[h]e got people too." (R. pp. 356–357; Trial Tr. pp. 484, l. 20 – 485, l. 5).

Williams testified that when he first spoke with police, he lied and said that Applicant and Smith were the shooters, but he later admitted that he was one of the shooters and that Smith was driving the car instead. (R. pp. 357–359; Trial Tr. pp. 485, l. 20 – 487, l. 21).

Bethea's testimony regarding the shooting was largely consistent with Williams's. Bethea testified that he and Smith were cousins. (R. p. 394; Trial Tr. p. 531, ll. 15–25). He also identified Applicant as "[o]ne of my people from Latta." (R. p. 395; Trial Tr. p. 532, ll. 1–13). Bethea

testified that he and Smith were together all day on April 12, 2012. (R. pp. 398–399; Trial Tr. pp. 535, l. 10 – 536, l. 18). They picked up Williams and Applicant later that evening. (R. pp. 399–401; Trial Tr. pp. 536, l. 16 – 538, l. 10). Bethea believed they were going to a club in Latta on Old Ebenezer Road, which is not far from Highway 501. (R. p. 401; Trial Tr. p. 538, ll. 11–24). But they passed that club, so he assumed they were headed to Fusion in Marion. (R. p. 403; Trial Tr. p. 540, ll. 4–17). Smith, who was driving, then stopped in front of a trailer that Bethea identified as "Eyebrows' trailer." (R. pp. 403–404; Trial Tr. pp. 540, l. 25 – 541, l. 8). Smith said, "'This is the house right here. That's the car in the back.'" (R. p. 404; Trial Tr. p. 541, ll. 9–14). Applicant and Williams then started shooting. (R. pp. 406–410; Trial Tr. pp. 543, l. 19 – 547, l. 3). After they finished, Applicant said he hoped he had hit somebody in the house. (R. p. 410; Trial Tr. p. 547, ll. 5–10). They then drove back to Latta, and Smith dropped the guns off at "Karen[s] house." (R. pp. 410–413; Trial Tr. pp. 547, l. 11 – 550, l. 6).

According to Bethea, afterwards, "[w]e just said don't say nothing about it and just keep your mouth closed." (R. pp. 413–414; Trial Tr. pp. 550, l. 25 – 551, l. 3). Smith later told Bethea, "'Keep your cool'" and advised him not to say anything about what had happened. (R. pp. 415–416; Trial Tr. pp. 552, l. 7 – 553, l. 5). Bethea learned that Victim had been killed in the shooting. (R. p. 416; Trial Tr. p. 553, ll. 9–25). Bethea testified that it was Wilson, not Victim, who was the intended target of the shooting because Wilson and Smith had bad blood. (R. p. 417; Trial Tr. p. 554, ll. 1–15). Bethea left town because he was "worried something crazy was going to happen. That somebody was going to get shot or something." (R. pp. 417–418; Trial Tr. pp. 554, l. 16 – 555, l. 20). When asked if he left town because he was worried about Smith or Applicant, Bethea responded, "They just told me—they kept calling me, like, don't say nothing or we're going to do something to you." (R. p. 418; Trial Tr. p. 555, ll. 21–24). Nevertheless, Bethea eventually turned

himself in after his mother told him, "The police kept coming to her house and she wasn't going to have it . . ." (R. pp. 421–422; Trial Tr. pp. 558, l. 16 – 559, l. 14). After the police spoke with Bethea, they arrested him. (R. p. 422; Trial Tr. p. 559, ll. 10–22).

CURRENT APPLICATION

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel prejudiced applicant by failing to request for mistrial for tampering and altering evidence at the crime scene."
 - b. "Trial Counsel prejudiced Applicant by failing to prepare and to conduct a proper pre-trial investigation to interview Adrian Smith."
 - c. "Trial Counsel prejudiced Applicant by failure to request written notice to seek life without parole."
 - d. "Trial Counsel prejudiced Applicant by failing to request a jury charge in compliance with State v. Logan."
 - e. "Also, trial counsel failed to object to the judge charging the jury that specific intent to kill is not required to prove attempted murder."
2. Juror Misconduct
 - a. Applicant alleges after discovered evidence of affidavits by two jurors who were sleeping during the trial and were not paying full attention.

On August 31, 2021, Applicant amended his application to include the following additional allegations as follows:

3. Newly Discovered Evidence
 - a. Applicant's co-defendant, Jaime Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.
1. Ineffective Assistance of Trial Counsel
 - f. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
 - g. Counsel was ineffective for failing to properly object to impermissible testimony and argument during the course of Applicant's trial, allowing the jury to hear impermissible testimony and thus failing to preserve the issues for direct appeal.

- h. Counsel was ineffective for failing to object to the incorrect instruction on the law to the jury, specifically with regards to the instructions for the charge of Attempted Murder.
- i. Counsel was ineffective for failing to object to improper vouching testimony during the testimony of Investigator Charlie Watson.

Applicant raised the following allegations during the evidentiary hearing:

- 1. Ineffective Assistance of Counsel
 - j. Failure to meet, prepare case for trial, and review discovery.
 - k. Failure to discuss constitutional rights.
 - l. Failure to object to Solicitor's comments in opening statements and closing arguments as impermissible vouching (Citing pp. 43, ll. 8–13; 485, ll. 4–6; 486, ll. 20–21; 488, ll. 18–20; and 493, ll. 5–15).
 - m. Failure to move to suppress and object to admission of shell casings into evidence based on incomplete chain of custody.
 - n. Failure to raise Brady violation for late disclosure of shell casings mishandling.

Applicant failed to present testimony or other evidence in support of various allegations raised in his pleadings, and therefore, this Court deemed them abandoned. The allegations are addressed specifically, *infra*.

Before this Court are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and records from the current PCR action, along with any amendments to his application.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;

⁹ S.C. Code Ann. §§ 17–27–10 to –160.



3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; accord, Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required

showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best

practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of Trial Counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under

Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and appellate counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at Applicant's evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is

entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoc, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1a: Trial Counsel Failed to Request a Mistrial Based on State Tampering and Altering Evidence at the Crime Scene

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to request a mistrial based on the State's tampering and altering evidence at the crime scene. Specifically, Applicant averred that Trial Counsel should have requested a mistrial because first responders moved several shell casings out of the roadway at the crime scene. This Court finds this allegation to be without merit.

"A motion for a mistrial is, by its very nature, both an allegation of error and an allegation of prejudice sufficient to warrant a mistrial." State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (Ct.

App. 2010); See State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009) ("A mistrial should only be granted when absolutely necessary, and a defendant must show both error and ... prejudice in order to be entitled to a mistrial."). "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447–48, 639 S.E.2d 160, 164 (Ct. App. 2006). The court considers the entire record in determining prejudice. Id. "The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." State v. Kelsey, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998).

Trial

On direct examination, Corporal Marion Richardson (Corporal Richardson) testified that he did not move any shell casings out of the roadway. (Trial Tr. pp. 131–132). On cross-examination, Corporal Richardson testified he had no idea if any shell casings were moved. (Trial Tr. p. 138).

On direct examination, Sergeant Clemson Legette (Sergeant Legette) testified that Patrolman Pike advised him that Corporal Richardson had moved some shells out of the roadway so they would not get run over. (Trial Tr. p. 153). Sergeant Legette testified that he would not have moved any evidence, and he would have stopped traffic. (Trial Tr. pp. 153–154). On cross-examination, Sergeant Legette testified that Corporal Richardson likely picked up the shells and moved them out of the roadway. (Trial Tr. pp. 163–164). Sergeant Legette testified that it is not standard practice to move evidence, and it was a mistake that it was moved. (Trial Tr. p. 164). Sergeant Leggette testified that he has no way of knowing where the evidence was located prior to it being moved off the roadway. (Trial Tr. p. 164). Sergeant Legette testified that the fact that

the shells were moved was not included in the report. (Trial Tr. p. 165). Trial Counsel continued to cross-examine Sergeant Legette concerning the moved evidence. (Trial Tr. pp. 167, 169). Additionally, Trial Counsel cross-examined Charlie Watson concerning the moved shells. (Trial Tr. pp. 242–243).

In closing, Trial Counsel argued that because Marion Richardson lied about moving the shell casings, where the shooters came from is uncertain and creates reasonable doubt. (Trial Tr. pp. 649–650).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he first learned that some of the evidence was mishandled at his trial. (PCR Tr. p. 23). Applicant testified that his discovery failed to mention that some shell casings had been moved out of the roadway. (PCR Tr. p. 23; State's Exhibit 40).¹⁰ Applicant testified he told Trial Counsel when he became aware, but did not recall what Trial Counsel said. (PCR Tr. 24). Applicant testified that after Officer Pike's testimony, he and Trial Counsel discussed the shell casings with his co-defendant and his counsel. (PCR Tr. p. 26). Applicant testified that Trial Counsel, his co-defendant, and his co-defendant's counsel knew about the mishandled evidence, but he did not know about it before their conversation. (PCR Tr. p. 26). Applicant testified that Trial Counsel's strategy did not change after those potential issues arose. (PCR Tr. p. 26).

On direct examination, Trial Counsel testified that the movement of shell casings by one of the first responding officers came up at trial. (PCR Tr. p. 8). Trial Counsel testified

¹⁰ Notably, at trial Agent Michelle Eichenmiller received six fired bullets, then one fired bullet, a small jacket fragment, along with twenty-one (21) fired .40 S&W caliber cartridges, two different firearms, and unfired ammunition. One firearm was a Taurus Millenium Pro PT140 in .40 S&W caliber and one Smith and Wesson model XW 40 VE also in .40 S&W caliber. (Trial Tr. p. 338).

that they made a great deal about the mishandling of evidence. (PCR Tr. p. 8). Trial Counsel further testified that he remembered the issue being an argument for the jury at the end of the trial. (PCR Tr. p. 9). Trial Counsel testified that he does not recall this influencing his representation. (PCR Tr. p. 9). Trial Counsel further testified that nobody contested the fact that somebody went and shot the house from the roadway. (PCR Tr. p. 9).

On cross-examination, Trial Counsel testified that, ultimately, whether the shell casings were moved was a matter for the jury. (PCR Tr. p. 15). Trial Counsel also testified that this was not a basis for a direct verdict motion or a mistrial. (PCR Tr. p. 15).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, *supra*. Trial Counsel credibly testified that the mishandling of shell casings came about during trial, and it was an issue for the jury. Trial Counsel credibly testified that even if the shell casings had been moved, it was an issue for the jury to decide. *See Madray v. United States*, 55 F.2d 552 (4th Cir. 1932) (The weight of the evidence is for the jury.). Trial Counsel credibly testified that there was no denying that somebody went and shot the house from the roadway. Therefore, Trial Counsel cannot be deficient where he articulated a valid strategy for not moving for a mistrial. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.").



Moreover, Applicant is unable to establish that had Trial Counsel moved for a mistrial, the outcome of his trial would have been different. It is not likely a mistrial would have been granted based solely on the mishandling of evidence, considering the other competent evidence that was presented to the jury implicating Applicant in this crime. For example: Applicant's co-defendant, Jamie Williams' testimony implicating Applicant as one of the shooters (Trial Tr. pp. 229–230, 472–474, 477–480); Willie Bethea's testimony corroborating Jamie Williams' testimony concerning the shooting (Trial Tr. pp. 531–550); the gun seized from the victims did not match the gun used to commit the crime (Trial Tr. pp. 232, 338); and Investigator Charlie Watson's testimony as to the original location of the shell casings and when they were moved (Trial Tr. pp. 242–245). Additionally, the fact that the trailer had been shot up was never contested. See State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (Ct. App. 2010) (a mistrial should only be granted when absolutely necessary, and movant must show both error and prejudice in order to be entitled to a mistrial; insubstantial errors that do not impact the result of the case do not warrant a mistrial in a criminal case when guilt is conclusively proven by competent evidence, and the determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.



Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE.**

Allegation 1e: Trial Counsel Failed to Object to Judge Charging the Jury that Specific Intent to Kill is Not Required to Prove Attempted Murder

Allegation 1h: Trial Counsel Was Ineffective for Failing to Object to the Incorrect Instruction on the Law to the Jury; Specifically With Regards to the Instructions for the Charge of Attempted Murder

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to object to the improper jury charge on attempted murder, that it was a general intent crime and not a specific intent crime. This Court finds this allegation to be without merit.

"In reviewing jury charges for error, this Court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge must charge only the current and correct law of South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury



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charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

Trial

At trial, the trial court gave the following jury charge regarding attempted murder:

The defendants are also charged with four counts of attempted murder: one count of attempted murder of Derrick Lamont Wilson, one count of attempted murder of Darrell Antonio Davis, one count of attempted murder of Gavin Graves, and one count of attempted murder of Christopher Kollock.

In order to prove this crime, the State must prove beyond a reasonable doubt that the defendants attempted to kill Derrick Lamont Wilson, Darrell Antonio Davis, Gavin Graves, and Christopher Kollock with malice aforethought, either express or implied.

Now, as I stated to you previously and I will say again, while the defendants are charged with four counts of attempted murder, in addition to murder, discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime, you must decide each charge separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other charge. The defendants may be convicted or acquitted on any or all of the offenses charged.

Now, malice as I explained to you earlier, ladies and gentlemen -- malice is as I have explained to you earlier. Furthermore, malice aforethought again may be express or inferred.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with the other evidence in the case, and you may give it the weight you decide it should receive.

A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurs; not accidentally or involuntary. Intent may be shown by acts and conduct of the defendants and other circumstances from which you may naturally and reasonably infer intent.

(Trial Tr. pp. 686-687).

Findings

As an initial matter, this Court notes that while Applicant raised this allegation within his PCR application, no testimony or evidence was presented to this Court to support Applicant's



allegation at the evidentiary hearing. Nevertheless, this Court finds it necessary to address this allegation as a matter of law.

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, *supra*. An attorney is not required to anticipate or discover changes in the law or facts, which did not exist at the time of trial, to render effective assistance of counsel. Thornes v. State, 310 S.C. 306, 309–310, 426 S.E.2d 764, 765 (1993).

In State v. King, the Court of Appeals held for the first time that "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder." 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015). Thereafter, our Supreme Court, in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), agreed that attempted murder was a specific intent crime. However, our Supreme Court recognized the confusion, stating, "While it may seem counterintuitive for the attempt of a crime to require a higher level of *mens rea* than that of the completed crime, this is the majority rule and a rule that our appellate courts and General Assembly have followed." King, 422 S.C. at 56, 810 S.E.2d at 22.

This Court finds that the jury charge as given in Applicant's trial in 2014 was a correct statement of the law at that time. Thus, Applicant cannot prove Trial Counsel's representation was deficient, nor can he show any resulting prejudice from the alleged deficiency. *See Teamer v. State* 416 S.C. 171, 182-83, 786 S.E.2d 109, 114-15 (2016) (finding PCR court erred in finding counsel deficient for not objecting to charge that had not yet been found improper); Strickland,

466 U.S. at 690 ("[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.").

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE.**

Allegation 1f: Trial Counsel Failed to Properly Investigate the Facts and Circumstances Surrounding the Allegations Against Applicant

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to properly investigate the facts and circumstances surrounding Applicant's case. Specifically, failure to investigate a possible alibi defense. This Court finds this allegation to be without merit.

"A criminal defense attorney has a duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied



by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he provided Trial Counsel with information on where he was and who he was with on the day of the shooting. (PCR Tr. p. 21). Applicant testified that he asked Trial Counsel to call a witness for him or put him on the stand to testify. (Trial Tr. p. 22). Applicant testified that Trial Counsel felt it was best for him not to testify, so the defense could have the last argument. (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that attorneys have duties to their clients. (PCR Tr. p. 8). Trial Counsel testified that he did not have much of a defense other than that Applicant did not commit the crime. (PCR Tr. p. 9). Trial Counsel testified that at trial, he made efforts to raise additional defenses, and while a few points came up, none were substantial. (PCR Tr. p. 10). Trial Counsel testified that when someone maintains they are not involved, they cannot

assist with providing information because they were not present. (PCR Tr. p. 10). Additionally, Trial Counsel testified that nobody contested the fact that the shooting took place. (PCR Tr. 9).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel credibly testified that he did not have much of a defense, other than that Applicant maintained he did not commit the crime and was not at the scene. Trial Counsel credibly testified that he investigated to the best of his ability with the information available to him. Trial Counsel credibly testified that Applicant maintained he was not involved, and so he could not assist in the investigation. Therefore, Trial Counsel is not deficient for failing to investigate and present an alibi defense.

Moreover, Applicant failed to provide the name or present testimony or other evidence establishing the existence of the alleged alibi witness. See Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46; see also Glover, 318 S.C. at 498–99, 458 S.E.2d at 540 (To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence.). Therefore, Applicant's general testimony of an existing alibi witness that he advised Trial Counsel of is not credible, and Applicant cannot establish prejudice resulting from Trial Counsel's performance. Clark v. State, 315 S.C. 385, 434



S.E.2d 266 (1993) (Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice.).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE.**

Allegation 1i: Trial Counsel Failed to Object to Improper Vouching Testimony of Investigator Charlie Watson.
Allegation 1g: Trial Counsel Failed to Object to Impermissible Testimony During Trial Thereby Failing to Preserve the Issues for Direct Appeal.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to object to impermissible testimony during trial, thereby failing to preserve the issues for direct appeal. Specifically, Applicant alleged that Trial Counsel was constitutionally ineffective for failing to object to the improper vouching testimony of Investigator Charlie Watson. This Court finds these allegations to be without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that

failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[c] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

"Vouching constitutes an assurance by the prosecuting attorney of the credibility of a Government witness through personal knowledge or by other information outside of the testimony before the jury." State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001), rev'd and remanded, 534 U.S. 246 (2002), citing United States v. Walker, 155 F.3d 180 (3d Cir. 1998). In State v. Kelly, the Supreme Court held that questions posed by the prosecuting attorney that convey they believe the witness is telling the truth constitute vouching. 343 S.C. at 369, 540 S.E.2d at 860-61; State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) ("Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness's veracity[] or where a prosecutor implicitly vouches for a witness's veracity by indicating information not presented to the jury supports the testimony.").

"This court decided the testimony of a witness is improper bolstering if: (1) the witness directly states an opinion about the [other witness]'s credibility; (2) the sole purpose of the testimony is to convey the witness's opinion about the [other witness]'s credibility; or (3) there is no way to interpret the testimony other than to mean the witness believes the [other witness] is telling the truth." State v. Geter, 434 S.C. 557, 864 S.E.2d 569 (Ct. App. 2021), aff'd, 445 S.C. 139, 912 S.E.2d 255 (2025) (citing Chappell v. State, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019)).

Trial

At trial, Solicitor questioned Investigator Charlie Watson as follows on direct examination:

- Q: Okay. Did — when you talked to Willie Bethea, did he have a nickname, if you recall?
- A: I can't recall the nickname.
- Q: Okay. When you talked to Willie Bethea, can you describe for us what was his demeanor and how did he act?
- A: Mr. Willie Bethea was very cooperative. Out of all the co-defendants involved in this, he was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.

(Trial Tr. p. 230).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that there was no strategic reason for not objecting to Investigator Watson's comment. (PCR Tr. pp. 12–13).

Findings

As an initial matter, this Court finds that the complained-of testimony of Investigator Watson was not improper bolstering or vouching and that any objection from Trial Counsel would not have been meritorious. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466

U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

In this context, the Solicitor's inquiry was specifically focused on Bethea's demeanor, rather than on his overall truthfulness or credibility. Importantly, Investigator Watson addressed the Solicitor's questions and provided his professional assessment of Bethea's demeanor. While Investigator Watson's remark regarding his lengthy tenure in law enforcement may have been tangential, it was not prompted by the Solicitor's line of questioning and did not detract from the main issue. What is more, it is unequivocal that Bethea provided a statement against his own penal interest, which goes to Bethea's credibility and justifies Investigator Watson's commentary on Bethea's demeanor. This Court finds Applicant has failed to show that had an objection been made that there is a reasonable probability that the outcome of his trial would have been different; thus, Applicant has failed to show any deficiency in Trial Counsel's representation or any prejudice flowing therefrom.

Further, as this Court finds any objection would not have been meritorious, this Court also finds that even if it were preserved for appeal, it would not have been successful on appeal. Therefore, Applicant has failed to show any deficiency or prejudice from trial counsel's failure to preserve the issue. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018) (Holding that the appropriate inquiry to determine prejudice from failure to preserve an issue is whether it would have been successful on appeal); McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (Finding "that, even if trial counsel had renewed his motion in order to preserve the issue, McHam has not shown there

is a reasonable probability that the outcome of the trial would have been different because his Fourth Amendment claim fails on its merits.")

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, these allegations must be **DENIED and DISMISSED with PREJUDICE.**

Allegation 1j: Failure to Meet, Prepare the Case for Trial, and Review Discovery.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to review and discuss discovery. Specifically, Applicant alleged that Trial Counsel failed to review the chain of custody, his co-defendant's statements with him prior to trial, and Willie Bethea's medical records. This Court finds the allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with

his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an

applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he reviewed some of the evidence in his case when he received his Rule 5 motion, about a year before his trial. (PCR Tr. p. 20). Applicant testified that he did not have an opportunity to discuss the evidence with Trial Counsel. (PCR Tr. p. 20). Applicant testified that he knew that Williams and Bethea were going to testify against him and his co-defendant. (PCR Tr. p. 22). Applicant testified that he discussed Bethea's mental health background with Trial Counsel. (PCR Tr. p. 22). Applicant testified that he was unable to review Bethea's medical records because they were privileged. (PCR Tr. p. 23). Applicant testified that he did not have a complete chain of custody. (PCR Tr. p. 27). Applicant testified that he did not have a chance to discuss the chain of custody of the evidence in his case with Trial Counsel. (PCR Tr. p. 27). Applicant further testified that it was not something he worried about and figured he would find out at trial. (PCR Tr. p. 27).

On cross-examination, Applicant testified that he received the discovery a year before trial. (PCR Tr. p. 28). Applicant also testified that he knew all along that his co-defendant, Bethea, would testify against him, and that statement led to multiple arrests, including his. (PCR Tr. p. 28).



On direct examination, Trial Counsel testified that he recalled meetings with Applicant on several occasions, both in Marion County and in Marlboro County. (PCR Tr. p. 7). Trial Counsel testified that he became aware that shell casings were moved at the scene when it came out through testimony at Applicant's trial. (PCR Tr. p. 8). Trial Counsel testified that Applicant was unable to assist with his defense because he maintained he was not at the scene. (PCR Tr. p. 10). Trial Counsel testified that it was not a surprise at all that the co-defendants were cooperating. (PCR Tr. p. 7). Trial Counsel testified that he attempted to craft a defense based on the trajectory of the bullet holes into the house, suggesting that the bullets could have been fired from behind the house. (PCR Tr. p. 11). Trial Counsel testified that when evidence is in SLED's custody, they are required to keep a chain of custody the entire time. (PCR Tr. p. 12). Trial Counsel testified that the timeline is anybody's guess, where you might get something back or you might not get something back for a long time. (PCR Tr. p. 11).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant testified that he met with Trial Counsel prior to trial, received and reviewed discovery, and discussed various matters, including Bethea's mental health background. Applicant testified that he was not able to review Bethea's medical records himself, as they were privileged documents. Based on Applicant's own admission, failure to review these records was not based on any deficiency on the part of Trial Counsel. Additionally, while

Applicant testified that he did not review the chain of custody, he also testified that he was not concerned about it and knew he would learn about the chain of custody at trial. Further, Trial Counsel credibly testified that he met with Applicant several times and crafted a defense as best as he could based on the limited information Applicant provided him with.

Additionally, even if this Court were to find Trial Counsel's representation was deficient, which it does not, Applicant failed to prove any prejudice, as he failed to provide this Court with the alleged evidence or defenses that would have been available to him had he spent more time in consultation and preparation with Trial Counsel. Applicant's testimony amounts to mere speculation, as he provided general testimony about evidence that Trial Counsel could have reviewed with him, but failed to provide the evidence itself and failed to provide how it would have affected the outcome of his trial. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, these allegations must be **DENIED and DISMISSED with PREJUDICE**.

Allegation 1k: Failure to Discuss Applicant's Constitutional Rights.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to explain his constitutional rights. This Court finds this allegation to be without merit.

Trial

The following colloquy occurred at trial between the trial court, Applicant, and his co-defendant:

The Court: If each of you would, raise your right hand to be sworn. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God, Mr. Smith?

Defendant Smith: Yes, sir.

The Court: Mr. Hayes?

[Applicant]: Yes, sir.

The Court: All right. You can put your hands down. All right. At this time, gentlemen, I am going to explain to you certain of your rights. If you do not understand anything that I say, please let me know. If you want me to explain anything in more detail, please let me know as well. Do each of you understand, Mr. Smith?

Defendant Smith: Yes, sir.

The Court: Mr. Hayes?

[Applicant]: Yes, sir.

The Court: All right. We have now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States and that amendment states in part that no person -- no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot -- you cannot be required to testify in this case. You have the right to testify on your own behalf. However, no one -- and I repeat no one can make you testify. This is a personal right and no one can waive this right except you. If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility. If you decide to testify, this decision on your part must be freely, voluntarily, and intelligently made with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify, I will

instruct the jurors that they cannot -- that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. Now, it is left entirely up to you whether or not you testify. You may talk with your attorney, your family, friends, or anyone else, but the final decision is left entirely up to you. Do you understand what I have explained to you, Mr. Smith?

Defendant Smith:

Yes, sir.

The Court:

Mr. Hayes?

[Applicant]:

Yes, sir.

The Court:

Do you have any questions about what I have explained to you, Mr. Smith?

Defendant Smith:

No, sir.

The Court:

Mr. Hayes?

[Applicant]:

No, sir.

The Court:

Have you discussed with your attorney whether or not you should testify, Mr. Smith?

Defendant Smith:

Yes, sir.

The Court:

Mr. Hayes?

[Applicant]:

Yes, sir.

The Court:

Do you need any more time to talk to your attorney, Mr. Smith?

Defendant Smith:

No, sir.

The Court:

Mr. Hayes?

[Applicant]:

Yes, sir.

The Court:

All right.

Mr. Bailey:

I was going to request a few minutes to talk.

The Court:

Well, I'm going to stand down for just a minute and allow you two to -- or allow each of you to talk with your respective attorneys. Let me know when you all are finished talking to your clients. At that time, I want to talk with all the lawyers in chambers concerning the charge and et cetera. All right? All right. We'll stand down for just a few minutes. You all may be seated, Mr. Hayes and Mr. Smith.

(Whereupon, there is a break in the proceedings from 10:52 a.m. until 11:16 a.m.)

The Court:

All right. We stood down for a minute for the defendants, Mr. Smith and Mr. Hayes, to speak with their respective attorney. Mr. Smith, if you would, please stand. Mr. Hayes, would you please stand? Have each of you had sufficient time -- enough time to talk with your lawyer concerning whether or not you will testify, Mr. Smith?

Defendant Smith: Yes, sir.
 The Court: Mr. Hayes?
 [Applicant]: Yes, sir.
 The Court: Do you wish to testify in this case, Mr. Smith?
 Defendant Smith: No, sir.
 The Court: Mr. Hayes?
 [Applicant]: No, sir.

(Trial Tr. pp. 616–620).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not discuss his constitutional rights with him. (PCR Tr. p. 19).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony Trial Counsel did not discuss his constitutional rights with him is **not credible**. Applicant merely provided that Trial Counsel failed to discuss his constitutional rights, without more. Notably, the record indicates that the trial court advised Applicant of his right to present a defense and testify, and Applicant indicated he had discussed his right to testify with Trial Counsel. (Trial Tr. pp. 616–620). This Court finds that Trial Counsel was not deficient, and Applicant failed to establish any resulting prejudice from Trial Counsel's alleged deficient performance.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably

effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

Allegation 11: Failure to Object to the Solicitor's Comments in Opening and Closing Arguments as Impermissible Vouching.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to object to the Solicitor's comments in opening statements and closing arguments as impermissible vouching, the challenged comments cited below. This Court finds this allegation to be without merit.

A solicitor may not vouch for the credibility of a witness based on personal knowledge or other information outside the record. Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). "Vouching" occurs where the prosecutor indicates to the jury that her argument regarding the credibility of a witness is based on something *other* than the evidence admitted—i.e., that the prosecutor "knows something about the credibility of a witness that the jury does not know." State v. Busse, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023).

On the other hand, when the solicitor bases her credibility arguments on evidence *within* the record, or on reasonable or common-sense inferences therefrom, no improper vouching occurs. State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990), overruled on other grounds by State v. Evans, 371 S.C. 27, 30, 637 S.E.2d 313, 315 (2006); see also Busse, 439 S.C. at 109, 886 S.E.2d at 211 ("A prosecutor arguing forcefully during closing argument that the jury should



believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial."). A solicitor has the right to argue to the jury regarding the weight that should be given to a witness's testimony. State v. Gibbs, 438 S.C. 542, 553, 885 S.E.2d 378, 384 (2023). In fact, "a prosecutor is *expected* to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer." Busse, 439 S.C. at 111, 886 S.E.2d at 212 (emphasis added). Such comments are especially necessary when the case involves a "swearing contest" between a witness and the defendant. State v. Raffaldi, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995).

To find whether a prosecutor's comments in a closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. Fortune v. State, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. State v. Brown, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant." Fortune, 428 S.C. at 550, 837 S.E.2d at 40 (quoting Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)).

The legal concept of vouching prohibits a prosecutor from giving the jury any indication that she knows something about the credibility of a witness that the jury does not know, or that is based on an event or proceeding outside the presence of the jury. See State v. Kelly, 343 S.C. 350, 368, 540 S.E.2d 851, 860 (2001) (quoting United States v. Walker, 155 F.3d 180, 184 (3d Cir. 1998))), rev'd and remanded on other grounds by Kelly v. South Carolina, 534 U.S. 246, 122 S.

Ct. 726, 151 L. Ed. 2d 670 (2002). "It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." United States v. Francisco, 35 F.3d 116, 120 (4th Cir. 1994).

Trial

At trial, the Solicitor made the following comments in his closing arguments:¹¹

But it boils down to those two young men and I'll admit to you right now if you don't believe them, the State doesn't have that much of a case, but I'm going to tell you they're believable. They're credible. Just as I know that y'all know they were credible. You heard it on the stand. They could not be shaken from what they said.

(ROA p. 483, ll. 8–13).

If he's shooting over the top of the car, the car is going towards Marion, just like Willie "Boo Boo" Bethea told you it was.

(ROA p. 485, ll. 4–6).

I submit to you, ladies and gentlemen, Jamie was telling the truth.

(ROA p. 486, ll. 20–21).

Now, Jamie — I think he told the truth absolutely clear, you know, getting it off his conscience and putting himself there and putting himself in and owning up to what he did.

(ROA p. 488, ll. 18–20).

So don't get caught up in that smoke. Weigh it. Compare it. All these pieces of the puzzle fit together and you can believe Jamie and you can believe Boo Boo. I'm sure they're hoping — you know, we've all been told all our lives the truth will set you free. The truth is your friend. You've got to be truthful. And if you're truthful, good things can happen to you. You know, no deals have been made. They testified to that. Nothing has been offered, but they know. They're not stupid. They know the best thing they can do is tell the truth and hope for the best, and they told the truth. They told the truth.

¹¹ While Applicant's allegation is to improper comments during opening and closing, Applicant did not cite to and presented no evidence of improper statements made during the Solicitor's opening statement.

(ROA p. 493, ll. 5–15).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that during openings and closings, he makes objections only in extreme circumstances. (PCR Tr. p. 13). Trial Counsel testified that, if objecting under these circumstances, you run the risk of offending the jury. (PCR Tr. p. 13). Trial Counsel testified that "if something is going afoul, then certainly something you have to consider." (PCR Tr. p. 13).

Findings

As an initial matter, Applicant presented no evidence to this Court regarding any alleged improper comments in the Solicitor's opening statement, and therefore, this Court finds Applicant has abandoned that portion of the allegation. Thus, that portion of the allegation is **DENIED and DISMISSED with PREJUDICE**.

Turning to the failure to object to portions of the Solicitor's closing argument as impermissible vouching, this Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving that Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that the Solicitor's comments during his closing argument did not constitute improper vouching. The challenged comments were inferences and comments on evidence that was before the jury, and did not constitute assurances of any of the witnesses' credibility based on the Solicitor's personal knowledge or information not presented to the jury. See Kelly, 343 S.C. at 368, 540 S.E.2d at 860

(2001) ("Vouching constitutes an assurance by the prosecuting attorney of the credibility of a government witness through personal knowledge or by other information outside of the testimony before the jury.").

Moreover, the Solicitor's comments were a presentation of the State's theory of the case based on the evidence presented to the jury, and a comment on the weight of the testimony presented. See State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented and furthermore may comment on the weight to be accorded such testimony."). Therefore, Trial Counsel was not ineffective for failing to object to the challenged comments in closing, as any objection would have been futile. See Vicux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE.**



Allegation 1m: Failure to Move to Suppress and Object to the Admission of the Shell Casings Based on an Incomplete Chain of Custody.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to move to suppress and object to the admission of the shell casings based on an incomplete chain of custody. This Court finds this allegation to be without merit.

The proof of chain of custody does not have to negate all possibilities of tampering; the State only needs to establish a complete chain of evidence as far as practicable. State v. Rogers, 603 S.E.2d 910 (S.C. Ct. App. 2004). Instead, "where the identity of persons handling the specimen is established...evidence regarding its care goes only to the weight of the specimen as credible evidence," and not to the admissibility of the evidence. State v. Carter, 344 S.C. 419, 424, 544 S.E.2d. 835, 837 (2001); see United States v. Allen, 619 F.3d 518 (6th Cir. 2010) (Holding that the bag of cocaine was properly admitted even though original evidence bag was destroyed and replaced, and the weight of the cocaine diminished over time, as appellant merely raised possibility of tampering and there was nothing improper about officers replacement of original bag); see also United States v. Lewis, 363 Fed.Appx. 382, 390 (6th Cir. 2010) (affirming admission of allegedly mishandled evidence where "[t]he undisputed evidence presented at trial indicates that the officers carefully documented each step between recovery of the [evidence] and its placement into the evidence vault").

PCR Evidentiary Hearing

On direct examination, Applicant testified that he first learned that some of the evidence was mishandled at his trial. (PCR Tr. p. 23). Applicant testified that his discovery failed to mention that some shell casings had been moved out of the roadway. (PCR Tr. p. 23; State's Exhibit 40). Applicant testified that he informed Trial Counsel upon becoming aware, but he did



not recall Trial Counsel's response. (PCR Tr. 24). Applicant testified that Trial Counsel's strategy did not change after those potential issues arose. (PCR Tr. p. 26). Applicant testified that he did not discuss a suppression hearing with Trial Counsel. (PCR Tr. p. 27). Applicant testified that Trial Counsel should have asked for a suppression hearing before his trial, because the only evidence to prove his innocence or guilt was not presented at trial. (PCR Tr. p. 27). Applicant testified that they resubmitted the shell casings for fingerprint analysis thirty-three days before his trial. (PCR Tr. p. 27). Applicant testified that he felt his rights were violated at the beginning and end of the trial. (PCR Tr. p. 27).

On direct examination, Trial Counsel testified that the movement of shell casings by one of the first responding officers came up at trial. (PCR Tr. p. 8). Trial Counsel testified that they made a great deal about the mishandling of evidence. (PCR Tr. p. 8). Trial Counsel further testified that he remembered the issue being an argument for the jury at the end of the trial. (PCR Tr. p. 9).

On cross-examination, Trial Counsel testified that, ultimately, whether the shell casings were moved was a matter for the jury. Trial Counsel testified that he did not think there was a basis for a motion for a mistrial. (PCR Tr. p. 15).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

Trial Counsel credibly testified that the mishandling of shell casings came about during trial, and even if the shell casings had been moved, it was an issue for the jury to decide. It was established at trial that: Corporal Richardson moved some of the shell casings out of the road (Trial Tr. pp. 153, 195–196), Investigator Charlie Watson testified that the detective division collected the shell casings from the roadway, and it was given to the evidence custodian, Lieutenant Eddie Sawyer (Trial Tr. p. 234); and Lieutenant Sawyer received the shell casings, held them in evidence, and carried them to SLED (Trial Tr. pp. 318–322). As the identity of all people who handled the shell casings was established, the chain of custody was complete. The mere fact that some shell casings were moved out of the roadway does not make them inadmissible, especially where only a few of the numerous shell casings were moved, and Officer Greg Pike testified he arrived first on the scene and saw the shell casings on the highway. See Carter, Allen, Lewis, supra.

Additionally, it was brought out in testimony that some shell casings were moved out of the roadway in a misguided effort to preserve the evidence, not for some improper basis (Trial Tr. p. 153). Therefore, Trial Counsel is not ineffective for failing to object to the admissibility of the shell casings based on an incomplete chain of custody, as any objection would have been futile. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably

effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

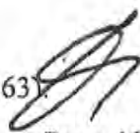
Allegation 1n: Failure to Object to Admission of Shell Casings Based on Brady Violation.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to object to the admission of the shell casings based on Brady¹². This Court finds this allegation to be without merit.

The South Carolina Supreme Court has found: "A Brady claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Sheppard v. State, 357 S.C. 646, 659, 594 S.E.2d 462, 470 (2004). The duty to disclose evidence is applicable even where it has not been requested by the accused, and the duty encompasses impeachment evidence and exculpatory evidence. United States v. Agurs, 427 U.S. 97, 107 (1976); United States v. Bagley, 473 U.S. 667, 676 (1985).

Not every violation of a prosecutor's duty to disclose results in an unjust outcome, as "there is never a real Brady violation unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler v. Greene, 527 U.S. 263, 281 (1999) (internal quotations omitted).

¹² Brady v. Maryland, 373 U.S. 83 (1963).



PCR Evidentiary Hearing

On direct examination, Applicant testified that he first learned that some of the evidence was mishandled at his trial. (PCR Tr. p. 23). Applicant testified that his discovery failed to mention that some shell casings had been moved out of the roadway. (PCR Tr. p. 23; State's Exhibit 40). Applicant testified that he informed Trial Counsel upon becoming aware, but he did not recall Trial Counsel's response. (PCR Tr. 24). Applicant testified that Trial Counsel's strategy did not change after those potential issues arose. (PCR Tr. p. 26).

On direct examination, Trial Counsel testified that the movement of shell casings by one of the first responding officers came up at trial. (PCR Tr. p. 8). Trial Counsel testified that they made a great deal about the mishandling of evidence. (PCR Tr. p. 8).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*.

This Court finds that the failure to disclose the moving of the shell casings did not constitute a Brady violation, as the evidence was not material. As noted *supra*, only a few of the shell casings were moved, not all, and the other evidence was "formidable," including the eyewitness testimony from several co-defendants. See State v. Proctor, 358 S.C. 417, 424, 595 S.E.2d 476, 480 (2004) ("We find that the nondisclosure of proficiency test results was not material. The other evidence was formidable: the test results could only have reduced the probabilities."). This is even more

clearly demonstrated by Trial Counsel's extensive cross-examination of various witnesses concerning the movement of the shell casings, the theory he put forward that the shots might have come from the trailer and not the highway, and his closing argument. Trial Counsel took advantage of these facts and repeatedly put them before the jury throughout the trial, yet the jury convicted Applicant. Therefore, Applicant has failed to prove any deficiency in Trial Counsel's representation for failing to object to the admissibility of the shell casings based on Brady, as any objection would have been futile. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE.**



ALLEGATION OF NEWLY DISCOVERED EVIDENCE

Allegation 3a: Applicant's Co-Defendant, Jamie Williams, Who Testified Against Applicant, Has Given a Statement That He Provided False Testimony During Applicant's Trial. Neither Applicant nor Counsel Had Notice of The Admission of Falsity of Mr. Williams' Testimony and Could Not Have Discovered Such. Mr. Williams Has Provided an Affidavit, Dated December 6, 2017, Where He Acknowledges the Falsity of His Testimony.

Applicant alleged that he recently discovered his co-defendant, Williams, provided false testimony at his trial. Specifically, Applicant alleges that Williams provided an affidavit dated December 7, 2017, acknowledging the falsity of his testimony. This Court finds this allegation to be without merit.

To obtain a new trial based on newly or after discovered evidence under S.C. Code Ann. § 17-27-20(A)(4), a PCR applicant must show the evidence:

1. would probably change the result if a new trial is had;
2. has been discovered since the trial;
3. could not have been discovered before trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)); see also, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with

the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . ."). The "credibility of newly-discovered evidence . . . is a matter for determination by the circuit judge to whom it is offered." State v. Mayfield, 235 S.C. 11, 34, 109 S.E.2d 716, 729 (1959); Harris, 391 S.C. at 544–45, 706 S.E.2d at 529 ("The credibility of newly-discovered evidence is for the trial court to determine."); see, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.").

PCR Evidentiary Hearing

On direct examination, Applicant testified that he does not recall when he became aware of Williams giving statements to law enforcement. (PCR Tr. p. 12).

On direct examination, Williams testified that he was charged with Smith, Bethea, and Applicant. (PCR Tr. p. 35). Williams testified that his testimony from the August 2014 trial was true and accurate. (PCR Tr. p. 37). Williams testified that he recalled the contents of his affidavit and signed it. (PCR Tr. p. 38; Applicant's Exh. 3). Williams further testified that his sister was told that he had to plead to perjury so that his murder case would be dismissed. (PCR Tr. p. 39).

Findings

As an initial matter, this Court is not persuaded by Williams' incredible testimony. Further, upon conducting and completing its analysis, this Court finds Applicant has failed to meet the requisite burden of proof regarding newly or after-discovered evidence under S.C. Code Ann. § 17-27-20(A)(4) (2014) and further failed to establish any constitutional violations or deprivations that would entitle Applicant to relief. See Rule 71.1 (c), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). As aforementioned, it is a "fixed rule that the credibility of

newly discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered." State v. Parker, 249 S.C. 139, 141, 153 S.E.2d 183, 184 (1967); see also Clemons v. Mississippi, *supra*.

The determination of whether new evidence is credible for the purposes of a new trial rests with the trial court. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing Porter, 269 S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." State v. Deese, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)).

Specifically, Applicant contends that his co-defendant, Williams, admitted to presenting false testimony by way of an affidavit dated December 6, 2017. However, contrary to Applicant's assertions, Williams testified that his testimony at trial was true and accurate. Further, Williams' intense concern with being charged with perjury calls into question his signed affidavit, which contradicts his testimony at the evidentiary hearing. Further, even if Williams testified consistently with his affidavit, his recantation is unreliable and merely has impeachable value. State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977) (quoting State v. Mayfield, 235 S.C. 11, 34–35, 109 S.E.2d 716, 729 (1959) ("Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.") (internal quotations omitted)). Moreover, Williams' affidavit is not material to Applicant's guilt or innocence, as it was not his testimony solely that implicated Applicant.



Accordingly, this Court further finds Applicant has failed to meet his burden, and the evidence presented does not constitute newly discovered evidence. Importantly, even if the evidence constituted newly discovered evidence, it was immaterial to Applicant's guilt or innocence and would not change the result if Applicant was granted a new trial. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

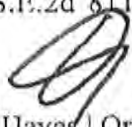
ALLEGATIONS OF JUROR MISCONDUCT

Allegation 2a: Juror Misconduct in the Form of Jurors Sleeping During Trial.

Applicant alleged that juror misconduct in the form of jurors sleeping during his trial. Specifically, the Applicant presented two affidavits from two jurors, Rachel Williams (Rachel) and Diamond A. Brown (Brown), in which they admitted to sleeping during Applicant's trial. This Court finds this allegation to be without merit.

A "defendant has a constitutional right to be tried by competent jurors," which "implies a tribunal both impartial and mentally competent to afford a hearing." Tanner v. United States, 483 U.S. 107, 134 (1987) (Marshall, J., dissenting) (citing Jordan v. Massachusetts, 225 U.S. 167 (1912)). Consistent with these principles, "a juror who has not heard all the evidence in the case or the court's instructions as to the applicable principles of law is grossly unqualified to render a verdict." People v. Valerio, 141 A.D.2d 585, 529 N.Y.S.2d 350, 351 (1988).

Juror misconduct discovered post-trial is not properly considered as newly discovered evidence; instead, it is a separate basis for a new trial. McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). Misconduct of a juror is "a fact to be determined by the trial judge from the circumstances" of each case. 23A C.J.S. Criminal Law § 1437 at 381; see also State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) (trial court has broad discretion in assessing



allegations of juror misconduct); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998), cert. denied, 525 U.S. 1077 (1999). The general test for evaluating alleged juror misconduct is whether there, in fact, was misconduct and, if so, whether any harm resulted to the defendant as a consequence. See 23A C.J.S.Criminal Law § 1437 at 381. Indeed, the great majority of courts in other states considering the sleeping juror question have utilized this approach. See 59 A.L.R.5th at 42 (because harm to defendant does not automatically follow a determination that a juror was sleeping, most states require a defendant to show prejudice, such as the juror "failed to follow some essential part of the proceedings"); People v. Bradford, 15 Cal.4th 1229, 65 Cal.Rptr.2d 145, 939 P.2d 259 (1997).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he recalled jurors sleeping during his trial. (PCR Tr. p. 24). Applicant testified that he told Trial Counsel, and the trial court made a mention about it during the trial. (PCR Tr. p. 25). Specifically, Applicant testified that Rachel kept sleeping on and off. (PCR Tr. p. 24).

On direct examination, Trial Counsel testified that he did not recall any members of the jury nodding off or falling asleep. (PCR Tr. p. 14). Trial Counsel testified he did not recall Applicant telling him about any jurors falling asleep. (PCR Tr. p. 14).

On direct examination, Rachel testified that she did not recall signing an affidavit back in 2016. (PCR Tr. p. 31). Rachel testified that it was her signature on the affidavit. (PCR Tr. p. 31). Rachel testified that she recalled saying that she was sleeping during trial but that she "wasn't asleep where [she] couldn't, you know, hear anything." (PCR Tr. p. 32).



On cross-examination, Rachel testified that attorney Shelly Williams contacted her about providing an affidavit. (PCR Tr. p. 33; Applicant's Ex. 1).¹³

Findings

This Court finds the combination that Applicant failed to meet his burden in proving that there was juror misconduct, and that he suffered any resulting prejudice from the jurors' conduct and was denied his right to a fair trial with an impartial jury. See 23A C.J.S. Criminal Law, supra. As an initial matter, Applicant failed to show any existing juror misconduct as it pertained to Brown, as Brown failed to appear and testify concerning this matter. See Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi); See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Concerning Rachel, she testified that she may have nodded off during trial, but not to the extent that she could not hear what was taking place. Further, contrary to Applicant's testimony and the affidavit, there is no indication in the record that the trial court admonished any of the jurors for sleeping or not paying attention. Trial Counsel testified that he did not recall an issue with jurors sleeping, and did not recall having a conversation with Applicant about jurors sleeping. Based on the lack of this issue appearing in the record, Rachel's testimony that she did not recall sleeping, and testimony that she was able to hear what was going on throughout the trial, and Trial Counsel's inability to remember such an issue, this Court finds Applicant's testimony that he saw

¹³ The second juror, Diamond Brown was subpoenaed but did not appear at Applicant's evidentiary hearing. PCR Counsel offered Brown's affidavit as Applicant's Exhibit 2. (PCR Tr. p. 34). The trial record does not corroborate the juror's affidavit.

multiple jurors sleeping throughout the trial not credible. Applicant failed to establish that either Brown or Rachel failed to follow some essential part of his trial. See 59 A.L.R.5th at 42, *supra*.

Therefore, this Court finds Applicant has failed to establish any juror misconduct or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

ALLEGATIONS ABANDONED

- Allegation 1b:** Trial Counsel Failed to Prepare and Conduct Pre-Trial Investigations to Interview Adrian Smith.
- Allegation 1c:** Trial Counsel Failed to Request Written Notice to Seek Life without Parole.
- Allegation 1d:** Trial Counsel Failed to Request Jury Charge in Compliance with State v. Logan¹⁴.

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems these allegations abandoned.

|CONCLUSION & SIGNATURE PAGE FOLLOWS|

¹⁴ 405 S.C. 83, 747 S.E.2d 444 (2013).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE**.

This Court notifies the Applicant that he 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21 day of October, 2025.

GEORGE M. MCFADDEN, JR.
Presiding Judge
Twelfth Judicial Circuit

[Signature], South Carolina

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
SHAHEED HAYES,	)	MOTION TO ALTER OR AMEND
	)	THE JUDGEMENT
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2017-CP-33-0219

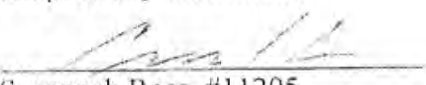
COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on April 7, 2026. The Applicant takes issue with the findings of fact and conclusions of law set forth in the denial of post-conviction relief in his case. He further argues that even if a single allegation does not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

As to the findings regarding the allegation that trial counsel failed to object or take exception to the jury instruction on attempted murder, the Applicant points out that Raheem D. King's trial was prior to his 2014 trial and had his counsel objected to the charge at trial as King's counsel did, the outcome would have been different. (Order p.19). Raheem D. King's case was remanded after the court "clarify[ed] that the offense of attempted murder, as codified in section 16-3-29 of the South Carolina Code and viewed in its entirety, requires a specific intent to kill." State v. King, 810 S.E.2d 18, 422 S.C. 47 (S.C. 2017). The opinion relied on the plain wording of the statute and existent case law such that it would not require a jury to object to the instruction that "a specific intent to kill is not an element of attempted murder".

Additionally, the Applicant argues that the Order's findings regarding the investigator and Solicitor vouching for key witnesses were erroneous. (Order pp. 28-30, & 38-42). Two co-defendants testified at Applicant's trial: Willie Bethea and Jamie Williams. (Trial Tr. p. 468 & p. 530). Jamie Williams later seemed to recant. (PCR Tr. p. 38). At trial, the investigator said that his honest opinion based on his 18 years of law enforcement was that Willie Bethea was most sincere and apologetic and remorseful. (Trial Tr. P. 230). As sincerity indicates truthfulness, this comment amounted to vouching and counsel did not object. The prejudicial effect was heightened by the solicitor's comments at trial, stating in summation, "They told the truth". (Trial Tr. 493). Applicant's counsel did not object. "It is improper for a judge or a prosecutor to bolster a witness's credibility by stating to the jury his or her view that the witness is likely being truthful." State v. Reyes, 432 S.C. 394, 401, 853 S.E.2d 334, 338 (2020). "Credibility is a determination for the jury." *Id.* at 404, 853 S.E.2d at 339. Moreover, "[a] solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002)."

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St.
 Greenville, SC 29601
 susannah@rossenderlin.com
 (864) 242-0029

2026 MAY 12 P 2:14
 MARION COUNTY SC
 CHRISTY H. GRAY
 CLERK OF COURT

This ____ day of _____, 2026

STATE OF SOUTH CAROLINA
COUNTY OF MARION

SHAHEED HAYES.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

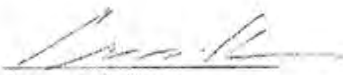
IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE
BY ELECTRONIC MAIL

CASE # 2017-CP-33-0219

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by E-mail exists throughout the state of South Carolina and this is a proper circumstance of service by E-mail.
3. I have this day served a copy of the **Amended Application** in the above-captioned matter on the following person by E-mail to:

rusbarlow @scag.gov


Susannah Ross
Attorney for Applicant

This 16th day of April, 2026

FILED
2026 MAY 12 P 2:15
MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Shaheed Hayes

Applicant,

v.

State of South Carolina

Respondent.

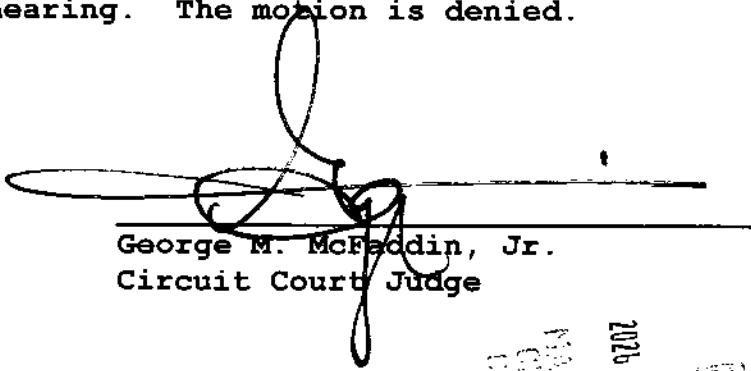
IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-33-0219

ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
AFTER THE JUDGMENT

In this post-conviction case, this court dismissed the application with prejudice by written order on October 21, 2025. Applicant filed and served his motion for reconsideration (alter or amend) of that order. This weekend I reviewed the motion and the order along with the file. I respectfully decline the motion to alter or amend the order. It is within the court's discretion to issue a ruling from or related to a motion to alter or amend without holding a motion hearing. Here, counsel for Applicant provided the motion with concise reasons for the motion. I do not, therefore, hold a hearing. The motion is denied.



George M. McFaddin, Jr.
Circuit Court Judge

May 18, 2026
Sumter, SC

FILED
2026 MAY 22 P 2:26
MAR 22 2026
CLERK OF COURT
JUDICIAL CIRCUIT
12

FILED

BOOK _____ PAGE _____

2013 JAN 31 A 9:39

MARION COUNTY SC

WITNESSES

MARTIN BELL Marion County Sheriff

915

E. L. Clements, III

ARREST WARRANT NUMBER

M397251/M397255/M397259/M397263/M397277/

M397260/M397261/M397262/M397279/M397274/
M397275/M397258/M397276/M397280/M397253/M397252/
M397254/M397256/M397278/M397257/M397285/M397271/
M397286/M397270/M397267/M397268/M397282/M397284

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

Pauline R Scott
Jan 31, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-33-00097

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

vs.

BLATON WAKEEM SMITH
WILLIE OBRIAN BETHEA
SHAHEED HAYES
JAMIE WILLIAMS

Indictment for

**MURDER;
DISCHARGING FIREARM INTO DWELLING;
POSSESSION OF WEAPON DURING
COURSE OF VIOLENT CRIME;
ATTEMPTED MURDER
(FOUR COUNTS)**

916

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

MURDER

DISCHARGING FIREARM INTO DWELLING
POSSESSION OF WEAPON DURING COURSE OF
VIOLENT CRIME
ATTEMPTED MURDER
(FOUR COUNTS)

At a Court of General Sessions, convened on JANUARY 31, 2013 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, willfully, feloniously, and intentionally kill the victim, Christian James Drawhorn, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 13, 2012 in Marion County, in violation of Section 16-03-0010, 20 S. C. Code of Laws, 1976, as amended.

COUNT TWO- DISCHARGING FIREARM INTO DWELLING

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County on or about April 13, 2012, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; located at 5316 N. Hwy 501, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED MURDER, DISCHARGING A FIREARM INTO A DWELLING, POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME AND FOUR COUNTS OF ATTEMPTED MURDER WITH THE AFORESAID NAMES(S) OF BLATON SMITH, WILLIE O. BETHEA, SHAHEED HAYES AND JAMIE WILLIAMS SHOWN THEREON

COUNT FOUR- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Derrick Lamont Wilson, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT FIVE- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Darrell Antonio Davis, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT SIX- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Gavin Graves, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT SEVEN- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Christopher Kollock, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR