

VOL. I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

RECEIVED

JUN 23 2014

S.C. Supreme Court

WILLIAM JERMAINE HENRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002762

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,)

2006-GS-23-0698-0701

PLAINTIFF,)

-VS-)

February 2-4, 2009

WILLIAM HENRY,)

TRANSCRIPT OF RECORD

DEFENDANT.)

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JEFF WESTON
ASSISTANT SOLICITOR FOR 13TH JUDICIAL CIRCUIT
ATTORNEY FOR THE STATE

TOM CREECH
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
176	Wright, Laura M	B	F				X
89	Malloy, Ronald K	B	M			X	
25	Bylenga, Gregorie P	W	F			X	
98	McDaniel, Ronald W	W	M			X	
161	Wanner, Laurel M	W	F				X
102	McKinney, Barbara A	B	F				X
114	Parrott, Rebecca R	W	F			X	
130	Roddy, Inez H	W	F			X	
44	Fennell, Brenda S.	W	F	X			
101	McKee, Lisa B	W	F				
108	Murray, Jacques L	B	M				X
157	Tyson, Natalie S	W	F				X
62	Harris, Reginald L	B	M				X
11	Basler, Donald S	B	M		X		
113	Parker, Scott M	W	M	X			
136	Seeger, William A	W	M			X	
86	Long, Richard L Jr.	W	M		X		
106	Moody, Sherry Y	B	F				X
174	Rupe, Stanley H	W	M			X	
90	Marbut, Lance A	W	M				X
57	Gruss, Elizabeth	W	F				X
95	Mauk, Heidi B	W	F				X
40	Durham, Donna A	W	F				X
21	Bryant, Sheila A	W	F				X
29	Chandler, Karen R	B	F				X

1 (WHEREUPON, Court convened with all parties present
2 and the following proceedings were had.)

3 THE COURT: I understand the jury is empaneled.
4 Anything we need to take care of before the panel gets up
5 here?

6 MR. WESTON: Yes, sir, Your Honor. There are
7 two co-defendants who are prepared to enter deferred
8 sentencing pleas this morning. It's the state's intention
9 to call these co-defendants as witnesses against Mr.
10 Henry. And they are prepared to plead guilty and have
11 their sentencing deferred until after the -- until the
12 conclusion of these proceedings. One of the attorneys is
13 here in the courtroom, Mr. Godfrey, for one of the
14 defendants. And Mr. Posey is right outside the door
15 there. The defendants are here. We didn't know if you
16 wanted to do that before picking a jury or afterwards?

17 THE COURT: I thought about doing it afterwards,
18 but I hate to keep them waiting. Both the defendants are
19 here, I guess?

20 MR. WESTON: Yes, sir. We would just ask that
21 they be brought up one at a time because they generally
22 have been separated since they've been housed in the
23 detention center. We'd like to maintain that just because
24 of potential for any kind of interplay between the two.

25 THE COURT: I'm assuming -- I saw Ms. Kline

1 outside bringing the jury up. I don't know if she's doing
2 that or not. Let's see if she's ... The jury, they're
3 not on their way up, are they?

4 MS. KLINE: No, sir.

5 THE COURT: Okay. We're going to do those two
6 pleas first.

7 (WHEREUPON, court stood at recess for a short break..)

8 THE COURT: Good morning, ladies and gentlemen.
9 Thank you very much for your patience with us in waiting
10 for us to be ready to select a jury for a trial of this
11 particular case. You've been qualified to serve as jurors
12 already by Judge Patterson, but we now need to select you
13 -- or find out -- I need to ask you some additional
14 questions if you're qualified to serve on this particular
15 jury.

16 I'm Eddie Welmaker. I'm a judge from Pickens County
17 here for the 13th Circuit and I'm over here handling
18 criminal court this week or general sessions court. We
19 have a trial that's about to begin. This is a case in
20 which the state of South Carolina has issued several
21 indictments through the grand jury charging Mr. William
22 Henry with various offenses to which I'll inform you in a
23 moment. He's entered a plea of not guilty to all of these
24 charges. And that, of course, places the burden on the
25 state of South Carolina to prove his guilt beyond a

1 reasonable doubt on each of the charges. Every citizen
2 charged with an offense in this state is presumed
3 innocent. And he's entered a plea of not guilty, which
4 places that burden on the state of South Carolina.

5 These attorneys, the state of South Carolina, Mr.
6 Henry, desire to have fair and impartial jurors to hear
7 this case to decide just what the facts are. We need to
8 select a panel of jurors to be the fact finders, to be
9 judges of the facts in this case. They deserve -- they
10 don't just desire to have fair jurors. They deserve to
11 have fair and impartial jurors. So I need to ask you some
12 questions about this particular case to determine your
13 eligibility to serve on it.

14 As I said, these indictments are merely the charging
15 papers that bring the cases before us in this courtroom.
16 One indictment states that on or about March the 21st of
17 2006 here in Greenville County that Mr. William Jermaine
18 Henry unlawfully seized or abducted or confined or carried
19 away an Andre Brooks without legal authority, that being
20 the crime of kidnaping against that particular individual,
21 Andre Brooks.

22 The other indictment states that on or about that
23 same date here in Greenville County, March the 21st, 2006,
24 that Mr. William Henry wilfully and unlawfully and with
25 malice aforethought, either expressed or implied, he

1 committed assault and battery of a -- with an intent to
2 kill upon Mr. Andre Brooks. There's also a charge that on
3 or about that same date, March the 21st, 2006, while armed
4 with a deadly weapon and either by words or actions,
5 indicating being armed, during the commission of a
6 robbery, that he took by means of force or intimidation
7 goods or money, that being the victim's clothing and cell
8 phone from Andre Brooks, that constituting armed robbery.

9 There's also a charge that on or about that same
10 date, March the 21st, 2006, that Mr. William Henry
11 unlawfully and with malice aforethought did kill Francisco
12 Perez by means of gunshots and that Mr. Perez, as a
13 proximate result of that, constituting the crime of
14 murder. So these are the charges to which have brought
15 against Mr. Henry today.

16 First of all, I need to ask you, ladies and
17 gentlemen, is there any member of the jury panel who has
18 any independent knowledge about this particular event,
19 these events that happened on or about March the 21st,
20 2006, either that you were in the neighborhood or you were
21 a witness to them, you heard something about it on the
22 radio or on television or read something in the newspaper.
23 Is there any member that has any independent knowledge
24 about these particular allegations? If so, would you
25 please stand?

1 JUROR: I might have heard something another on
2 the radio, but I didn't remember what happened.

3 THE COURT: Do you remember anything that you
4 may have heard?

5 JUROR: Yes, sir, I just heard something ...

6 THE COURT: Do you have any recollection now
7 about what you heard?

8 JUROR: Not too much, no, sir. Vaguely I
9 remember -- I'm not even sure, but it sounds familiar.
10 But I never heard -- I don't think I knew anything at the
11 time.

12 THE COURT: Well, if you have heard something
13 that you say you can't recall now, do you believe that
14 would affect -- what you heard through the media, would
15 this affect your ability to be a fair juror?

16 JUROR: No, I don't think so.

17 THE COURT: Well, do you have any hesitancy at
18 all that it could affect you?

19 JUROR: No, it wouldn't affect me at all.

20 THE COURT: Do you know that?

21 JUROR: Yeah, I know that.

22 THE COURT: All right. And your name, please,
23 sir?

24 JUROR: Jim Chakeris.

25 THE COURT: All right. Thank you for sharing

1 that with us, sir.

2 Is there any member of the jury panel who is related
3 by blood or marriage or has a close business, a social or
4 a personal relationship with Mr. William Henry? If so
5 would you please stand?

6 (No response.)

7 THE COURT: Thank you. There's no response.

8 Ladies and gentlemen, there are several potential
9 juror -- witnesses who may be called upon to testify in
10 this case. I'm going to read a list of those possible
11 witnesses. After that I'll need to ask you some
12 questions. If you would just listen carefully as I call
13 these names. With the Greenville Police Department is
14 Officer T.D. Robinson, Investigator Collis Flavell. With
15 Pickens County Forensic Division is Officer A.J. Deitz.
16 James Armstrong with the Greenville County Forensic
17 Division. Dr. Michael Ward. Officer Craig Gardner with
18 the Greenville Police Department. Other witnesses that
19 might possibly be, Katrina Haynes, Frederick Irby, Welton
20 Booker, John Garrett, Mark Cureton, Andre Brooks. Is
21 there any member of the jury panel related by blood or
22 marriage to any of these potential witnesses? If so would
23 you please stand?

24 (No response.)

25 THE COURT: Is there any member of the jury

1 panel who has a close business, a social or a personal
2 relationship with any of these potential witnesses? If so
3 would you please stand?

4 Yes, sir, your name, please?

5 JUROR: My name is Scott Parker. Dr. Ward and
6 myself are business associates. We're both pathologists
7 with Pathology Associates and Consultants.

8 THE COURT: All right, sir. I'll excuse you
9 from the trial of this case then, sir. If you would, just
10 -- well, I'll excuse you at this time. Thank you. Again,
11 your name, please.

12 JUROR: Scott Parker.

13 THE COURT: Thank you. If you would, Dr.
14 Parker, if you would just go back down to the assembly
15 room, they'll give you instructions there about what you
16 need to do further. Thank you.

17 At this time I'll ask the attorneys if you would
18 please stand and introduce yourselves to the jury. Mr.
19 Weston.

20 MR. WESTON: My name is Jeff Weston. I'm a
21 prosecutor with the 13th Circuit Solicitor's Office and I
22 will be prosecuting the case along with Ms. Lindsey
23 Kicklighter, my paralegal.

24 THE COURT: Mr. Creech.

25 MR. CREECH: Good morning. My name is Tom

1 Creech. I'm a lawyer here in Greenville. I'm privileged
2 to represent Mr. Henry in today's case. Here with us
3 assisting is my paralegal, Laura Gibson. Thank you.

4 THE COURT: Is there any member of the jury
5 panel related by blood or marriage to either of these
6 attorneys? If so would you please stand?

7 (No response.)

8 THE COURT: Is there any member of the panel who
9 has a close business, a social or a personal relationship
10 with either of these attorneys? If so would you please
11 stand?

12 (No response.)

13 THE COURT: Is there any member of the jury
14 panel a member or a -- a member who contributes to any
15 group having the primary concern the promotion of law
16 enforcement or victims' rights such as MADD, SADD, CAVE,
17 PAR, any of those organizations? If you're a contributing
18 member, would you please stand?

19 (No response.)

20 THE COURT: Thank you. There is no response.

21 Is there any member of the jury panel who has ever
22 been a victim of a violent crime such as those I've listed
23 of a kidnaping or a robbery or a crime of violence against
24 you? If you have been a victim of those, would you please
25 stand?

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13

1 JUROR: Sir.

2 THE COURT: Yes, ma'am.

3 JUROR: My brother was murdered September the
4 14th of '08.

5 THE COURT: Okay. Your brother was murdered?

6 JUROR: Uh-huh (affirmative).

7 THE COURT: All right. The fact that you --
8 that that has obviously affected you, would you be able to
9 be a fair juror in this case?

10 JUROR: No, sir.

11 THE COURT: All right. Again, your name,
12 please, ma'am?

13 JUROR: Brenda Fennell.

14 THE COURT: All right. Thank you, Ms. Fennell.
15 I'll excuse you at this time. If you would, go back
16 downstairs.

17 JUROR: Your Honor.

18 THE COURT: Yes, sir. Just a minute, please,
19 sir? All right, sir.

20 MR. CREECH: Your Honor, may we approach just
21 briefly?

22 THE COURT: Yes, sir.

23 (WHEREUPON, Mr. Weston and Mr. Creech approached the
24 bar.)

25 THE COURT: Yes, sir, I'm sorry.

1 JUROR: I'll mention that about twenty years
2 ago, thirty, twenty-eight or something, I was a manager of
3 a pharmacy ---

4 THE COURT: All right, sir, I don't need all the
5 facts. I'll excuse you too. Thank you very much, sir. I
6 appreciate that.

7 JUROR: I just wanted to mention it.

8 THE COURT: All right. Thank you. You can go
9 back downstairs if you would, please, sir, and they'll
10 give you instructions about when to report back. Thank
11 you very much.

12 Is there any member of the jury or a member of your
13 immediate family involved in law enforcement? If so would
14 you please stand? A member of your immediate family or
15 you.

16 Yes, sir, your name, please?

17 JUROR: Lance Marbut.

18 THE COURT: And what family member is it?

19 JUROR: My brother is a secret service agent in
20 Washington, D.C. And my brother-in-law is a sergeant with
21 the police force in South Brunswick, New Jersey.

22 THE COURT: If you would just remain standing
23 just a minute, please, sir.

24 Your name, please? Did you get his name?

25 MR. CREECH: I didn't get his name.

1 JUROR: Lance Marbut, juror number 90.

2 MR. CREECH: Marbut?

3 JUROR: Marbut, M-a-r-b-u-t.

4 THE COURT: If you would remain standing just a
5 moment. Ma'am, your name, please?

6 JUROR: Elizabeth Gruss. And my brother-in-law
7 works for the FBI in Milwaukee, Wisconsin. And does
8 military service count?

9 THE COURT: Excuse me?

10 JUROR: Does military service ---

11 THE COURT: No, ma'am.

12 Yes, sir, your name and number, please?

13 JUROR: Adam Meredith, Juror number 103. I
14 don't know if it's relevant, but my aunt is a dispatcher
15 with Greenville County.

16 THE COURT: Greenville County dispatcher?

17 JUROR: Yes, sir.

18 THE COURT: All right. Your name, sir and
19 number?

20 JUROR: William Seeger, 136. I have a -- my
21 wife's uncle's son is a highway patrolman. And a cousin
22 of hers is a city policeman.

23 THE COURT: All right, sir. Yes, sir, your
24 name, please, sir?

25 JUROR: Alphonso Houston, Juror number 68. My

1 uncle is a sergeant with the Greenville County Sheriff's
2 Department.

3 THE COURT: All right, sir. Yes, ma'am, your
4 name, please?

5 JUROR: Deborah Arnold. My number is number 8.
6 I'm a retired New York City Police officer and my husband
7 is a retired New York Police Sergeant.

8 THE COURT: All right. Those of you who are
9 standing, you have relatives who are in law enforcement.
10 Would the fact that you have law enforcement in your
11 family, folks that serve, if a law enforcement officer
12 testifies, and some are likely to I'm confident, would
13 that affect your ability to be a fair juror? In other
14 words, these parties want folks to make a decision on this
15 case based on what you hear from the witness stand, the
16 law that I give you and nothing else. If you believe that
17 because of that relationship you could not be a fair
18 juror, I'll ask if you would, please, to remain standing.
19 If you believe you could be a fair juror, would you please
20 be seated, those of you who are standing?

21 All right. Let the record reflect that all the
22 jurors have been seated. Thank you very much for sharing
23 that information with us.

24 Is there any member of the jury panel aware of any
25 bias or prejudice that would interfere with you in anyway

1 in rendering a fair verdict if you were picked as a juror
2 in this case? If so, would you please stand?

3 JUROR: Many years ago I did have some things
4 stolen from my car one night that ---

5 THE COURT: All right. Do you believe that
6 would affect your ability to be a fair juror?

7 JUROR: No. But I mean, it did happen.

8 THE COURT: All right. What's your name and
9 number, please?

10 JUROR: Jennifer Gibson, 50.

11 THE COURT: All right. Thank you, ma'am.

12 Is there any member of the jury panel who has
13 expressed or formed an opinion in anyway about this case
14 in anyway? If so would you please stand?

15 (No response.)

16 THE COURT: Let me repeat again, ladies and
17 gentlemen, these parties desire to have fair jurors. They
18 deserve to. Is there any member of this panel aware of
19 any reason whatsoever that you believe you could not
20 render a verdict that's fair to both the state of South
21 Carolina, to Mr. Henry, the Defendant, in this case, one
22 that would speak the truth based upon the law that I give
23 you, the evidence that you hear from this courtroom and
24 this alone? Any reason whatsoever you believe you could
25 not be a fair juror in this case, would you please stand?

1 (No response.)

2 THE COURT: Thank you. There's no response.

3 Any other questions from the State?

4 MR. WESTON: Nothing from the State, Your Honor.

5 THE COURT: From the Defense?

6 MR. CREECH: Not at this time, Your Honor.

7 THE COURT: All right. Let's select a jury.

8 MADAM CLERK: When I call your name, will you
9 please stand where you are?

10 Juror number 176, Laura Wright.

11 MR. WESTON: Present Ms. Wright, please.

12 MADAM CLERK: What says the Defense?

13 MR. CREECH: Please swear Ms. Wright.

14 MADAM CLERK: Ms. Wright, will you please have a
15 seat in the jury box.

16 Juror number 89, Ronald Malloy.

17 MR. WESTON: Present Mr. Malloy, please.

18 MR. CREECH: Your Honor, please excuse Mr.
19 Malloy.

20 THE COURT: You may be seated.

21 MADAM CLERK: Juror number 25, Gregorie Bylenga.

22 JUROR: Bylenga.

23 MADAM CLERK: I'm sorry.

24 MR. WESTON: Present Ms. Bylenga, please.

25 THE COURT: Please just remain standing.

1 JUROR: Oh, I'm sorry. I thought he said be
2 seated.

3 MADAM CLERK: What says the Defendant?

4 MR. CREECH: Please excuse Ms. Bylenga.

5 MADAM CLERK: Thank you. You may have a seat.

6 Juror number 98, Ronald McDaniel.

7 MR. WESTON: Present Mr. McDaniel, please.

8 MADAM CLERK: What says the Defendant?

9 MR. CREECH: Please excuse Mr. McDaniel.

10 MADAM CLERK: Thank you. You may be seated.

11 Juror number 161, Laurel Wanner.

12 MR. WESTON: Present Ms. Wanner, please.

13 MADAM CLERK: What says the Defendant?

14 MR. CREECH: Please swear Ms. Wanner.

15 MADAM CLERK: Thank you. You may have a seat in

16 the jury box.

17 Juror number 102, Barbara McKinney.

18 MR. WESTON: What was the number again?

19 MADAM CLERK: 102.

20 MR. WESTON: Thank you.

21 MADAM CLERK: You're welcome.

22 MR. WESTON: Present Ms. McKinney, please.

23 MADAM CLERK: What says the Defendant?

24 MR. CREECH: Please swear Ms. McKinney.

25 MADAM CLERK: Thank you. You may have a seat in

1 the juror's box.

2 Juror number 114, Rebecca Parrott.

3 MR. WESTON: Present Ms. Parrott, please.

4 MADAM CLERK: What says the State -- or the

5 Defendant?

6 MR. CREECH: Please excuse Ms. Parrott.

7 MADAM CLERK: Thank you. You may have a seat.

8 Juror number 130, Inez Roddy.

9 MR. WESTON: Present Ms. Roddy, please.

10 MR. CREECH: Please excuse Ms. Roddy.

11 MADAM CLERK: Thank you. You may have a seat.

12 Juror number 101, Lisa McKee.

13 MR. WESTON: Present Ms. McKee, please.

14 MADAM CLERK: What says the Defendant?

15 MR. CREECH: Please excuse the juror.

16 MADAM CLERK: Thank you. You may be seated.

17 Juror number 108, Jacques Murray.

18 MR. WESTON: Present Mr. Murray, please.

19 MADAM CLERK: What says the Defendant?

20 MR. CREECH: Please swear the juror.

21 MADAM CLERK: Thank you. You may have a seat in

22 the jury box.

23 Juror number 157, Natalie Tyson.

24 MR. WESTON: Present Ms. Tyson, please.

25 MADAM CLERK: What says the Defendant?

1 MR. CREECH: Please swear the juror.

2 MADAM CLERK: Thank you. Please have a seat in
3 the jury box.

4 Juror number 62, Reginald Harris.

5 MR. WESTON: Present Mr. Harris, please.

6 MADAM CLERK: What says the Defendant?

7 MR. CREECH: Please swear Mr. Harris.

8 MADAM CLERK: Thank you. You may have a seat in
9 the jury box.

10 Juror number 11, Donald Basler.

11 MR. WESTON: Excuse Mr. Basler from this jury,
12 please.

13 MADAM CLERK: Thank you. You may be seated.

14 Juror number 136, William Seeger.

15 MR. WESTON: Present Mr. Seeger, please.

16 MR. CREECH: Please excuse Mr. Seeger.

17 MADAM CLERK: Thank you. You may be seated.

18 Juror number 86, Richard Long.

19 MR. WESTON: Excuse Mr. Long from this jury,
20 please.

21 MADAM CLERK: Thank you. You may be seated.

22 Juror number 106, Sherry Moody.

23 MR. WESTON: Present Ms. Moody, please.

24 MADAM CLERK: What says the Defendant?

25 MR. CREECH: Please swear the juror.

1 MADAM CLERK: Thank you. You may have a seat in
2 the jury box.

3 Juror number 174, Stanley Rupe.

4 JUROR: It's Rupe.

5 MADAM CLERK: Sorry.

6 JUROR: That's okay.

7 MR. WESTON: Present this juror, please.

8 MR. CREECH: Please excuse Mr. Rupe.

9 MADAM CLERK: Thank you. You may be seated.

10 Juror number 90, Lance Marbut.

11 MR. WESTON: Present Mr. Marbut, please.

12 MADAM CLERK: What says the Defendant?

13 MR. CREECH: Please swear the juror.

14 MADAM CLERK: Thank you. You may have a seat in
15 the jury box.

16 Juror number 57, Elizabeth Gruss.

17 MR. WESTON: Present Ms. Gruss, please.

18 MADAM CLERK: What says the Defendant?

19 MR. CREECH: Please swear the juror.

20 MADAM CLERK: Thank you. You may have a seat in
21 the jury box.

22 Juror number 95, Heidi Mauk.

23 MR. WESTON: Present Ms. Mauk, please.

24 MR. CREECH: Please swear the juror.

25 MADAM CLERK: Thank you. You may have a seat in

1 the jury box.

2 Juror number 40, Donna Durham.

3 MR. WESTON: Present Ms. Durham, please.

4 MR. CREECH: Please swear Ms. Durham.

5 MADAM CLERK: Thank you. You may have a seat in
6 the jury box.

7 Juror number 21, Sheila Bryant.

8 MR. WESTON: Present Ms. Bryant, please.

9 MR. CREECH: Please swear Ms. Bryant.

10 MADAM CLERK: Thank you. You may have a seat in
11 the jury box.

12 Okay. This is for an alternate. Juror number 29,
13 Karen Chandler.

14 MR. WESTON: Present Ms. Chandler, please.

15 MR. CREECH: Please swear the juror.

16 MADAM CLERK: Thank you. You may have a seat in
17 the jury box.

18 THE COURT: Any legal matters we need to take
19 care of as far as the selection of the jury in this case?

20 MR. WESTON: Nothing from the state, Your Honor.

21 THE COURT: From the defense?

22 MR. CREECH: None from the defense.

23 THE COURT: Ladies and gentlemen who were not
24 selected for the trial of this case, I'll ask if you would
25 go back downstairs to the assembly room. They'll have

1 instructions for you at that time. Thank you very much
2 for being with us.

3 (WHEREUPON, the jury pool was dismissed at
4 approximately 12:19 p.m.)

5 THE COURT: Ladies and gentlemen of the jury,
6 let me just make some brief remarks to you. This is in no
7 way to be considered a charge. I'm going to instruct you
8 on the law of this case at the end of the trial when all
9 the evidence is in. I look forward to working with you in
10 this case. It makes me proud that you've accepted the
11 responsibility. You've seen the process by which you were
12 selected and you've made the commitment to these parties
13 to be fair and impartial and make a decision on this case
14 based upon what you hear taking place in this courtroom
15 and the testimony offered in the witness stand. There
16 will be perhaps other documents that are introduced into
17 evidence and you'll have an opportunity to hear all the
18 testimony.

19 You're going to be judges. What you've seen so far
20 is you've heard me called a judge. I'm wearing the black
21 robe. But you're every bit as much judges as I am in this
22 case. We're going to be working together. You may have
23 never served as a juror before. You may have some
24 apprehension about this process, about the title I've just
25 given you as a judge. But let me assure you, ladies and

1 gentlemen, you bring into this courtroom every skill
2 you're going to need to be a judge of the facts in this
3 case because you're going to bring into this courtroom the
4 everyday experiences that you've enjoyed in your work, in
5 your home, social activities, church, wherever you may be,
6 you're going to bring those activities with you today.
7 You're also going to bring into this courtroom the good
8 common sense with which you've been blessed.

9 That's what you're going to need to utilize because
10 you're going to be judging witnesses. You've going to be
11 judging credibility. You've going to be judging the facts
12 to decide just what facts make sense to you and which
13 facts are true indeed. You've committed to fairness and
14 impartiality to both sides in hearing this case.

15 Now, my job as the judge is to conduct the trial, to
16 decide when we take breaks and rule on admissibility of
17 evidence and otherwise. This trial will be taking place
18 and there will be opportunities for lunch breaks, things
19 of that nature.

20 Before I forget, let me explain to you that you may,
21 coming and going as you go out of the building or have
22 lunch, you may see some of these attorneys around and
23 witnesses or whatever. These attorneys, obviously they've
24 been trained as lawyers, and sometimes when you may see
25 them passing in the hallway, they may seem to be high-

1 hating you and just ignoring you or be a little
2 unfriendly. That's part of their training. They've been
3 trained to avoid jurors. They don't want any impropriety
4 to take place or even the appearance of any impropriety.
5 So if you see them in the hallway and they seem to be
6 ignoring you and don't even say good morning, they might
7 be wanting to make sure that there's nothing untoward that
8 happens or anyone makes any such allegations. So you can
9 certainly bear that in mind.

10 As I stated to you, my job is to conduct the trial.
11 We're going to take periodic breaks. Normally we'll go
12 for maybe an hour, hour and a half with testimony. We'll
13 take a break then and let you go back to your jury room
14 and refresh yourself and then we'll come back with more
15 testimony. Sometimes you may need a break and I haven't
16 said let's take a break. Obviously you need to let us
17 know if that takes place because your comfort level is
18 vitally important, because as I stated to you, you're
19 going to need to be good listeners. You've going to have
20 to listen to what takes place and watch the demeanor. So
21 if you're not comfortable, obviously you're not going to
22 be able to fulfill your duty as a juror. So if anytime
23 you need to take a break and I haven't said let's take a
24 break, please let us know. Raise your hand and get my
25 attention.

1 You've met the bailiffs already, Mr. Thompson in the
2 back and Ms. Cook up here. They'll certainly assist you
3 in anyway. In addition, so that you'll know who they are,
4 the young lady sitting down in front of me is Ms. Danette
5 Hanks. She's taking down everything that's said. She's
6 keeping a transcript of the record that we'll have to make
7 sure that everything goes as it's supposed to here.
8 Seated beside me, the young man, is Buckley Warden. He's
9 a recent law school graduate, my law clerk, and he's a
10 valuable asset. You may see him coming and going, taking
11 care of things upstairs in the office. But he'll be here
12 as well. We have two clerks from our fine Clerk of
13 Court's office, Ms. Shirley Kline and Ms. Joelle Langford.
14 They're both down here. Ms. Langford is the one who
15 called your names out earlier.

16 So that you will know, of course, these names were
17 randomly selected, the order in which they were called.
18 Used to we'd have a box and roll it around and pick out a
19 name. Now we have computers to randomly pick those names.
20 Your names were put in a computer and the order in which
21 they were called is the way that they were presented to
22 the court.

23 Your experience as a juror might be none. Your
24 experience of trials might be the latest movie that you've
25 seen about a courtroom or a novel that you've enjoyed

1 reading. Normally in a courtroom there's not moments of
2 high drama. It's a deliberative process by which the
3 lawyers will ask questions and answers will be given under
4 oath.

5 Normally the first stage will be when the attorneys
6 will make an opening statement to you. They'll give you
7 an overview of what this case is about in their
8 perspective. And after that there will be testimony
9 given.

10 When testimony is given, sometimes there's objections
11 made. That's the attorneys -- they have been trained on
12 the rules of evidence and my job is to rule upon those
13 objections that may be made. They may say the question is
14 improper or there's some other objection.

15 Frequently I can rule on that and I can say overruled
16 or I can say sustained and move on and they ask the next
17 question. Sometimes such as during the jury selection,
18 there might be a legal matter they want to discuss and
19 they can come up here to the bench and we can whisper and
20 get it resolved. Sometimes there might be an objection
21 made and it might necessitate you having to leave the
22 courtroom to go back to your jury room while we discuss
23 that legal matter or I rule upon that objection.
24 Sometimes when an objection is made and there's a legal
25 issue involved, I have to hear things that wouldn't be

1 normally presented to the court. There might be testimony
2 that wouldn't even be relevant to this case and I would
3 have to hear legal theories that I have to rule upon. I
4 want to make the very best decisions that I can as the
5 judge of the law and sometimes I have to hear these other
6 matters in order to hopefully make the right decision.

7 Therefore since we're judges, you're the judges of
8 the facts, but I'm the judge of the law, sometimes when I
9 make those legal decisions I have to do that outside of
10 your presence. I hope you'll understand if you have to be
11 removed from the courtroom maybe soon after you've just
12 came back that I'm trying to make those decisions in a
13 conscientious and a sane and upright manner.

14 It's very similar to what will happen when all the
15 evidence is in and the law has been given to you, you'll
16 go back to your jury room. You'll then start your
17 deliberation process and decide what the facts are and be
18 judges of the facts. I won't be back there in that jury
19 room with you because even though I'm a judge like you
20 are, that's your prerogative to decide what the facts are.
21 It would be improper for me to be back there in the jury
22 room with you giving you my opinion about the facts,
23 because I don't have an opinion about the facts. I'll
24 stick with the law. You'll be the fact finders, you'll be
25 the ones who will make that decision.

1 But as I stated to you, you need to make sure that
2 you don't start that process of deliberations or
3 discussion of the case in any manner until all the
4 evidence is in, because you've committed to these parties
5 by the selection process that you'll going to be fair and
6 impartial to both sides and you've going to hear
7 everything that's presented before you make those
8 decisions.

9 After all the evidence is in then the attorneys will
10 again have an opportunity to address you in closing
11 statements. And then and only then will you start that
12 deliberation process.

13 You've committed to bring justice to both sides. I'm
14 honored to have an opportunity to work with you in this
15 case. And I look forward to that opportunity.

16 At this time, in order to make sure the record is
17 clear, I need to ask the attorneys, are there any
18 objections to the comments made? Any from the State?

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

20 THE COURT: From the Defense?

21 MR. CREECH: No, Your Honor.

22 THE COURT: Ladies and gentlemen, rather than
23 starting the trial now, I think this might be -- normally
24 we would take a lunch break around one o'clock if at all
25 possible. We'll usually start at nine, nine thirty in the

1 mornings and hopefully end by five or five thirty in the
2 afternoon, depending on how long the testimony of the
3 witness may be going. I believe you've gone through the
4 process quite a bit today and been shuffled around. I'm
5 going to let us take a lunch break at this time. That'll
6 give us an opportunity to hopefully get some exhibits
7 marked and other things done to expedite the trial so that
8 it'll move smoothly once we do begin. We've got some
9 matters we need to take care of here for a few minutes
10 after you've out and about for lunch.

11 So if you would, remember not to discuss the case
12 while you're out at lunch. You may want to have lunch
13 with your fellow jurors. You may want to see business
14 associates, family members. Obviously you're going to
15 have friends or family who are going to be mighty curious
16 about what's happening, did you get picked, what's the
17 case about, those kind of things. You naturally can share
18 with them that you have been picked to sit on a jury. But
19 it would be improper for you to talk to them in anyway
20 about what the case is about, what the particular facts
21 are.

22 You don't need to be getting information from others.
23 I would not suspect in anyway that anyone would approach
24 you during the lunch break and want to give you any
25 information or want to ask you questions. If that were to

1 happen, please explain to that individual, well, I'm on
2 the jury, I've been picked, I can't talk to you about
3 anything. And then if someone were to persist and want to
4 give you information or influence you in anyway, please
5 excuse yourself as quickly as you can and possibly get the
6 name of that individual and report it back here and I'll
7 certainly take care of that matter for you. I wouldn't
8 expect anything like that would be happening.

9 I'm going to ask if you would to be back in your jury
10 room at two o'clock. That'll give us time to get some
11 things done and give you time to have lunch. If you'll go
12 with Ms. Cook, she'll show you where to report back and
13 we'll be ready to start the case at two o'clock. Thank
14 you very much, ladies and gentlemen.

15 (WHEREUPON, the jury exited the open court at
16 approximately 12:32 p.m.)

17 (WHEREUPON, State Exhibits 1 through 10 were marked
18 for identification.)

19 THE COURT: I think some of the exhibits are in
20 the process of being marked or have been marked. Are
21 there any other things we need to take care of at this
22 time or right before two o'clock, let me know. I'd like
23 to do that so we're ready to start your opening statements
24 when we come back.

25 MR. WESTON: Your Honor, I've shown Mr. Creech

1 the pictures that I plan to introduce. I think he wanted
2 to try to -- they've already been premarked. I didn't
3 know if we might do that before we left or whether --
4 they've already been premarked, whether he wanted to do it
5 as they were being offered into evidence?

6 THE COURT: Well, at least we'll have them
7 marked. Then if he wants to -- if you want to go through
8 them, and if there are objections then let us know. We'll
9 do that either way. If they're by consent, then we can go
10 on and mark them into evidence, but at least have them
11 premarked for ID, then that will help to know what we're
12 referring to. You can object to them as you see fit.

13 All right. Have a good lunch. We'll swear the jury
14 and be ready to proceed at two o'clock.

15 MR. CREECH: Thank you, Your Honor.

16 (WHEREUPON, court stood at recess for a lunch break.)

17 THE COURT: Anything we need to take care of
18 before the jury comes back? Well, we need the solicitor,
19 don't we?

20 MS. KICKLIGHTER: He went to the restroom.

21 THE COURT: Okay. Anything we need to take care
22 of before the jury comes back?

23 MR. WESTON: Nothing from the state, Your Honor.

24 MR. CREECH: Nothing, Your Honor.

25 THE COURT: All right. Let's bring our jury in.

1 (WHEREUPON, the jury entered the open court at
2 approximately 2:12 p.m.)

3 THE COURT: Thank you very much for bearing with
4 us, ladies and gentlemen. At this time I'm going to ask
5 the clerk to administer an oath to you to hear this
6 particular case. After that the attorneys will have an
7 opportunity to address you in their opening statements. I
8 told you earlier that the evidence is going to be what you
9 hear from the witness stand here, any documents that may
10 be presented. But while these attorneys' opening
11 statements to you are not evidence, I urge you to listen
12 carefully to it. Perhaps they can give you some insights
13 into the overview that you will need to help you
14 understand the case as it develops.

15 All right. Madam Clerk, you may swear the jury.

16 MADAM CLERK: Would you stand and raise your
17 right hand, please? You shall well and truly try the
18 cases, indictment 2006-GS-23-9698, William Jermaine Henry,
19 indictment for kidnaping; indictment 2006-GS-23-9699,
20 indictment for assault and battery with intent to kill;
21 indictment 2006-GS-23-9700, indictment for murder;
22 indictment 2006-GS-23-9701, indictment for armed robbery,
23 and a true verdict rendered according to the law and the
24 evidence, so help you God?

25 (WHEREUPON, the jury panel was duly sworn.)

1 THE COURT: Mr. Weston.

2 OPENING STATEMENT

3 BY MR. WESTON:

4 Thank you, Your Honor. May it please the court.

5 Ladies and gentlemen, as you may recall my name is
6 Jeff Weston and I am a prosecutor with the 13th circuit
7 solicitor's office. I would like to use my opening
8 statement to briefly do three things.

9 Number one, tell you what this case is about. Number
10 two, tell you what we are required as the state and what
11 we intend to prove. And number three, tell you how we
12 intend to prove it.

13 This is a case simply about drug dealer's revenge.
14 The kind of stuff you see on TV. On the 9th of August --
15 excuse me -- of March 21st, 2006, that man, William
16 Jermaine Henry, went to the home of Francisco Perez,
17 another drug dealer. Mr. Henry had been robbed or
18 assaulted by Mr. Perez some week or two before that. And
19 he simply was going there to get revenge.

20 MR. CREECH: Your Honor, I object. I have a
21 motion.

22 THE COURT: All right. Ladies and gentlemen,
23 we'll take a short break and let you go back to your jury
24 room. We've got a matter of law we need to take care of
25 now. I explained that to you earlier. You can go back.

1 Don't discuss anything you've heard so far. We'll call
2 you back in just a few moments.

3 (WHEREUPON, the jury exited the open court at
4 approximately 2:18 p.m.)

5 THE COURT: Yes, sir, Mr. Creech.

6 MR. CREECH: Your Honor, the prosecutor referred
7 to my client at least twice as a drug dealer in his
8 opening statement, which obviously puts my client's
9 characterization at issue in the trial. I would move for
10 a mistrial based on that. I don't think he can go around
11 calling my client a drug dealer. There's no -- I move for
12 a mistrial based on that, Your Honor.

13 MR. WESTON: Your Honor, if I may. I can't also
14 call him a murderer, but that's what we're here for. If
15 the evidence -- I basically said I was going to show them
16 three things. What the case is about, what we are
17 required to prove and we're going to prove he's a drug
18 dealer. Just like we're going to prove he's a murderer.
19 I don't understand the distinction he's making. If I had
20 said he was an angel, he wouldn't have objected.

21 Your Honor, this is what we intend to prove. This is
22 simply Mr. Creech being Mr. Creech to start with. I don't
23 get two lines into my opening statement before he's
24 objecting to something that I have an absolute right to
25 say if I intend to prove that.

26 MR. CREECH: He can't -- Your Honor, he can't

1 put in the defendant's character as a drug dealer. That's
2 not allowed into evidence. He can't -- even if he intends
3 to prove it, it's not, it's not admissible. So I would
4 move for a mistrial based on that reference to my client's
5 character as a drug dealer.

6 MR. WESTON: Your Honor, we intend to show that
7 the motivation for this murder was that this defendant was
8 mad because the victim robbed him of his drugs and money.
9 How can I not talk about that? I have no idea what he's
10 talking about, Your Honor. I cannot try a case in a
11 sanitized manner. His client is a drug dealer and we
12 allege he's a murderer. And we're going to show that.
13 I've got a right to say that.

14 THE COURT: I overruled your objection. I'll
15 allow him to make the argument based upon whatever
16 pertinent evidence that he'll present to the jury during
17 the course of the trial. Remember that we are here on the
18 charges and the indictments and that's what we need to
19 focus on.

20 MR. WESTON: Yes, sir, Your Honor.

21 THE COURT: All right. Let's bring our jury
22 back.

23 MR. CREECH: And Your Honor, for the record I
24 would just put on here my objections pursuant to Rule
25 404(a) and the fact that he referred to my client as a

1 drug dealer. I would move for a mistrial based on those
2 grounds.

3 THE COURT: All right, sir. Your objection is
4 noted. We'll have our jury come back, please, sir.

5 (WHEREUPON, the jury entered the open court at
6 approximately 2:20 p.m.)

7 THE COURT: All right. Thank you very much,
8 ladies and gentlemen. We are now ready to proceed. Mr.
9 Weston, you may continue with your opening statement.

10 **OPENING STATEMENT CONTINUED**

11 **BY MR. WESTON:**

12 Thank you, Your Honor.

13 Ladies and gentlemen, as I was saying, this man here
14 killed Francisco Perez on the night of March the 21st,
15 2006. The evidence that we will use to prove this will
16 come from, number one, Ms. Katrina Haynes, the victim's
17 girlfriend, who came home and found the body. We will
18 show you evidence from the police investigation that will
19 tell you how they led to the suspects and the arrest of
20 the perpetrators, including this defendant, William
21 Jermaine Henry. But primarily, ladies and gentlemen, the
22 evidence that we believe damns Mr. Henry in this case is
23 the testimony of his three codefendants, the three men who
24 he confederated with to avenge this earlier robbery, the
25 three men that he enlisted to go to this man's house,

1 burst in there uninvited and announced. The three men
2 that he enlisted to beat up Andre Brooks, another person
3 in the house, while he shot and killed Francisco Perez.

4 You will also hear from another person, Welton
5 Booker, who spoke with the defendant earlier in the day
6 two times concerning this victim. Mr. Booker will get up
7 here on this witness stand and tell you how he saw the
8 defendant and the other three men just as they were
9 outside the house and going into the house. You will hear
10 from Andre Brooks, the other victim in the house, who at
11 first, no question, lied to the police and said, I don't
12 know who they were, they had on masks, out of fear of
13 reprisal. But he's going to get on the stand and tell you
14 that man shot him. He was in the room when he saw him
15 shoot him. Not three people that were with him, not three
16 people and the victim who was there, not three
17 codefendants and the victim and another person who saw him
18 going in. All these people are going to tell you he did
19 it.

20 Now ladies and gentlemen, make no mistake, when a
21 drug deal shooting happens like this, all of the people
22 surrounding it are not angels. Katrina Haynes is going to
23 admit that she was dating a drug dealer. And she knew it.
24 And she reaped the benefits of it. Welton Booker is going
25 to tell you that he had a drug problem back then and he

1 was there to buy drugs. That's why he saw this defendant
2 outside, because he was just leaving from buying drugs
3 from the victim. Andre Brooks is going to tell you at the
4 time that he was in the apartment because he and the
5 defendant would sort of co-friend drug dealers.
6 All three of the codefendants of this defendant are going
7 to tell you they were hanging out with him and doing drugs
8 with him. All these people were in what we would call the
9 life I guess, the street life. But do not for a second,
10 ladies and gentlemen, mistake their lifestyle for innocent
11 people.

12 At the conclusion of this case I'm going to come back
13 to you and ask you for a guilty verdict on the charge of
14 murder for this man's killing of Francisco Perez. I'm
15 going to ask you for a guilty verdict on the charge of
16 assault and battery with intent to kill for when they beat
17 Andre Brooks and ran him out of the apartment. I'm going
18 to come back and ask you for a guilty verdict on the
19 charge of armed robbery, because they were armed with a
20 weapon and they took away Andre Brooks's phone after they
21 beat him. And I'm going to come back and ask you for a
22 guilty verdict on the charge of kidnaping because they
23 held Andre Brooks against his will and would not let him
24 leave while they beat him.

25 Ladies and gentlemen, you were all selected to be on

1 this jury for two reasons. One, we thought you would be
2 fair. And two, because you seem to have common sense.
3 When you listen to the witnesses think about why would
4 they lie, what motivation they would have to name this
5 defendant as the person who shot him if he didn't, and
6 leave the real person who shot him out there in the
7 streets. As I said, ladies and gentlemen, I'm going to
8 come back to you at the conclusion of this case and ask
9 you for a vote of guilty. I don't think there's going to
10 be any question after you hear the testimony of all of
11 these witnesses who are going to all point at that man,
12 that he is the one who shot and killed Francisco Perez.
13 Thank you.

14 THE COURT: Mr. Creech, you may address the
15 jury.

16 MR. CREECH: Thank you, Your Honor. Your Honor,
17 may we take a couple of quick motions -- a quick matter up
18 with Your Honor, briefly?

19 THE COURT: Up here?

20 MR. CREECH: May we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Weston and Mr. Creech approached the
23 bar.)

24 OPENING STATEMENT

25 BY MR. CREECH:

1 Good afternoon. Ladies and gentlemen, thank you. My
2 name is Tom Creech. I am an attorney and I am here for
3 William Jermaine Henry in this case. It's my pleasure and
4 it's my privilege to defend Mr. Henry against these
5 charges.

6 These charges, ladies and gentlemen, simply because
7 somebody says you did something doesn't make it true.
8 Simply because the prosecutor has come up here and laid
9 out these -- laid out this story that he's laid out, that
10 does not make it true. Okay? You are going to have to
11 make a decision in this case and your decision is going to
12 have to be based upon the evidence. When you go about
13 listening to this case, okay, ladies and gentlemen, it's
14 just as the judge told you earlier, you are judges.
15 You're judges of the facts. Your job is just like his
16 job. He's a judge of the law. But you are a mutual
17 decider of the facts.

18 One thing that you are going to have to do in this
19 case, ladies and gentlemen, as the judge, is you are going
20 to have to look at the people who take the stand. Okay?
21 You are going to have to listen to them very closely.
22 You're going to have to watch them very carefully. And
23 you are going to have to scrutinize them very closely.
24 And I would ask you to use your inner ear when you listen
25 to these witnesses. I called the witnesses. These

1 people, these so-called accomplices, okay, listen to what
2 they have to say. I believe that you are going to, after
3 you hear them, you're going to have a lot of questions, a
4 lot of questions after you hear them.

5 You're going to ask yourself, I think, are these
6 people even telling us the truth? Unfortunately, in our
7 society today people do come into court and they don't
8 tell the truth despite us having an oath, despite us
9 having the Bible up there and despite them taking an oath,
10 people do not tell the truth in court. And you have got
11 to be on guard for that. Because the state has asked you,
12 the prosecutor, has asked you to do a very serious thing.
13 He's asked you to return a verdict of guilty. Okay? You
14 have a very serious, important decision to make. And only
15 you, the jury, can do it. And the state has asked you to
16 trust the people that they are going to call to the
17 witness stand in making a very important decision. You've
18 got to trust these people. And after you hear the
19 testimony you will not, you will not trust these people.
20 They are untruthful, they're inconsistent, and they have
21 an interest in testifying the way they do.

22 Ladies and gentlemen, at one point these people that
23 are going to come in here to testify, at one point they
24 were charged with murder. They were charged with
25 kidnaping and assault and battery with intent to kill and

1 armed robbery and all that stuff. They were charged with
2 that. But the prosecutor went to them and made a deal
3 with them. Whereas they were looking at life in prison,
4 they have a deal now that they are not going to get more
5 than twelve years, if they testify. All they have to do
6 is come in here and get a great deal is say three words.
7 Jermaine did it. Jermaine Henry did it. That's it, and
8 they get a great deal. They have an obvious bias, obvious
9 interest in the outcome of this case, obvious motive in
10 testifying the way that they do.

11 Now, ladies and gentlemen, it's very easy to think,
12 well, gosh, two sides have given a story here, two sides
13 are making presentations. But in a criminal case, and you
14 may have learned this when you were in high school, in a
15 criminal case in this country, unlike a communist country,
16 the state, the prosecutor, they have to prove the case.
17 They have to bring the witnesses in. Under our Bill of
18 Rights and Constitution, Jermaine Henry is presumed to be
19 innocent. He's presumed to be innocent. That is called
20 the presumption of innocence. And that's what makes us
21 one of the greatest countries in the world because we have
22 the presumption of innocence. And it's with him, it's
23 with any citizen, any citizen. It's a very serious thing.
24 That's what makes the quality of our justice different and
25 better than anywhere else.

1 Also, another rule, and the judge will be telling you
2 about all of this. The prosecution has to prove this case
3 beyond a reasonable doubt. Beyond a reasonable doubt.
4 Which is an incredibly high level of proof. Just because
5 somebody says you did something, that doesn't necessarily
6 make it true. It doesn't make it true just because
7 somebody says something. Proof beyond a reasonable doubt
8 is a lot of evidence. Evidence. There is none in this
9 case. You will not see it. There's none.

10 Ladies and gentlemen, you obviously have a very
11 important task. This is a very serious case. Convicting
12 a citizen, any citizen, on the word of very questionable
13 people is not justice. It's injustice. We'll ask you to
14 return verdicts of not guilty. Not proven. Not guilty.
15 Remember, everything in this case, everything, the
16 prosecutor must prove. Mr. Henry, me, the defense
17 counsel, and the judge will tell you this, we have no
18 burden of proof. It's not our job to present any evidence
19 in this case. It's the prosecution's job to present all
20 the evidence. We will ask you to determine, to find Mr.
21 Henry not guilty of all of these charges. Thank you.

22 THE COURT: Mr. Weston, you may call your first
23 witness.

24 MR. WESTON: Thank you, Your Honor. Your Honor,
25 before we -- I hate to do this, but I think there's a

1 matter we need to take a real quick look at outside the
2 presence of the jury. I apologize, Your Honor.

3 THE COURT: We'll take care of that. Ladies and
4 gentlemen, again, there's a legal matter I need to take
5 care of. I'll ask you again to go back to your jury room.
6 We'll call you back in just a few minutes.

7 (WHEREUPON, the jury exited the open court at
8 approximately 2:35 p.m.)

9 THE COURT: Yes, sir, Mr. Weston.

10 MR. WESTON: Your Honor, we're going to have to
11 sequester witnesses anyway. This makes it a little
12 easier. But Your Honor, I'm going to object to counsel,
13 in his opening statement he sat here this morning and
14 watched those deferred pleas and then he stands up in
15 front of this jury and intentionally says that they would
16 only get twelve years, when he knows it was fifteen, was
17 the maximum they could get. Your Honor, he's deliberately
18 minimized their involvement and lied to this jury when he
19 sat right here and heard us say what each one of them --
20 now he's going to stand up and say, oh, it was a mistake.
21 Your Honor, I'm not asking for -- I don't know what I
22 can do at this point except to ask you, please, do not let
23 him do that in his closing argument. He sat right here
24 and heard us say fifteen years. He got right here and
25 said the most they can get is twelve years, which was a

1 deliberate attempt to minimize the amount of time that
2 these other codefendants were going to get to try to
3 persuade this jury. Your Honor, that was inappropriate.
4 It was wrong. And it was deliberate, Your Honor. And I'm
5 just asking that you please advise counsel that if he does
6 -- starts to do that in his closing and basically just
7 lying about the evidence like he just did, that I'm going
8 to jump up and object. I did not want to object in his
9 opening statement, unlike what he did to me within two
10 sentences, but Your Honor, that was just wrong. And he
11 knows it was wrong.

12 THE COURT: Mr. Creech, anything you want to say
13 in response?

14 MR. CREECH: Your Honor, yeah, I guess what I
15 said was the twelve years is that going through the
16 preparation of this case and when I asked the witnesses
17 about the deal that they received, of course, they've been
18 in jail since these charges occurred three years ago, so
19 they are going to obviously get the three years that
20 they've served down at the detention center. So in
21 effect, yeah, they get a fifteen year sentence they're
22 going to serve twelve years.

23 MR. WESTON: Your Honor, and if he had said they
24 were only going to serve twelve years I wouldn't have had
25 a word to say. But you said they're only going to get

1 fifteen years. His words. He was very clear about what
2 he said, Your Honor, he was very specific, and it was
3 intentional. And I'm just asking, Your Honor, that you
4 please not let him do that in his closing.

5 THE COURT: Well, I don't know what has taken
6 place before, but from what I've heard in court this
7 morning, the sentence was a recommendation. I thought I
8 took a recommendation. And I explained to them that they
9 could be sentenced to even more than that. Didn't I say
10 that?

11 MR. WESTON: Yes, sir, Your Honor. And once
12 again that points out another misstatement on his part
13 when he said the most they could get was fifteen -- was
14 twelve years.

15 THE COURT: Well, I think I took the pleas. You
16 can certainly ask the witnesses their questions. But you
17 attorneys are well trained and well versed. Let's keep it
18 within the rules and keep it within the evidence that we
19 have. Let's try to focus on these case. These are
20 serious matters that we need to make sure the jury doesn't
21 get off on tangents and they're focused on what this case
22 is all about. Make your objections when you need to do
23 during your closing statements or during the examination
24 and cross examination. I'll certainly rule on them as
25 best I can.

1 MR. WESTON: Thank you, Your Honor.

2 THE COURT: Have we got our witnesses
3 sequestered now?

4 MR. WESTON: Yes, sir, I believe so.

5 THE COURT: There's a bench motion for
6 sequestration and Mr. Weston has consented to that. I've
7 ruled that the witnesses other than the prosecuting
8 witness for the state will be sequestered.

9 All right. Are we ready to call our first witness?

10 MR. WESTON: Yes, sir, Your Honor.

11 THE COURT: All right. Let's see if our jury is
12 ready to come back in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 2:41 p.m.)

15 THE COURT: All right. Solicitor, you may call
16 your first witness.

17 MR. WESTON: Thank you, Your Honor. State would
18 call Ms. Katrina Haynes to the stand.

19 THE COURT: If you would come around, please,
20 ma'am, to be sworn.

21 KATRINA HAYNES,

22 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. WESTON:

25 Q. Ms. Haynes, you speak very lightly. I'm going to ask

1 you if you would please speak up so that this last juror
2 back on this end can hear you as well as people sitting
3 close to you. Okay?

4 A. Okay. My name is Katrina Haynes.

5 Q. Where do you live, Ms. Haynes?

6 A. I live off of Laurens Road in Greenville.

7 Q. All right. And how old are you?

8 A. I'm twenty-six.

9 Q. Are you employed?

10 A. No. I'm a stay-at-home mother.

11 Q. All right. You have children then?

12 A. Yes.

13 Q. Would you tell the jury about that?

14 A. I have a four year old little boy and I have a nine
15 month old son.

16 Q. All right. Let's get right to this. Did you know
17 the deceased, Francisco Perez?

18 A. Yes. He was my boyfriend.

19 Q. Did he have a nickname?

20 A. Paco. We called him Paco.

21 Q. And how long had you and he been dating, just
22 generally?

23 A. Between six months to a year. It had probably been
24 about ten months maybe.

25 Q. And at that time where was he living?

- 1 A. He lived in Ashworth Apartments off of Pelham Road.
- 2 Q. Is that in Greenville County?
- 3 A. Yes.
- 4 Q. And where were you living at that time? Were you
- 5 living when you met him first? Let's start with that.
- 6 A. I lived in Breckenridge Apartments on Pelham Road.
- 7 They were right next to the Ashworth Apartments.
- 8 Q. All right. And the nature of y'all relationship, you
- 9 said y'all were dating?
- 10 A. Yes.
- 11 Q. And how long had y'all been dating at the time of his
- 12 death?
- 13 A. About ten months.
- 14 Q. All right. Now, were you working at that time?
- 15 A. Yes.
- 16 Q. On March 21st, which was the date he died, where were
- 17 you working?
- 18 A. I was working at Cheeseburger in Paradise.
- 19 Q. Where is that at?
- 20 A. It was on Haywood Road.
- 21 Q. All right. And what did you do there?
- 22 A. I was a waitress.
- 23 Q. Okay. About how long had you been doing that?
- 24 A. I was there about four months.
- 25 Q. Now, did Paco work at a nine to five job?

- 1 A. No.
- 2 Q. But he had an apartment?
- 3 A. Yes.
- 4 Q. And he had a car?
- 5 A. Yes.
- 6 Q. Do you know how he made his money?
- 7 A. Yes.
- 8 Q. Would you tell the jury?
- 9 A. He sold drugs.
- 10 Q. What kinds of drugs?
- 11 A. He sold weed.
- 12 Q. Weed being marijuana?
- 13 A. Yes.
- 14 Q. All right. Did he sell any other kinds of drugs as
- 15 far as you know?
- 16 A. Not that I -- I didn't really know much about his
- 17 business.
- 18 Q. All right. But you knew what he did?
- 19 A. Yes.
- 20 Q. And at the time you met him did you find out pretty
- 21 quickly after that what he did?
- 22 A. Yes.
- 23 Q. But you still dated him?
- 24 A. Yes.
- 25 Q. And during the course of the six to eight to ten

1 months that you were dating him, was he engaged in drug
2 dealing on a regular basis?

3 A. Yes.

4 Q. All right. And you were aware of that?

5 A. Yes.

6 Q. And you benefitted from that in terms of gifts he
7 might buy and ---

8 MR. CREECH: Objection, Your Honor. I object to
9 the leading questions.

10 THE COURT: Okay. If you would, rephrase your
11 questions.

12 MR. WESTON: Thank you, Your Honor.

13 Q. Did he buy you gifts?

14 A. Yes.

15 Q. And did you have any idea -- did you have any
16 thoughts as to where that money might have come from?

17 A. Yes.

18 Q. All right. But did you accept the gifts?

19 A. Yes.

20 Q. Let's talk about March -- well, let's go back a
21 little further. How did you meet Paco.

22 A. I met Paco through William Jermaine Henry.

23 Q. Do you know William Jermaine Henry?

24 A. Yes.

25 Q. Do you see him in the courtroom today?

- 1 A. Yes.
- 2 Q. Would you point him out for the jury?
- 3 A. He's right there.
- 4 Q. Would you describe what he's wearing?
- 5 A. He's wearing a plaid shirt, collared shirt.
- 6 Q. All right. And how did you know William Jermaine
- 7 Henry?
- 8 A. He was a neighbor of mine.
- 9 Q. All right. And did you know William Jermaine Henry
- 10 pretty well?
- 11 A. Yes.
- 12 Q. Did you know what he did for a living?
- 13 A. Yes.
- 14 Q. Would you tell the jury?
- 15 A. He was a drug dealer.
- 16 MR. CREECH: Objection, Your Honor. I moved for
- 17 a mistrial.
- 18 THE COURT: I overrule your objection. Your
- 19 objection is noted.
- 20 MR. CREECH: Same grounds. Thank you, Your
- 21 Honor.
- 22 Q. And was that the nature of the relationship between
- 23 your boyfriend and Mr. Henry?
- 24 A. Yes. They were friends at first. But yeah, mainly.
- 25 Q. Now, who introduced you to Mr. Perez, your boyfriend?

1 A. William Jermaine Henry.

2 Q. And so you knew both of them pretty well?

3 A. Yes.

4 Q. I mean, you got to know Mr. Perez later but at some
5 point you knew both of them pretty well?

6 A. Yes.

7 Q. All right. And did they see each other often?

8 A. Yes.

9 Q. Now, let's go to March 21st of 2006. As far as you
10 know were they still friends?

11 A. No. They hadn't spoken in about -- I would say about
12 two months.

13 Q. All right. And you don't know personally what it was
14 about; do you? You were there when -- you were never
15 there -- were you ever present when they exchanged words
16 or had any kind of shouting matches or physical
17 confrontations?

18 A. No. I just know what Paco told me.

19 Q. Okay. And did you see Mr. Henry come around the
20 house over the last two months before Mr. Perez died?

21 A. No.

22 Q. Did you ever see them together during that last two
23 months?

24 A. No.

25 Q. Now, let's talk about March 26th of 2006. Were you

1 working that evening or that day?

2 A. Yes.

3 Q. And did you talk with Francisco Perez, your
4 boyfriend, that afternoon or evening?

5 A. Yes.

6 Q. When and how did you talk to him?

7 A. I spoke to him twice. The first time I spoke to him
8 about seven twenty and it was just casual conversation. I
9 called him from work just to see what he was doing. And I
10 told him I would be getting off shortly and I would call
11 him back.

12 Q. All right. Why were you going to call him back?

13 A. To let him know when to come and get me so he
14 wouldn't be outside waiting and so I would be finished and
15 ready to go.

16 Q. All right. Did you call him back?

17 A. Yes.

18 Q. And did you get a response?

19 A. Yes. I talked to him again about eight thirty and he
20 said he was on his way to ---

21 MR. CREECH: Objection, Your Honor. Hearsay
22 from the witness Paco.

23 THE COURT: I sustained the objection.

24 Q. So when was the second time you talked to him?

25 A. About eight thirty.

1 Q. What was your understanding as to how you were going
2 to get home that evening?

3 A. He was coming to pick me up.

4 Q. Did he ever come pick you up?

5 A. No.

6 Q. Did you try to call him again ---

7 A. Yes.

8 Q. -- sometime after eight thirty.

9 A. Yes.

10 Q. About how many times? Excuse me. Let me stop you
11 right there. I'm sorry. I'm kind of old. Did you do
12 anything other than call him, like text him or page him or
13 something like that?

14 A. I paged him several times and I never got a response.
15 And I called the house several times and I never got a
16 response.

17 Q. All right. So did you -- were you planning to go to
18 your apartment that evening or to his?

19 A. To his.

20 Q. All right. So how did you leave your place of
21 employment?

22 A. A co-worker of mine, Michelle, I asked her if I could
23 get a ride with her.

24 Q. Did she give you a ride?

25 A. Yes.

1 Q. And where did she take you?

2 A. She took me to Paco's apartment.

3 Q. All right. Did she leave or did she wait out front?

4 A. She waited for me.

5 Q. All right. Did you ask her to wait for you?

6 A. Yes.

7 Q. Why?

8 A. Because I saw that Paco's car was there. And he -- I

9 waited about an hour for him and I was very worried and I

10 just wanted to make sure that everything was all right.

11 Q. All right. And so when she parked and waited for

12 you, what did you do?

13 A. I went up to the apartment and when I got there,

14 outside the apartment, I heard the CD player and it was

15 skipping and it was turned up all the way. It was very

16 loud. I could hear it outside the apartment. So I went

17 to open the door and the door was unlocked.

18 Q. Was that -- did you find that unusual?

19 A. Yes.

20 Q. Why?

21 A. Because Paco never left his doors unlocked.

22 Q. All right. And so what happened then after you found

23 the door unlocked?

24 A. I opened the door and I saw that there was blood on

25 the wall. And I looked over to the right and Paco was

1 laying on the floor.

2 Q. Now, did you see -- at that point -- how was he
3 dressed?

4 A. His shirt was on. His pants were down around his
5 ankles. And he had on his clothes, but he was laying
6 there in his underwear.

7 Q. Was he laying face up or face down?

8 A. He was laying on his back.

9 Q. All right. Now, did you -- what did you do?

10 A. I called his name, like [pause - witness crying]. I
11 called his name like four or five times and he wasn't
12 responding.

13 Q. Did you see anybody else in the apartment at that
14 time?

15 A. No.

16 Q. By the way, aside from him, did he have any roommates
17 like other guys that lived there with him or other females
18 that lived there with him?

19 A. No.

20 Q. Okay. And I think you just said you didn't see
21 anybody else in the apartment?

22 A. No.

23 Q. Okay. So what did you do after that?

24 A. I ran out of the apartment and I closed the door
25 behind me. And I asked Michelle to take me to Publix

1 because the phone -- when I was in the apartment, the
2 phone -- I picked up the cordless phone and it wasn't
3 working. So I asked her to take me to Publix which was
4 right across the street, to use the phone.

5 Q. Did she do that?

6 A. Yes.

7 Q. So what happened when you got to Publix?

8 A. I called DeShawn, which was a friend of ours. I
9 wasn't thinking clearly and I was really panicked and I
10 didn't know what to do. So I called DeShawn and told him
11 something was wrong with Paco.

12 Q. Okay. Don't tell us what DeShawn said. Who is --
13 you said DeShawn was a friend of y'all's?

14 A. Yes. He was just a friend of ours that we would hang
15 out with, him and his girlfriend sometimes.

16 Q. Now, at that point did you know whether or not Mr.
17 Perez was dead or not?

18 A. No. I didn't think he was dead. I thought that he
19 was knocked out, because when he was laying there, there
20 was a hammer on one side of his head, like next to him,
21 and there was a broken bottle on the other side. And
22 there was blood like right here. So I thought somebody
23 just came in and beat him up and knocked him out.

24 Q. Okay. Now, after you talk to DeShawn, what did you
25 do then?

1 A. I got Michelle to take me back over to the apartment
2 and drop me off.

3 Q. And did she do that?

4 A. Yes.

5 Q. All right. When you got back to the apartment tell
6 the jury what you did next?

7 A. I ran up to a neighbor's house, Marlon and Chris, and
8 I told them that something was wrong with Paco. And
9 Marlon and Chris ran down to the apartment with me.

10 Q. Did they go inside with you?

11 A. Yes.

12 Q. And what if anything did you see either one of them
13 do?

14 A. Chris checked Paco's pulse and told me ---

15 Q. Okay. Don't say what he said. But you saw Chris
16 check Paco's pulse?

17 A. Yes.

18 Q. All right. And after y'all -- how long were y'all in
19 the apartment?

20 A. Maybe two, three minutes.

21 Q. All right. Did you see anybody in the apartment at
22 this time?

23 A. No.

24 Q. All right. After the two or three minutes, y'all
25 left the apartment?

1 A. No. We walked out -- we called -- Marlon called 911
2 and we walked outside and just waited on the police.

3 Q. All right. And you stayed there till the police
4 arrived?

5 A. Yes.

6 Q. Now, when the police arrived did you talk with an
7 officer on the scene?

8 A. Yes.

9 Q. Did you tell the officer what Paco did for a living?

10 A. No.

11 Q. All right. And later did you meet with investigators
12 or detectives in this case, like a few days later?

13 A. Yes.

14 Q. Did you give them a statement as to what happened?

15 A. Yes.

16 Q. What you just testified to generally?

17 A. Yes.

18 Q. Were you a little bit more forthcoming in your
19 statement to them at that time than you were to the
20 officer on the scene?

21 A. Yes.

22 Q. Let me ask you a question. Why didn't you call 911
23 immediately from the apartment, as opposed to calling
24 DeShawn?

25 A. Because I was -- well, I was panicked and I was

1 freaked out and I didn't know if he was dead or not. And
2 if he was not -- see, I didn't think he was dead. I
3 thought he was just hurt. And I thought if I call 911 and
4 the police come, and I know what he does, you know, he
5 would get in trouble, we would get in trouble. I didn't
6 know what to do.

7 Q. Okay.

8 A. So I called somebody who was calmer than I was.

9 Q. Now, did you know Andre Brooks?

10 A. Yes.

11 Q. And does he have a nickname?

12 A. Shorty.

13 Q. Okay. And did Andre, from your personal knowledge,
14 know Paco, Mr. Perez?

15 A. Yes.

16 Q. Where did Andre live in conjunction to Mr. Perez?

17 A. He was our neighbor -- or he was Paco's neighbor in
18 Ashworth. He lived a couple of apartments down.

19 Q. All right. Did he visit at the apartment often when
20 you were there?

21 A. Yes. Him and his girlfriend.

22 Q. All right. You know Welton Booker?

23 A. Yes.

24 Q. How do you know Mr. Booker?

25 A. He was my neighbor at Breckenridge.

1 Q. And did you ever see him in Mr. Perez's apartment or
2 in his presence?

3 A. Yes.

4 Q. Now, did Mr. Booker have a nickname?

5 A. Yes.

6 Q. What did they call him?

7 A. Crum.

8 Q. All right. And did Paco own -- excuse me. I keep
9 saying Paco. I would rather refer to him as Mr. Perez. I
10 apologize. Did Mr. Perez own any guns that you are aware
11 of?

12 A. Yes.

13 Q. Did he have any guns in his bedroom?

14 A. Yes.

15 Q. Would you tell the jury what you remember seeing,
16 what types of guns you remember seeing in his bedroom?

17 A. He had a shotgun in the closet and he had a big
18 silver gun, a big silver handgun, I would describe it, on
19 the dresser.

20 Q. And those were in the bedroom usually?

21 A. Yes.

22 Q. All right. Now, did he have any other weapons that
23 you were aware of personally?

24 A. Yes.

25 Q. Would you tell the jury what kind of gun it was,

1 first?

2 A. It was a handgun, like a revolver.

3 Q. And where did he keep that gun?

4 A. He kept it underneath his pants in a belt and a
5 holster.

6 Q. And did he usually had that gun with him?

7 A. Always.

8 Q. Okay. Now you say his pants were down somewhat when
9 you came into the apartment?

10 A. They were down around his ankles.

11 Q. Did you see the holster or the gun?

12 A. No.

13 Q. I'm sorry?

14 A. No.

15 Q. All right. Thank you, ma'am. Answer any questions
16 counsel may have for you.

17 THE COURT: Mr. Creech, you may cross examine.

18 MR. CREECH: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. CREECH:

21 Q. Ms. Haynes, Paco lived at 11-I Ashworth Apartments?

22 A. Yes.

23 Q. He lived there by himself?

24 A. Yes.

25 Q. People came to see him at that apartment?

1 A. Yes.

2 Q. People would come to that apartment to see him, stay
3 for just a few minutes and leave?

4 MR. WESTON: Objection, Your Honor. That's a
5 statement. It's not a question.

6 THE COURT: I'll give him leeway. I overrule
7 your objection. Just make sure you ask her questions so
8 she can answer.

9 Q. A lot of people were coming in and out of his
10 apartment; is that correct?

11 A. Yes.

12 Q. Those people were buying drugs from Paco; is that
13 correct?

14 A. Some of them, yes.

15 Q. Paco bought a big bag of marijuana every week; is
16 that right?

17 A. Yes.

18 Q. Just a week before he died he bought a big bag of
19 marijuana from somebody in North Carolina; is that right?

20 A. Yes.

21 Q. He bought that bag of marijuana at the Home Depot
22 parking lot; is that right?

23 A. Yes.

24 Q. When he bought that big bag of marijuana at the Home
25 Depot parking lot, where there any children there in the

1 parking lot?

2 MR. WESTON: Objection, Your Honor..

3 THE COURT: What's your objections?

4 MR. WESTON: Relevance as to whether there were
5 children in the parking lot at a Home Depot a week before
6 this crime.

7 THE COURT: I overrule your objection. If she
8 knows. I don't know if she was even there, but I'll allow
9 the question.

10 A. No.

11 Q. Was -- he had -- Paco had a gun on him at that time
12 too; is that correct?

13 A. He normally kept it with him, yes.

14 Q. He carried his gun with him everywhere he went;
15 correct?

16 A. Yes.

17 Q. Paco also sold cocaine; is that right?

18 A. Sometimes. I didn't really know about it though.
19 That's just what he told me.

20 Q. Paco sold powder cocaine; is that right?

21 MR. WESTON: Objection, Your Honor. Asked and
22 answered.

23 THE COURT: I overrule your objection.

24 Q. Paco sold powder cocaine; is that right?

25 A. Yes.

- 1 Q. He sold cocaine to a lot of people; is that right?
- 2 A. I wouldn't say a lot.
- 3 Q. Paco was from Greenville; is that right?
- 4 A. As far as I know, yes.
- 5 Q. Do you know Paco -- how long Paco had been in
- 6 Greenville?
- 7 A. I know that he went to Mauldin High School.
- 8 Q. Was Paco originally from Texas?
- 9 A. No. I don't think he was from Texas.
- 10 Q. Now, on March 21st, 2006, you had been at work;
- 11 correct?
- 12 A. Yes.
- 13 Q. Prior to going to work, Paco got a lot of drugs; is
- 14 that right?
- 15 A. That day?
- 16 Q. Yes?
- 17 A. That day, no. We just went out to eat that day.
- 18 Q. Isn't it true that Paco got three pounds of heroine
- 19 that day?
- 20 A. I don't know anything about that.
- 21 Q. Well, after you got back to the apartment you knew
- 22 that the police would be arriving shortly; right?
- 23 A. Yes.
- 24 Q. You knew that there was three pounds of heroine in
- 25 that apartment?

1 MR. WESTON: Objection, Your Honor, she's

2 already ---

3 A. No. I didn't know that. I just told you that.

4 THE COURT: Hang on just a moment before you ---

5 MR. WESTON: Objection, Your Honor. She's

6 already testified she didn't know anything about three

7 pounds of heroine.

8 MR. CREECH: Your Honor, she just testified she

9 said she didn't know.

10 A. That's what I just said. I didn't know.

11 MR. WESTON: If she did know, Your Honor, he's

12 asking her again about three pounds of heroine. She's

13 already testified she didn't know anything about that.

14 THE COURT: Just rephrase your question if she's

15 already answered, Mr. Creech.

16 Q. Well, you were asking your friends there whether you

17 should get rid of that three pounds of heroine; correct?

18 A. No.

19 Q. You said to your friends, oh, my God, what do I tell

20 the police; correct?

21 MR. WESTON: Objection, Your Honor.

22 A. No.

23 THE COURT: I'll overrule your objection, Mr.

24 Weston.

25 A. I didn't know anything about any heroine.

1 Q. You never told the police about the three pounds of
2 heroine in the apartment; is that right?

3 A. No. I never talked to the police about heroine.

4 Q. Paco got his drugs from his supplier named Tarzan; is
5 that right?

6 A. No. He traded a gun to Tarzan.

7 Q. Tarzan was from the country of Colombia, South
8 America; correct?

9 A. Yeah. That's all I know about him.

10 Q. Tarzan was light skinned?

11 A. Yes.

12 Q. Tarzan supplied Paco with drugs?

13 A. I don't know.

14 Q. Tarzan supplied Paco with the heroine?

15 A. I don't know anything about the heroine.

16 Q. Tarzan liked to rob people that he sold drugs to; is
17 that correct?

18 MR. WESTON: Your Honor, I'm going to object.
19 He's talking about some guy named Tarzan. She's testified
20 she doesn't know anything about this. He's got to at
21 least establish that she knows something about this before
22 -- what he's doing is putting facts that are not into
23 evidence into evidence, Your Honor.

24 THE COURT: Yes, sir. Mr. Creech, ask it in
25 question form to her and let her answer the question,

1 rather than you agree. I would rather you not -- I would
2 rather you ask the question rather than making a statement
3 and saying, do you agree with that.

4 MR. CREECH: I was just asking a leading
5 question, Your Honor.

6 THE COURT: Well, I disagree with you. I don't
7 mind you asking leading questions. I just want you to
8 make it in the form of a question, if you would, please,
9 sir.

10 MR. CREECH: Okay.

11 Q. It's true that Tarzan liked to rob the people that he
12 sold drugs to; correct?

13 A. I don't know about Tarzan.

14 Q. Okay. You don't know if Tarzan had sold Paco that
15 three pounds of heroine?

16 A. I don't know anything about any heroine. I know that
17 Paco traded a gun to Tarzan. That's all I know about
18 Tarzan.

19 Q. Well, Tarzan was at the apartment complex that night;
20 right?

21 A. I saw him come up, yes, but he never spoke to anyone.

22 Q. You saw Tarzan at the apartment complex this ---

23 A. He walked up, yes, but I didn't see him speak to
24 anybody.

25 Q. You never spoke to Tarzan?

1 A. No, no. I don't know him like that.

2 Q. You never told Tarzan to leave the apartment ---

3 MR. WESTON: Objection, Your Honor. Asked and
4 answered.

5 A. No. I did not speak to him that night. I spoke to
6 the police.

7 MR. WESTON: Asked and answered, Your Honor.

8 Q. Let me ask you this.

9 THE COURT: I'll sustain the objection.

10 MR. WESTON: Thank you, Your Honor.

11 Q. Tarzan left the complex that night when the police
12 arrived; isn't that correct?

13 A. Yes.

14 Q. Now, you gave a statement to the police the day after
15 this happened; right?

16 A. Yes.

17 Q. And you had time to think about what you wanted to
18 tell the police; is that right?

19 A. No. I told them what happened. I told them what I
20 found.

21 Q. Okay. But you had some time to think about what you
22 were going to tell the police before you met with them;
23 correct?

24 A. I guess.

25 Q. You knew in your statement that you had to be

1 truthful with the police; correct?

2 A. Yes.

3 MR. WESTON: Your Honor, I'm going to object.

4 He is doing exactly what you admonished him not to do.

5 He's not asking leading questions. He is telling her

6 things.

7 THE COURT: I'll overrule your objection on
8 this, on this question. Just make sure your examination
9 is in question form, please, sir.

10 Q. Katrina, now, in your statement to the police, you
11 told them about seeing DeShawn that night; correct?

12 A. Yes.

13 Q. You told them about seeing Chris, I think that lived
14 upstairs?

15 A. Yes.

16 Q. You told the police about talking to Marlon; is that
17 right?

18 A. Yes.

19 Q. You told the police about seeing Marlon that night;
20 correct?

21 A. Yes.

22 Q. And you told the police about seeing Tarzan that
23 night too; correct?

24 A. No. Because I didn't talk to Tarzan. I just saw him
25 walk up and then he left. I didn't talk to him. I don't

1 know him enough to walk up to him and speak to him.

2 Q. Well, in your statement you told the police that
3 Tarzan was at the apartment complex that night; is that
4 right?

5 MR. WESTON: Your Honor, I'm going to object
6 again. If he's going to ask her specific questions about
7 every line of her statement, I think she has a right to
8 see this statement. This is a two -- this is two years
9 ago she gave that statement.

10 THE COURT: I'll overrule your objection. She's
11 answering the questions that he's asking.

12 A. The only thing I remember telling the police about
13 Tarzan is that he -- that Paco traded him a gun. That's
14 the only thing that I remember telling the police about
15 Tarzan.

16 Q. So you never told the police that Tarzan was actually
17 there in the apartment complex that night?

18 A. I don't remember. The only thing that I remember
19 telling the police is that Tarzan -- that Paco traded
20 Tarzan a gun. That's all I remember. Because he wasn't
21 even -- I don't even know who he is really.

22 Q. Paco kept guns in his apartment; is that correct?

23 A. Yes.

24 Q. And at one time it's true that Paco had a shotgun in
25 his apartment?

- 1 A. Yes.
- 2 Q. Did you ever see him shoot that?
- 3 A. No.
- 4 Q. Did you ever see him handle it?
- 5 A. Yes.
- 6 Q. Did he bring it out and use it in the apartment, show
7 it around to his friends?
- 8 A. No. He just showed it to me.
- 9 Q. Paco also had, you say, a silver automatic?
- 10 A. Yeah. I guess that's what it was. I don't really
11 know much about guns.
- 12 Q. He kept that gun in his dresser bedroom; is that
13 right?
- 14 A. On top of the dresser, yes.
- 15 Q. And that was beside the bed; is that correct?
- 16 A. Yes.
- 17 Q. That was the bed in which he slept; is that right?
- 18 A. Yes.
- 19 Q. Paco had a silver revolver; is that correct?
- 20 A. Yes, I think so. I don't remember if it was silver
21 or not. I know it was a revolver.
- 22 Q. Did you ever see Paco shoot the revolver?
- 23 A. No.
- 24 Q. Did he carry that silver revolver on his person?
- 25 A. Yes.

- 1 Q. Did you ever see him handle the silver revolver?
- 2 A. Yes.
- 3 Q. Did you see him use the silver revolver?
- 4 A. No.
- 5 Q. At some point did Paco trade that revolver?
- 6 A. Yes.
- 7 Q. He traded it for a black revolver; is that correct?
- 8 A. Yes.
- 9 Q. He traded that black revolver with Tarzan; is that
- 10 right?
- 11 A. To Tarzan, yes.
- 12 Q. So Tarzan knew that Paco had a gun ---
- 13 MR. WESTON: Objection, Your Honor. She can't
- 14 testify as to what Tarzan knew. It calls for speculation.
- 15 MR. CREECH: She may or may not. If she saw him
- 16 trade then she would certainly know.
- 17 THE COURT: Ask her -- I'll overrule your
- 18 objection. Ask her a question and we'll see if she can
- 19 answer it.
- 20 Q. So then Tarzan would have known that Paco had this
- 21 black revolver; is that right?
- 22 THE COURT: I sustain the objection as far as
- 23 that question as asked.
- 24 MR. WESTON: Thank you, Your Honor.
- 25 Q. You knew that Paco and Tarzan traded that silver and

- 1 black revolver; is that right?
- 2 A. Yes.
- 3 Q. And you knew that because you saw them trade?
- 4 A. Yes.
- 5 Q. And Tarzan was in the room when the trade was made?
- 6 A. Yes.
- 7 Q. You were there too?
- 8 A. Yes.
- 9 Q. And Paco was there?
- 10 A. Yes.
- 11 Q. Paco used to smoke marijuana; is that right?
- 12 A. Yes.
- 13 Q. Paco used to snort cocaine; is that right?
- 14 A. Yes.
- 15 Q. He used to smoke crack cocaine as well; correct?
- 16 A. I never seen him do that.
- 17 Q. Did Paco used to take pills?
- 18 A. Sometimes.
- 19 Q. Was Paco using pills on this night?
- 20 A. Yes.
- 21 Q. Did Paco use heroine?
- 22 A. Sometimes.
- 23 Q. You used drugs with Paco; is that right?
- 24 A. Yes.
- 25 Q. You were at work from at least eight o'clock until

1 ten o'clock this night; is that right?

2 A. I went into work at five p.m. that day and I worked
3 until -- I got off around nine, so I waited on Paco for
4 like an hour. So yeah, about ten.

5 Q. You were not at your apartment; correct?

6 A. No.

7 Q. You were not at Paco's apartment; correct?

8 A. No.

9 MR. CREECH: Thank you. I have no further
10 questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. WESTON: No, Your Honor, nothing on
13 redirect.

14 THE COURT: Thank you, ma'am. You may step
15 down.

16 MR. WESTON: Your Honor, state would ask that
17 this witness be allowed to be released from her subpoena.

18 MR. CREECH: Just subject to recall if
19 necessary, Your Honor.

20 THE COURT: Well, then she needs to be available
21 if she only has the subpoena.

22 MR. WESTON: Your Honor, if -- she received the
23 subpoena from the state. I don't know whether Mr. Creech
24 has subpoenaed her or not.

25 MR. CREECH: I have not subpoenaed her, no.

1 MR. WESTON: In which case he can't -- he
2 doesn't have the right to recall her without a subpoena of
3 his own, I don't think.

4 THE COURT: All right. Do you feel like you're
5 going to need her? You said you objected to her being
6 released from her subpoena.

7 MR. CREECH: I would just say subject to recall,
8 Your Honor, in the event that she's needed to testify
9 again. That's my only ...

10 THE COURT: All right. Recall from the state
11 then. No objection. Then she may be released from her
12 subpoena.

13 MR. WESTON: Thank you, Your Honor.

14 State would call Mr. Andre Brooks.

15 ANDRE BROOKS,

16 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WESTON:

19 Q. Mr. Brooks, where do you live?

20 A. 5 Stoke Street.

21 Q. I'm sorry, you're going to have to speak a little bit
22 louder?

23 A. 5 Stoke Street.

24 Q. All right. And are you employed?

25 A. Not currently at the moment.

- 1 Q. Who do you live with?
- 2 A. My mother.
- 3 Q. Anyone else live there?
- 4 A. Father. Mother and father.
- 5 Q. And how long have you lived there, about?
- 6 A. Roughly now I've been living there since I got out
- 7 of, got out of prison. December. December.
- 8 Q. Now, would that be December a month ago or December
- 9 ---
- 10 A. This year, '08.
- 11 Q. Okay. So that would be about thirteen months ago?
- 12 A. No. Just ---
- 13 Q. One month ago?
- 14 A. This December just past.
- 15 Q. I'm sorry. One month ago?
- 16 A. I ain't too long got out. December just past.
- 17 Q. Okay. And what were you in prison for?
- 18 A. I was in the Turbeville Correctional Facility for
- 19 assault and battery of a high and aggravated nature.
- 20 Q. Okay. Now, did that involve any of these parties in
- 21 this action?
- 22 A. No, sir, it didn't.
- 23 Q. Okay. You know Paco, Francisco Perez; is that
- 24 correct?
- 25 A. Yes, sir.

1 Q. And would you describe your relationship with him,
2 the relationship you had with him?

3 A. That was my friend. Also, we did a lot of bad things
4 such as sell drugs. That was my past. I learned from my
5 past. That ain't the route I want to take. I almost lose
6 my life and other lives.

7 Q. All right. Now, do you know Jermaine Henry, the
8 defendant sitting here?

9 A. Yes, I do.

10 Q. How do you know him? How did you know him before
11 March of last year?

12 A. I knew him earlier when we -- back when we was young.
13 We went to school, Greenville night school when I first
14 met him. Greenville night school used to have alternative
15 school, bad kids who had a behavior problem. So he -- we
16 also met, we met up there.

17 MR. CREECH: Object, Your Honor. Move -- again,
18 based on rule 404(a), I move that be stricken from the
19 record. I also moved for a mistrial and alternative
20 curative instruction.

21 THE COURT: All right. Ladies and gentlemen,
22 we'll strike that from the record as far as -- he can
23 testify as to, you know, what record he has. Things that
24 are not pertinent to the case you should just disregard.
25 I'll certainly allow the testimony of him as to any record

1 or any activity with another person that he knew would not
2 be relevant. Just disregard that.

3 Q. Now, later in life did you see Jermaine Henry on a
4 relatively regular basis?

5 A. No, sir, I haven't.

6 Q. All right. Did you ever see him with Francisco
7 Perez?

8 A. Yes, sir, I have.

9 Q. All right. We're going to work backwards from March
10 21st, okay, of 2006. We're going to talk about before
11 that time. Before March 21st of 2006, did you ever see
12 Jermaine and Francisco Perez together?

13 A. That's exactly how I met Francisco Perez. Through
14 him.

15 Q. Did Jermaine introduce you to him?

16 A. They was together and I was introduced to both of
17 them. I was seeing him and I seen them together. They
18 introduced each other.

19 Q. What did Francisco Perez -- how did he make his
20 money?

21 A. We all was drug dealers.

22 Q. I'm sorry?

23 A. We all was drug dealing at the time. We was all drug
24 dealing at the time.

25 Q. All right. Let's just talk about Francisco Perez.

1 Please just answer my question. Okay?

2 A. We drug dealed.

3 Q. All right. And did you know personally how Jermaine
4 Henry made his money?

5 A. We was all dealing, sir.

6 Q. Not we. I'm asking you about a specific question.

7 MR. CREECH: Your Honor, I object to that
8 question.

9 THE COURT: Wait, wait just a minute.

10 MR. CREECH: I object to ---

11 THE COURT: What's your objection to the
12 question?

13 MR. CREECH: Again, it's under Rule 404(a).

14 THE COURT: I overrule your objection. He may
15 answer the question.

16 Q. Now, just answer the question. I want you to just
17 talk about one person at a time. Don't talk we. How did
18 Francisco Perez earn a living?

19 A. Dealing drugs.

20 Q. How did Jermaine Henry earn a living?

21 A. Dealing drugs.

22 Q. And just to be fair, how did you earn a living?

23 A. Dealing drugs.

24 Q. Now, were y'all in it together or was this -- were
25 these separate?

1 A. No. We was not doing -- they was doing their own
2 thing at first and I was doing my mine.

3 Q. Did y'all have occasion sometimes to deal with each
4 other in your businesses?

5 A. Never, never dealt with Jermaine, but I dealt with
6 Francisco Perez.

7 Q. All right. What -- how did you deal with Francisco
8 Perez? What kinds of -- explain to the jury generally
9 what you did, how that worked?

10 A. Sometimes I would trade crack for his high dollar
11 marijuana. And other occasions I would, you know, make
12 big deals for him. He would deal with me by paying me off
13 for making transitions and transactions.

14 Q. All right. Now, let's talk about March 21st of 2006.
15 All right?

16 A. Yes, sir.

17 Q. All right. Now, on March -- on this date, March 21st
18 of 2006, did you have any beef, animosity, contradiction
19 or problem with Jermaine Henry?

20 A. No, sir, I haven't.

21 Q. All right. Now, where did you live at that -- on
22 March 21st, 2006?

23 A. I actually lived in a top apartment with another
24 roommate and my girlfriend Janelle, my ex-girlfriend.

25 Q. Where did you live? Not who you lived with. Where

1 did you live?

2 A. That is down in Ashworth Apartments.

3 Q. All right. Is that the same apartment complex that

4 ---

5 A. Yes, sir.

6 Q. -- Mr. Perez lived in?

7 A. Yes, sir.

8 Q. And did you visit him often and he visited you often?

9 A. All the time.

10 Q. Okay. Now, all March 21st of 2006, did you have an

11 occasion to see Mr. Perez?

12 A. Yes, sir.

13 Q. All right. Would you tell the jury about what time

14 that was and tell the jury what happened?

15 A. Perez called me first. I was ---

16 Q. Excuse me a second. Did you call him Perez or what

17 did you call him?

18 A. I called him Paco.

19 Q. Okay.

20 A. But I'm stating his name now that I know it by heart.

21 I'm trying to state his name.

22 Q. Okay. Mr. Perez?

23 A. I called him Paco though. We always just called

24 Paco.

25 Q. All right. When did you first talk to him that day,

1 about what time?

2 A. He called me roughly about like four thirty, five,
3 probably, afternoon.

4 Q. Okay. Now don't say what he said to you. Okay? You
5 can't testify as to what he said to you. All right. Did
6 you talk to him about four thirty or five?

7 A. Yes, sir.

8 Q. All right. After you spoke with him, tell the jury
9 what happened next in terms of your dealings with him?

10 A. As in ---

11 Q. What did you do next in relationship to Mr. Perez?

12 A. He was -- he came to the house. We sat down, we
13 smoked some blunts.

14 Q. What is a blunt?

15 A. Marijuana. We smoked marijuana.

16 Q. Okay.

17 A. And he was kind of -- he was really nervous as if,
18 you know, something was going on. He asked me ---

19 Q. Don't tell me what he told you. But if he -- you
20 said he appeared to be nervous?

21 A. Yeah. He appeared to be nervous, very nervous.

22 Q. All right. How long -- where did y'all smoke this
23 blunt at?

24 A. At my apartment. He came to my apartment.

25 Q. About how long did he stay at your apartment?

1 A. About fifteen, twenty minutes. Enough to smoke a
2 blunt.

3 Q. All right. About what time of day is this, just
4 generally?

5 A. This is afternoon like around -- anywhere from four
6 thirty to five thirty, round in that area, that time. You
7 know, about five, five thirty. It was still daylight
8 outside.

9 Q. So what did you do next, the two of you, you or him
10 or both of you?

11 A. He asked me to go ---

12 MR. CREECH: Objection.

13 Q. Don't say what he asked you. Don't say what he said.

14 A. Okay. We went exactly to his apartment, went
15 straight there.

16 Q. Okay. And was it just the two of you?

17 A. Yes, sir, just me and him.

18 Q. When you got to his apartment did you go in?

19 A. Yes, sir, we went in.

20 Q. Was anybody there?

21 A. No, sir.

22 Q. And how long did you stay there?

23 A. Roughly till the incident.

24 Q. Okay. And did anybody else prior to the -- did

25 anybody come to the door?

- 1 A. Yes, sir.
- 2 Q. Who was the next person or persons that came to the
3 door?
- 4 A. It was Crum. We call him Crum.
- 5 Q. And what is his real name?
- 6 A. I think it's Timothy or Tim, Johnny.
- 7 Q. But Crum came to the door?
- 8 A. Yes, sir.
- 9 Q. Tell the jury who Crum is?
- 10 A. Crum was a smoker at the time.
- 11 Q. Tell the jury what that means, a smoker?
- 12 A. A crack smoker, had a crack habit.
- 13 Q. Do you know where he lived?
- 14 A. Yes, sir.
- 15 Q. Where did he live?
- 16 A. Breckenridge.
- 17 Q. And where is Breckenridge in relationship to Ashworth
18 Apartments?
- 19 A. Next door.
- 20 Q. And is there a fence, chain link fence that divide
21 the two apartment complexes?
- 22 A. Yes, sir.
- 23 Q. And are there ways to go between apartments without
24 going all the way up to the street and coming back in?
- 25 A. Yes, sir. You've got a path -- you've got a hole in

1 the fence leading straight from Crum to Paco. And you've
2 got a hole in the fence leading from down there at the end
3 of my apartment down in the hole that leads you from
4 Breckenridge. There's two holes there.

5 Q. All right. So when Crum came to the apartment about
6 what time was that, just generally?

7 A. Around -- it was roughly six then. It was roughly
8 six.

9 Q. And how long did he stay?

10 A. No more than ten, fifteen minutes. Enough just to
11 get what he was going to get and leave the premises.

12 Q. And what did he come there -- you said to get what he
13 was going to get. Tell the jury when he came there and
14 what happened when he came there?

15 A. Roughly to cop crack cocaine.

16 Q. What does cop crack mean?

17 A. It means to get it.

18 Q. Buy some crack?

19 A. Actually buy.

20 Q. Okay. And did he buy some crack?

21 A. Yes, sir, he did.

22 Q. Who did he buy it from?

23 A. Paco.

24 Q. And you just happened to be there?

25 A. Yeah. I happened to be there.

1 Q. Okay. You didn't -- did you do any business with him
2 at all?

3 A. Yes. We was dealing.

4 Q. I'm sorry?

5 A. Yeah, me and Paco was dealing ourselves.

6 Q. No. Did you do any business with Crum?

7 A. No, sir.

8 Q. Okay. And so what happened as Crum was leaving?

9 Tell the jury.

10 A. As Crum was leaving the premises, Paco goes to open
11 the door for him. As he opened the door two suspects ran
12 in. Which was Mark Cureton and I would say Fat Albert.

13 Q. Do you know what Fat Albert's real name is?

14 A. No, sir, I don't.

15 Q. Okay. But you recognized him?

16 A. Yes, sir.

17 Q. You knew them when they came in?

18 A. No, I didn't know them at the time, but we put things
19 together and I identified them from how they looked
20 because they did not have on masks.

21 Q. All right. We'll get to that. So two people came
22 in. How did they come in? Did they knock on the door?

23 A. Oh, no. When he come -- when Paco opened the door
24 for Crum to leave they bomb rushed the door and came in.

25 Q. All right. So Crum had just stepped outside ---

1 A. As the door was opened ---

2 Q. Let me finish. Crum had just stepped outside and
3 they came on in while the door was open?

4 A. Yes, sir.

5 Q. All right. And what happened when they came in?

6 A. Pointed a gun -- Marcus pointed a gun in Paco's face.
7 and Fat Albert presented a gun and pointed it in my face.

8 Q. But now, when you say Marcus, who are you saying
9 again?

10 A. Marcus Cureton.

11 Q. Okay. Now, were they the only two that came into the
12 apartment?

13 A. No, sir, that wasn't.

14 Q. Who else came in?

15 A. After they came in it was William Henry, the
16 defendant right there, and it was also John Michael.

17 Q. All right. Did you know John Michael at that time?

18 A. At the time I didn't see when John Michael actually
19 came in, but I seen him when he actually came in. They
20 gave me enough time ---

21 Q. Listen to my question. When they came in at that
22 time did you already know John Michael, like know him from
23 previous dealings or see him or whatever? Did you know
24 him?

25 A. No, sir, I hadn't.

1 Q. Okay. So of the four of them that came in, how many
2 of them did you know from previous experience, either
3 having met, gone out with or something?

4 A. William Henry, Jermaine.

5 Q. All right. And I think you testified you knew him
6 pretty well?

7 A. Yes, sir, I did.

8 Q. Is there any doubt in your mind that that man was the
9 man, the fourth man, that came into the apartment?

10 A. No, he wasn't. He had to be the third. That's who I
11 seen, the third person was him that come in the door.

12 Q. All right. Is there any doubt in your mind that he
13 was the third person that came into the apartment?

14 A. He was the third person to come in that door.

15 Q. All right. Now, once the four of them got in there,
16 tell the jury -- let's talk about your perspective first.
17 What did they do as it relates to you?

18 A. As they came in and pointed the gun, I automatically
19 reacted and I ran towards the bedroom thinking -- first
20 quick reaction was to try to jump through the window. Me
21 not realizing that them not no old windows or nothing you
22 can just bounce through. I bounced back off the window.
23 That's when Mark Cureton was behind me.

24 Q. This is -- is this in the living room or the bedroom
25 now?

1 A. This is in the bedroom. I ran into the bedroom
2 trying to get out. There's only one way in and one way
3 out and I'm trying to go through the window.

4 Q. All right. You couldn't get out the window. Then
5 what happened?

6 A. I bounced off the window. As I bounced off the
7 window that's when Mark Cureton was trying to hit me with
8 a pistol to get me back into it. When I come around the
9 curve I see that man right there had a gun. He shot the
10 first shot and hit Paco in the head. That's when I ---

11 Q. All right. Let me stop you right there.

12 A. As I'm coming ---

13 Q. As you were coming back into the living room?

14 A. Yes, sir.

15 Q. All right. Now, what was the positioning? Were they
16 both -- was Mark [sic] Henry standing next to Paco? Was
17 Paco on the ground? What was their position?

18 A. As I'm running back through I could see right there
19 in the hall before I hit the curve, I could see Paco fall
20 as he shot the gun and he laid right in front of the door
21 facing his head to the wall, facing sideways.

22 Q. And you saw the shot?

23 A. Yes, sir.

24 Q. You saw the shooting?

25 A. Yes, sir. I saw the shot.

1 Q. And one more time, just to be clear, tell the jury
2 who shot Francisco Perez?

3 A. William Jermaine Henry sitting right there, the
4 defendant.

5 Q. Any doubt in your mind about that?

6 A. Ain't no doubt in my mind.

7 Q. Okay. All right. So then -- now, at the time of the
8 shooting what's going on with the other two guys that were
9 with you?

10 A. Okay. Mark Cureton proceeds -- after the fact, as
11 soon as I hit the curve, Fat Albert hit me. That's when I
12 slid across the table. He hit me with a pistol. I slid
13 across the table. It kind of opened up my head. And when
14 I went across the table, that's when he bomb rushed me,
15 him and John Michael. But when John Michael must have
16 realized what was going on, he left it alone. He opened
17 the door for me and was like, you need to get, you know,
18 get out of here, when he realized what was going on. He
19 didn't want nothing to happen to me or he didn't want to
20 be in that predicament at all.

21 Q. Now, did he say that to you or that's just what you
22 sensed?

23 A. I could see that. And besides that, I felt like --
24 and now I know, being honest with you, he's the one that
25 saved my life.

1 Q. You're talking about John Michael Garrett?

2 A. Yes, sir.

3 Q. He was one of the four men?

4 A. Yes, sir.

5 Q. Now, did they have you -- at some point prior to you
6 getting out and prior to the first shot, were the -- did
7 anybody strike any blows against you?

8 A. Yeah. It was Fat Albert. That's who I had the
9 tussle with. That's who kept pistol whipping me, trying
10 to rob me and intentionally making me strip.

11 Q. Okay. Tell the jury what you mean about
12 intentionally making you strip?

13 A. Made me come out of my pants, my shirt, phone, money,
14 drugs.

15 Q. All right. Did you have a cell phone with you that
16 day?

17 A. Yes, sir.

18 Q. And going to the conclusion of all this, did they
19 take your cell phone?

20 A. Yes, sir.

21 Q. Did they take your cell phone at gunpoint?

22 A. They took my cell phone, my clothes and my shoes and
23 whatever monies I had left on me, and drugs.

24 Q. All right. When did they stop hitting you? What was
25 it that made them stop hitting you?

1 A. He never, he never -- Fat Albert never stopped
2 hitting me. I had to actually struggle to get away from
3 him when John Michael opened the door. That gave me time
4 to hit him and reach for the doorknob to get out of the
5 apartment. That's when I heard the last two shots.

6 Q. So you heard a total of how many shots after the
7 first one?

8 A. I heard two, I heard two after the first shot.

9 Q. So there was a total of three shots you heard?

10 A. Yes, sir.

11 Q. Once you got out of the apartment -- were you the
12 first one out?

13 A. Yes, sir.

14 Q. And where did you go when you got out?

15 A. I ran straight to my apartment.

16 Q. All right. You don't know -- do you know what
17 happened to them or to Mr. Perez after you left?

18 A. No, sir. I have no idea what happened.

19 Q. All right. Once you went to your apartment what did
20 you do?

21 A. When I went to my apartment I was ---

22 Q. Well, let me interrupt you. I apologize for
23 interrupting you. I have to ask you this before I forget
24 it. When you got to your apartment describe your injuries
25 to the jury, what kind of injuries you were suffering from

1 at that point?

2 A. My whole, my whole left eye was swollen shut. Blood
3 was running out of -- steady gushing out the top of my
4 head. I couldn't see. All this was bloody, all the way
5 down to my, to my shorts that I was left in. I was highly
6 in shock.

7 Q. Okay. Once you got to your apartment, then what
8 happened?

9 A. My ex-girlfriend, Janelle, she actually went next
10 door because I didn't have no phone with me, no phone,
11 since they had took my phone. So she asked the neighbor,
12 please help me, assist me, which they did.

13 Q. And where did you go from there?

14 A. I went straight to my mother's house without even
15 thinking. I was in total shock. I actually bypassed the
16 hospital. Me being scared, didn't know what I should do
17 or how I should take this or what I should go about, what
18 way I should go about it. So I went to my mother's house
19 first.

20 Q. All right. Did Janelle go with you?

21 A. Yes, sir, she did.

22 Q. All right. When you left her mother's -- what did
23 your mother -- well, don't tell us what your mother told
24 you to do. How long did you stay at your mother's house?

25 Not long or a long time or what?

1 A. Maybe five, ten minutes. She was strongly suggesting
2 and telling me ---

3 Q. Don't tell the jury what she said.

4 A. -- to go ---

5 Q. No, no. Don't tell the jury -- it doesn't matter.

6 Where did you go after you left your mother's house?

7 A. St. Francis Hospital.

8 Q. All right. Did you go by Janelle's mother's?

9 A. No. We didn't go by there. We didn't go by there.

10 Q. And then you went to St. Francis Hospital ---

11 A. Yes, sir.

12 Q. -- for treatment; is that correct?

13 A. Yes, sir, I did.

14 Q. Now, at some point did you talk to a police officer
15 that night?

16 A. Yes, sir. He came in.

17 Q. All right.

18 A. It was a police officer come to the scene.

19 Q. To the hospital?

20 A. To the hospital.

21 Q. Did you tell the police officer how you got injured?

22 A. Yes, sir.

23 Q. Did you tell him the whole story?

24 A. No, sir, I didn't. No, sir, I didn't, because I --

25 to be honest with you, this statement, it was a scared

1 statement.

2 Q. What is a scared statement, sir?

3 A. I was not in my right mind at the time I made that
4 statement. I didn't, I didn't ---

5 Q. Let me interrupt you.

6 A. I know the police do not ---

7 Q. Please, let me stop you.

8 MR. CREECH: Judge, let him finish his answer.

9 He's answering his own questions.

10 THE COURT: I'll allow you to cross examine.

11 I'll allow you to explain your answer if you want to.

12 Just listen to the question first and then you can ---

13 Q. I just need you to answer my questions, please.

14 Okay? Now, when you say it was a scared statement that
15 you gave the police, did you say it was not the total
16 truth?

17 A. Yes, sir.

18 Q. Did you tell the police officer how many people had
19 come into the apartment?

20 A. Yes, sir.

21 Q. Did you tell them that you identified anybody? Did
22 you tell the police officer that you knew who one of the
23 people were?

24 A. No, sir.

25 Q. Why did you not identify this defendant?

1 A. Because I was scared that I would get killed. I was
2 scared they was going to come and get me, because, to be
3 honest with you, the police, they do their job but they're
4 not out there in the streets to protect you and help you
5 on an everyday basis.

6 Q. Okay. So did you tell the police that they had on
7 ski masks?

8 A. Yes, sir, I did.

9 Q. Did they have on ski masks?

10 A. No, sir, they didn't.

11 Q. Did they have on anything covering their face?

12 A. No, sir, they didn't.

13 Q. All right. Now, you met later with Investigator
14 Flavell; is that correct?

15 A. Yes, sir.

16 Q. Detective Flavell, I'm sorry. Just like a day or two
17 later?

18 A. Yes, sir.

19 Q. And you met with him twice, I think?

20 A. Yes, sir.

21 Q. The first time you met with him did you give him a
22 statement?

23 A. Yes, sir.

24 Q. Were you perfectly honest in that statement?

25 A. No, I wasn't.

1 Q. Why did you not tell him the truth? Excuse me. Let
2 me back up. Did you tell him basically what happened?

3 A. I told him basically what happened, but I had left
4 things out to try to protect myself.

5 Q. Did you identified the defendant in that statement?

6 A. No, sir, I didn't.

7 Q. And once again, why not?

8 A. Out of fear.

9 Q. All right. Tell the jury, because I misunderstood
10 what you were saying; what exactly were you afraid of?

11 A. I was afraid that they was going to get somebody to
12 get to me because I was still in the streets. I was in
13 the hood everyday life at the time running wild, not
14 thinking, and I just swore that, you know, they would be
15 ready to reach out and get me.

16 Q. So you didn't identify anybody at that point; did
17 you?

18 A. No, sir, I didn't.

19 Q. Now, when you met with Detective Flavell the second
20 time, like the next day I think it was, either later that
21 day or the next day, did he confront you with new
22 information?

23 A. Yes, sir.

24 Q. At that point did you talk to him about protection?

25 A. I tried. I tried to talk to him about it.

1 Q. What do you mean?

2 A. I asked him if I was to come forth, you know, and let
3 him know the names and give him the identities, how would
4 I be protected? What should I go about and what route
5 should I take?

6 Q. After your conversation with him, the preliminary
7 conversation with him, did you name the person who shot
8 Mr. Perez to him?

9 A. Yes, sir.

10 Q. Now, did you tell him you saw him or you heard it?

11 A. I told him I saw him. I went ahead and I told him I
12 saw him.

13 Q. And who did you tell him it was?

14 A. Jermaine Henry, William Henry.

15 Q. All right. Now, when you looked over at Mr. Henry
16 ---

17 A. Yes, sir.

18 Q. -- as he was preparing to shoot Mr. Perez or as he
19 shot Mr. Perez, how many guns did he have in his hand?

20 A. One.

21 Q. Okay. And was there anybody else standing over Mr.
22 Perez with a gun at that point?

23 A. Mark Cureton.

24 Q. Did he have a gun?

25 A. Yes, sir.

1 Q. Okay. Did you see who shot him though?

2 A. Yes, sir.

3 Q. Who was that?

4 A. William Henry.

5 Q. Okay. Is there any chance you might have

6 misidentified him and it might have been somebody else?

7 A. Ain't no way. No way. No way possible.

8 Q. Did he talk while he was in there? Mr. Henry? Did

9 you hear him say anything?

10 A. I couldn't hear nothing, but I could see. My eyes

11 was wide open.

12 Q. Okay. Thank you, sir.

13

CROSS EXAMINATION

14 **BY MR. CREECH:**

15 Q. Mr. Brooks, seeing someone being shot must have been

16 frightening for you; is that right?

17 A. Very.

18 Q. And I'm sure it made quite an impression on you;

19 didn't it?

20 A. No impression.

21 Q. In your words there's really no mistake what

22 happened; is that right?

23 A. Yes, sir.

24 Q. You watched, as you say, you saw Jermaine pull the

25 trigger and shoot Paco; is that right?

- 1 A. Yes, sir.
- 2 Q. You saw him shoot two times?
- 3 A. One.
- 4 Q. You stared at the whole thing?
- 5 A. I seen it all with my eyes.
- 6 Q. It's burned in your brain; is that right?
- 7 A. I have nightmares two, three times a week.
- 8 Q. That picture will never go away; correct?
- 9 A. No.
- 10 Q. You gave three statements to law enforcement; didn't
- 11 you?
- 12 A. Yes, I have.
- 13 Q. And in the first statement you didn't say Jermaine
- 14 shot the guy?
- 15 A. No, sir, I didn't.
- 16 Q. In the first statement you didn't say Jermaine -- you
- 17 said Jermaine -- no one was there. You never mentioned
- 18 anybody by the name of Jermaine being there; is that
- 19 right?
- 20 A. Yes, sir.
- 21 Q. The second statement you never said Jermaine shot
- 22 anybody?
- 23 A. Yes, sir. I really didn't. I didn't want to out of
- 24 fear.
- 25 Q. And in the third statement you did say you saw

1 Jermaine in the apartment; correct?

2 A. I went ahead and told the truth the third statement.

3 I went ahead and told the whole truth.

4 Q. You were telling the truth in that third statement,

5 is that your testimony?

6 A. The only thing I left out was about the mask. I kept

7 the mask in there because I was still in fear.

8 Q. Isn't it true that in your third statement that you

9 said, I recognized the voice of the one hitting Paco with
10 the hammer, it was Jermaine?

11 MR. WESTON: Your Honor, I'm going to object

12 once again. If he's going to ask, if he's going to ask

13 about a statement he gave two years ago about some

14 specific one line in a statement, I think he has a right
15 in fairness to show it to him first.

16 THE COURT: All right. I agree. You can ask

17 him about the statement and show it to him for him to ---

18 Q. Is this your statement? Look at it, line by line,
19 for me.

20 A. This is my statement. This is my signature right
21 here too.

22 Q. And there's not one line in that statement, not one
23 sentence that says you saw Jermaine shoot anybody; is
24 there?

25 A. No, there's not. No, it's not. That is totally

1 wrong. I gave a statement out of fear for my life.

2 Q. You were in the apartment that night; is that

3 correct?

4 A. Yes, sir, I was.

5 Q. You were there with Paco; is that correct?

6 A. Yes, sir.

7 Q. At some point you say Jermaine Henry came into the

8 apartment; is that right?

9 A. Yes, sir, he did.

10 Q. You say you could see his face?

11 A. Yes, sir.

12 Q. It was clear to you?

13 A. That face.

14 Q. You had a good view of it?

15 A. Yes, sir.

16 Q. Nothing obstructed your view?

17 A. Nothing.

18 Q. You knew it was his face?

19 A. Yes, sir.

20 Q. Now, on the statements that you gave to law

21 enforcement you said that these people that came in the

22 house were wearing bandannas; isn't that right?

23 A. Yes, sir, I did.

24 Q. You said they were wearing hats over their heads;

25 isn't that right?

- 1 A. Yes, sir, I did.
- 2 Q. You couldn't identify them; is that right?
- 3 A. Yes, sir, I did.
- 4 Q. On the first statement you never said you could see
- 5 his face?
- 6 A. You're right about that. I said that.
- 7 Q. On your second statement you never said you could see
- 8 his face?
- 9 A. Yes, sir.
- 10 Q. In fact, you said they were wearing bandannas.
- 11 MR. WESTON: Objection, Your Honor. He just
- 12 went through those ---
- 13 THE COURT: Hang on just a minute while he ---
- 14 MR. WESTON: He just asked these exact
- 15 questions, Your Honor. He just started on asking the same
- 16 questions he just asked him.
- 17 THE COURT: I overruled your objection, Mr.
- 18 Weston. I'll allow him to cross examine the witness.
- 19 Q. And this same night you say you were scared to tell
- 20 the police officers, the police don't protect you; is that
- 21 right?
- 22 A. That's how I felt at the time.
- 23 Q. All right. You went, you went and saw your mother
- 24 that night too; didn't you?
- 25 A. Yes, sir.

1 Q. And you also told your mother these men were wearing
2 masks; true?

3 A. Yes, sir, I did.

4 Q. Mr. Brooks, you were questioned by the police on the
5 night you say this happened, March the 21st, 2006; is that
6 right?

7 A. Yes, sir.

8 Q. You lied to the police in that statement; is that
9 right?

10 A. Yes, sir.

11 Q. Instead of telling the police the truth, you chose to
12 lie; is that right?

13 A. I didn't choose to lie. I lied out of fear.

14 Q. But you still made the choice to lie; is that right?

15 A. I lied. Yes, sir, I did.

16 Q. You met again with the police on March the 22nd,
17 2006; correct?

18 A. Yes, sir.

19 Q. You gave the police a second statement; is that
20 correct?

21 A. Yes, sir.

22 Q. Detective Flavell told you he would put you in jail
23 if you lied to him; is that right?

24 A. Yes, sir.

25 Q. And you lied to him; is that right?

1 A. Yes, sir.

2 Q. Instead of telling Detective Flavell the truth you
3 chose to lie; is that right?

4 A. Yes, sir.

5 Q. When you gave them this third statement, you lied; is
6 that right?

7 A. Out of fear, yes, sir, for my life.

8 Q. You've been charged in the past with giving false
9 information; is that right?

10 A. Yes, sir.

11 Q. Not related to this incident?

12 A. Related to a ticket. Me not, me not wanting to be
13 honest with you, me trying to give false information
14 because I had a warrants on me and I was trying to get
15 away.

16 Q. So you have no problems with lying; is that right?

17 A. I have a problem with lying now, because I've learned
18 that it ain't truthfully and honest. To be a man you've
19 got to tell the truth. A lot of things will haunt you
20 that you do in the past that are wrong. I mean, if you
21 keep telling lies you'll never, you'll never be a real
22 man. And you'll never set an example for your own child.
23 Or children, if you have any.

24 Q. Now, Mr. Brooks, ---

25 A. Yes, sir.

- 1 Q. -- you knew it was important to tell the truth to the
2 police officers; correct?
- 3 A. Did I know --- excuse me, sir?
- 4 Q. You knew it was important to tell the truth to the
5 police officers; is that right?
- 6 A. Yes, sir, I knew. Yes, sir, I knew.
- 7 Q. You knew you were supposed to tell the truth?
- 8 A. Yes, sir. You're always supposed to tell the truth.
- 9 Q. When you -- on this night of March the 21st, 2006,
10 you had been smoking marijuana that night; correct?
- 11 A. Yes, sir.
- 12 Q. And did you tell the police that?
- 13 A. Yes, sir, I told them that.
- 14 Q. You are smoking marijuana and that wasn't the first
15 time; was it?
- 16 A. No. I always smoked marijuana.
- 17 Q. And that same night you had crack on you; correct?
- 18 A. Yes, sir.
- 19 Q. And you smoked that marijuana so that you could get
20 high; correct?
- 21 A. Yes, sir.
- 22 Q. And you did get high; correct?
- 23 A. Yes, sir.
- 24 Q. You smoked marijuana with Paco that night; correct?
- 25 A. Yes, sir.

1 Q. And it was Paco's marijuana?

2 A. Yes, sir.

3 Q. You smoked a blunt; is that right?

4 A. Yes, sir.

5 Q. Is that how you prefer to smoke marijuana?

6 A. Yes, sir.

7 Q. You never told the investigators that you were going
8 back to the apartment, Paco's apartment that night to do a
9 drug deal; did you?

10 A. I went ahead and be truthful with them because I was
11 there. I told -- I chose to tell the truth at one point.

12 Q. In your first statement to the police you never told
13 them you were going to do a drug deal at Paco's apartment;
14 correct?

15 A. Yes.

16 Q. You did?

17 A. Yes. I didn't choose to tell them nothing about no
18 drug deal.

19 Q. You left the drug deal part out of it?

20 A. Oh, yeah.

21 MR. WESTON: Objection, Your Honor. He needs to
22 let him finish his answer before he interrupts him.

23 THE COURT: Hang on just a minute. The court
24 reporter can't get but one person talking at a time.

25 WITNESS: Can I explain myself?

1 THE COURT: Yes, sir. But when someone else is
2 talking you let them finish and then you do your answer.
3 And these attorneys are going to let you finish your
4 answer before they start asking questions as well. You
5 can ask your question again, Mr. Creech.

6 Q. You never told the investigators in your first
7 statement that you were going back to that apartment to do
8 a drug deal; correct?

9 A. Correct.

10 Q. Now, Mr. Brooks, you were selling crack cocaine at
11 the time; is that right?

12 A. Yes, sir.

13 Q. You are making money selling crack cocaine; is that
14 right?

15 A. Yes, sir.

16 Q. You weren't working a lawful occupation; is that
17 right?

18 A. Yes, sir.

19 Q. The money that you made from selling that crack
20 cocaine, you weren't paying any taxes on that; were you?

21 A. Impossible.

22 Q. You weren't reporting it to the IRS; were you?

23 A. Impossible.

24 Q. So you decided that you were going to sell drugs
25 instead of go to work; is that correct?

1 MR. WESTON: Objection, Your Honor.

2 A. It was ---

3 THE COURT: Wait just a minute. Let me hear his
4 objection. Yes, sir.

5 MR. WESTON: Your Honor, he is basically trying
6 to abilify this man. He's indicated he's a drug dealer.
7 Now he's saying he would rather sell drugs than go to
8 work. There's been no evidence that he didn't want to do
9 another type of job. It's just that's what he did.

10 THE COURT: I overruled your objection.

11 MR. WESTON: Thank you, Your Honor.

12 THE COURT: Now, if you can answer the question
13 if you can remember it. Otherwise you can restate the
14 question.

15 Q. You chose to sell drugs as opposed to going to work
16 in a lawful occupation; is that right?

17 A. At the time I did.

18 Q. Nobody forced you to make that choice; did they?

19 A. I made my own decisions. I also chose the wrong
20 path.

21 Q. And in fact you have a conviction on your record for
22 assault of a high and aggravated nature; isn't that right?

23 A. Yes, sir, I do.

24 Q. And was that from shooting at somebody and missing
25 them?

- 1 A. No, sir, it wasn't.
- 2 Q. What was it for?
- 3 A. Hands on.
- 4 Q. Assaulting someone; correct?
- 5 A. Yes, sir.
- 6 Q. Mr. Brooks, you say that night that two men came in
7 at first?
- 8 A. Yes, sir.
- 9 Q. And at the time you didn't know who those men were;
10 is that right?
- 11 A. Yes, sir. That's what I stated.
- 12 Q. You didn't know who they were; right?
- 13 A. Yes, sir.
- 14 Q. You eventually later tried to figure out who it was?
- 15 A. I didn't figure it out. I knew by face. All I knew
16 was a name. And that's when we came up with names.
- 17 Q. And you're saying those individuals had guns; is that
18 right?
- 19 A. Yes, sir.
- 20 Q. And one of them pointed a gun at you; is that
21 correct?
- 22 A. Yes, sir.
- 23 Q. And you are certain of that?
- 24 A. Positive.
- 25 Q. That was a very important detail to you; is that

1 --right?

2 A. Yes, sir.

3 Q. And you never told the police that fact; did you?

4 A. Didn't want to, out of fear.

5 Q. Didn't want to out of fear. Huh. You told the
6 investigators that you thought you saw other things in
7 that apartment that night; is that right?

8 A. Yeah. I told them a bunch of lies to protect myself
9 and my well-being.

10 Q. But you just happened to leave that detail out; is
11 that right?

12 A. Yes, sir.

13 Q. You just didn't tell them about somebody pointing a
14 gun at you; right?

15 A. As I recall all of it was a lie. And I'm here now to
16 tell the truth.

17 Q. Yeah, but if you just told them somebody had a gun,
18 how -- you were afraid to tell them that?

19 A. I was afraid to identify anybody at the present
20 moment in time.

21 Q. I didn't ask about identifying ---

22 A. I was afraid to say anything at that point in time,
23 period.

24 Q. Mr. Brooks, isn't it true that you've come in this
25 courtroom and you're just making this up?

- 1 A. Ain't no way.
- 2 Q. You've lied before?
- 3 A. That's then. Here I am now.
- 4 Q. You've lied on multiple occasions?
- 5 A. I'm here to tell the truth though.
- 6 Q. You lied when you knew you could be put in jail?
- 7 A. Anything to save my life at the time. I had no
- 8 choice. That's how I felt.
- 9 Q. You lie whenever you want to; isn't that right?
- 10 A. No. I lied to save my life.
- 11 Q. So that's why you lied to investigators?
- 12 A. Yes, sir.
- 13 Q. Do you think it's okay to lie to the police?
- 14 A. No, it's not.
- 15 MR. CREECH: Your Honor, I have no further
- 16 questions for this witness.
- 17 THE COURT: Any redirect?
- 18 MR. WESTON: No redirect, Your Honor.
- 19 THE COURT: All right. Thank you, sir, you may
- 20 step down.
- 21 MR. WESTON: The state would ask that this
- 22 witness be allowed to be released from his subpoena, Your
- 23 Honor.
- 24 THE COURT: Any objection?
- 25 MR. CREECH: No objection, Your Honor.

1 THE COURT: All right. Without objection, you
2 may be released.

3 Ladies and gentlemen, this might be a good time for
4 us to take a short break. I'll ask you to go back to your
5 jury room. Don't discuss the case.

6 When you come back, obviously the last juror chosen,
7 you know the seat you're going to be sitting in, the
8 alternate seat. You're every bit as much a part of this
9 jury as anyone else, but you were picked as an alternate
10 in case some emergency were to come up with the first
11 twelve who were chosen. As you come in and out you can
12 obviously sit in any seat you like. Sometimes you might
13 want a back row or a front row or one end or the other.
14 I'm going to appoint Ms. Tyson as the foreperson of the
15 jury. So she will occupy the front row seat, the seat
16 closest to the witness chair here when you come back in.

17 What the foreperson does, it doesn't mean that that
18 person has more votes than anyone else. But there might
19 be some exhibits presented into evidence and if the
20 attorneys want to present those around to the jury, then
21 they will show them to the foreperson and she can then
22 pass them around to everyone else. And sometimes when you
23 are back in your jury room there might be a special need
24 that you have or someone needs to make a call for a child
25 or you may have a question for the court. The foreperson

1 would be the one who would write out that question to give
2 to the bailiffs on behalf of the fellow jurors to make
3 sure that we get the information and we can meet that need
4 that you have. Sort of the liaison with the court, if you
5 would, the means by which you would communicate with the
6 court.

7 Ultimately when you have heard all the evidence and
8 the jury then is ready, having had the instructions on the
9 law and you begin your deliberations, the foreperson would
10 be the one of course that would help facilitate that
11 discussion so that all of you can have your say into your
12 deliberations and give your view of the facts that you've
13 heard. So she will always occupy that seat on the front.
14 The rest of you can sit anywhere you like. Ultimately
15 I'll explain the verdict form to the foreperson who will
16 bring it back to the court on behalf of all the jurors.

17 So the alternate will have that seat and the
18 foreperson will have the seat right in front on this end.
19 The rest of you when you come back in can choose the seats
20 that you like. We'll take about a ten or fifteen minute
21 break. Don't discuss the case while you're back, ladies
22 and gentlemen. When you come back we'll be ready for more
23 testimony.

24 (WHEREUPON, the jury exited the open court at
25 approximately 3:50 p.m.)

1 THE COURT: All right. We'll take a short
2 break. About fifteen minutes.

3 MR. WESTON: Yes, sir, Your Honor.

4 (WHEREUPON, court stood at recess for a short break.)

5 THE COURT: All right. Are we ready for the
6 jury to come back?

7 MR. WESTON: Your Honor, before we bring the
8 jury back in just one housekeeping matter. We have to
9 transport the three codefendants separately -- excuse me.
10 Law enforcement has to transport them separately. They
11 were asking me about whether or not they would be reached
12 today. And I told them I would speak with you about it
13 before we started back up.

14 We've got the first officer on the scene and a
15 forensic tech who are going to testify next. And before
16 we get to them, Detective Flavell is going to testify, who
17 is probably going to be very lengthy. I don't know
18 whether you want to wait till in the morning for him or
19 not, but I wanted to make sure that they would go ahead
20 and let them ---

21 THE COURT: Yeah. We won't need them today, I
22 don't believe, if that's the order you're going to be
23 calling them.

24 MR. WESTON: That is, Your Honor.

25 THE COURT: We might just get two more. We

1 might break a little early today.

2 MR. WESTON: Because we should, Your Honor, we
3 should finish by tomorrow, finish our case early tomorrow
4 afternoon or earlier. If we're starting at nine o'clock,
5 we should finish our case early in the afternoon or
6 probably even before lunch.

7 THE COURT: Okay. That'll give us some help on
8 getting the jurors back.

9 Let me remind those in the audience that when we take
10 a break, ladies and gentlemen, you need to keep your seats
11 until the jury has departed from the courtroom. If you
12 would just keep your seats. I'll try to remind you. But
13 if I don't you'll know that. Once the jury is out and the
14 door is closed, then you are certainly free to take your
15 break. But we are going to remain seated while the jury
16 is coming and going.

17 Let's have our jury come back in please.

18 (WHEREUPON, the jury entered the open court at
19 approximately 4:10 p.m.)

20 THE COURT: All right. Solicitor, you may call
21 your next witness.

22 MR. WESTON: Thank you, Your Honor. The state
23 would call Mr. T. D. Robinson.

24 T.D. ROBINSON,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1

DIRECT EXAMINATION2 **BY MR. WESTON:**

3 Q. Mr. Robinson, where do you work?

4 A. At the Cliffs of Keowee.

5 Q. And what do you do there?

6 A. I'm the captain over their security.

7 Q. How old are you, sir?

8 A. Thirty-seven.

9 Q. And how long have you been at the Cliffs of Keowee?

10 A. Almost two years.

11 Q. All right. Prior to that where were you employed?

12 A. At the Greenville Police Department.

13 Q. And what was your title at the Greenville Police

14 Department?

15 A. Patrol officer.

16 Q. All right. And about how long were you with the

17 Greenville Police Department?

18 A. Almost seven years.

19 Q. Now, did you have an occasion to investigate the
20 incident that occurred on March the 26th [sic] of 2006
21 that brings us here today?

22 A. Yes, sir.

23 Q. Were you one of the first officers on the scene?

24 A. Yes, sir.

25 Q. All right. And about what time did you arrive?

1 A. It was about twenty-two twelve hours.

2 Q. What is that to the rest of us?

3 A. That would be twelve minutes after ten.

4 Q. All right. And that would be -- that's at night?

5 A. Yes, sir, it is.

6 Q. All right. Would you tell the jury -- this is at
7 apartment I-11, Ashworth Apartments?

8 A. That is correct.

9 Q. All right. And what was your response to? What was
10 the call that came out with regard to this?

11 A. The information that we were given through dispatch
12 was that it was a possible stab or cut victim.

13 Q. All right.. And when you arrived on the scene
14 describe the scene to the jury in terms of were there
15 people outside, how many, what were they doing, and what
16 have you?

17 A. There was several people outside and they also
18 informed us there was a possibility that the person inside
19 had been robbed.

20 Q. And did you -- what was the first thing you did?

21 A. Officer Bedford was there prior to my arrival.

22 Moments later I arrived. And as soon as I got there he
23 was finishing up, getting some additional information from
24 the people there. And we immediately went inside once I
25 got there and cleared the apartment.

1 Q. Is Officer Bedford still with the Greenville Police
2 Department as far as you know?

3 A. He is -- to my understanding he is still working with
4 the police department, but he's currently serving in Iraq.

5 Q. Okay. And so the two of you were the first two on
6 the scene as far as you can remember?

7 A. That's correct.

8 Q. All right. Did y'all enter the apartment separately
9 or together?

10 A. Together.

11 Q. All right. And when you entered the apartment
12 described to the jury what you found as far as -- let's
13 talk first about the apartment -- the living room area of
14 the apartment itself.

15 A. Okay.

16 Q. How would you describe it to the jury?

17 A. It appeared that there had been a fight or a
18 struggle. Things were turned over. It looked like
19 somebody had been in a struggle there. Things were
20 knocked over, turned over, in disarray.

21 Q. All right. And did you see Mr. Francisco Perez in
22 the living room area?

23 A. Yes. He was lying face up in the living room floor.
24 We could tell he had some type of injury to his face and
25 head area, but we were not sure of what the injury was at

1 that time.

2 Q. All right. Now, what is the protocol and what
3 protocol did y'all follow once you got inside the
4 apartment and saw -- once you came in, obviously you could
5 see the living room area. But what is the protocol for
6 what you did after that, what y'all would do after that,
7 and what you did in this case?

8 A. We immediately cleared the apartment.

9 Q. What does that name?

10 A. To make sure that no one else was inside. To make
11 sure there was no other victims. Or to make sure that
12 there was no suspect on the scene.

13 Q. All right. And what did that entail? What did you
14 do?

15 A. We went room by room. As we come to each room we
16 would check it and make sure that no one was inside to
17 make sure no one was there that needed any medical
18 attention, another victim, or any possible suspects.

19 Q. And between the two of you did you clear every room?

20 A. Yes, sir, we did.

21 Q. And did you or Officer Bedford, as far as you know,
22 find anybody else in the apartment?

23 A. No, sir.

24 Q. All right. Now you described the living room. I
25 think you said it looked like there had been a fight or in

1 disarray. Did you go into the bedroom area?

2 A. Yes, sir.

3 Q. And what did you -- would you describe to the jury

4 what you found, what that was like?

5 A. The closet door was open. All the drawers of the

6 furniture was open. Things were tossed around. It looked

7 like somebody had been plundering through.

8 Q. Did you find -- did you yourself find any weapons?

9 A. Yes, sir. There was a 12 gauge shotgun in the

10 bedroom closet. The action was open on it. There was no

11 shells inside of it at the time that I found it.

12 Q. Okay. And did you find -- did you yourself find any

13 other weapons?

14 A. No other weapons.

15 Q. All right. Did you -- when you came into the living

16 room and/or the bedroom area, did you see any drugs in the

17 apartment?

18 A. I did not observe any drugs, no, sir.

19 Q. Were their bottles in the living room area?

20 A. If there was -- I don't recall if there was or not.

21 I didn't note that in my report.

22 Q. All right. Now once you cleared the apartment and

23 walked all the way through and confirmed there was nobody

24 else there and just kind of took notice of what the state

25 of affairs was, you came -- did you come back out into the

1 living room area?

2 A. Yes, sir.

3 Q. Did you sort of retreat back out?

4 A. Yes, sir.

5 Q. All right. Would you describe -- I think you briefly
6 did it. What injuries did you perceive the victim to have
7 at that point, just from a cursory glance?

8 A. I could tell that he had some type of injury to his
9 face and head area. But in the position that he was
10 laying, I couldn't really tell for sure what the injury
11 was.

12 Q. All right. Was he fully clothed?

13 A. He was. But the clothing was partially pulled away
14 from how it would normally be worn.

15 Q. Okay. And what did you do after -- what was y'all's
16 -- what is the next thing y'all did after y'all did all
17 that?

18 A. EMS arrived and -- just to confirm that the victim
19 was deceased. We notified detectives and also our
20 supervisors and they came out at that time.

21 Q. All right. Did y'all -- did you stay on the scene
22 after the EMS and detectives arrived for any length of
23 time?

24 A. No, sir, I did not.

25 Q. All right. And at the time detectives arrived did

1 you turn the case -- basically, did you apprise them of
2 what you have found?

3 A. That's correct, sir.

4 Q. And did you sort of turn the scene over to them at
5 that point?

6 A. Yes, sir.

7 Q. - All right. And did you talk to any of the witnesses
8 on the scene yourself?

9 A. No, sir.

10 Q. All right. And have you had any other involvement in
11 this case since that time?

12 A. No, sir.

13 Q. All right, sir. Thank you, sir.

14 **CROSS EXAMINATION**

15 **BY MR. CREECH:**

16 Q. Is it Sergeant Robinson?

17 A. Currently it's captain.

18 Q. Captain Robinson, excuse me. You walked into the
19 apartment; is that correct?

20 A. That's correct.

21 Q. And you say you saw the marijuana; is that right?

22 A. No, sir, I didn't note that in my report. I don't
23 recall seeing any.

24 Q. You smelled marijuana?

25 A. I didn't note that in my report either, so I don't

1 recall.

2 Q. You saw liquor bottles?

3 A. No, sir.

4 Q. You saw beer bottles?

5 A. No, sir.

6 Q. You saw crack cocaine?

7 A. No, sir.

8 Q. You saw a shotgun?

9 A. That's correct, sir.

10 Q. Do you remember seeing over ten thousand dollars in
11 cash in the apartment?

12 A. No, sir.

13 Q. When you arrived on the scene you spoke with people
14 there on the scene; is that correct?

15 A. No, sir. Officer Bedford did until I arrived. Once
16 I arrived we both immediately went into the apartment.

17 Q. Okay. You say you never spoke with Sarah Amber
18 Scott; is that correct?

19 A. That's correct.

20 Q. Never spoke with Audrey Chastain; is that right?

21 A. No, sir, I didn't.

22 Q. You never spoke with DeShawn Madden; is that right?

23 A. That's correct.

24 Q. Now, you were at this apartment for approximately an
25 hour; would you say?

- 1 A. Probably close to it, maybe a little less.
- 2 Q. Okay. And other investigators and police officers
- 3 also arrived on the scene; is that right?
- 4 A. That's correct.
- 5 Q. Officer Robinson was there; correct?
- 6 A. I'm ---
- 7 Q. Excuse me. Officer Bedford was there?
- 8 A. That's correct.
- 9 Q. Okay. Detective Flavell was there; correct?
- 10 A. I didn't note that in my report, but ... I don't
- 11 recall specifically whether or not he was there.
- 12 Q. Detective Bruce was there; is that correct?
- 13 A. I can't recall that either.
- 14 Q. Detective Allgood, was he there?
- 15 A. I can't recall that either.
- 16 Q. Do you remember speaking with Detective Karais? Was
- 17 he there?
- 18 A. I don't recall speaking with him.
- 19 Q. You never met with Katrina Haynes that night; is that
- 20 right?
- 21 A. No, sir.
- 22 Q. Do you know which officer, if any, met with Katrina
- 23 Haynes?
- 24 A. No, sir. I don't have any information to that.
- 25 Q. Okay. So Katrina Haynes never told you about there

IN THE COURT OF GENERAL SESSIONS

1 COUNTY OF GREENVILLE
 1 BEING asked in the apartment; is that right?

2 A. No, sir.
 2 STATE OF SOUTH CAROLINA,)

3 Q. Was Officer Robinson -- excuse me, Officer Bedford, 2006-GS-23-0698-0701
 3 PLAINTIFF,)

4 he spoke with more people on the scene; is that right? February 2-4, 2009
 4 -VS-)

5 A. That's correct. He had a few moments before I
 5 WILLIAM HENRY,)

6 arrived just to speak to some people prior to us going
 6 DEFENDANT.)

7 ~~into the apartment.~~

8 Q. And so for the other -- you know, except for the
 8 BEFORE:

9 about forty-five minutes to an hour you were there that

10 THE HONORABLE G. EDWARD WELMAKER, JUDGE
 10 night, that's about all you have on this case; is that

11 right?
 11 APPEARANCES:

12 A. That's correct.

JEFF WESTON

13 ASSISTANT SHERIFF FOR 13TH JUDICIAL CIRCUIT
 13 ATTORNEY FOR THE STATE

14 MR. WESTON: Just a couple of questions on

15 TOM CREECH
 15 redirect, Your Honor, if I may.
 15 ATTORNEY FOR THE DEFENDANT

16 THE COURT: Yes, sir.

17 MR. WESTON: DANETTE P. HANKS
 17 Thank you
 17 CIRCUIT COURT REPORTER

18 REDIRECT EXAMINATION

19 BY MR. WESTON:

20 Q. Mr. Robinson, now this has been two years ago; is

21 that correct, almost three now?

22 A. Correct.

23 Q. When counsel asked you about the detectives that

24 arrived on the scene or other officers that may or may not

25 have been on the scene, are you saying that they weren't

1 there or you just don't recall?

2 A. I just don't recall. That's been too far back for me
3 to remember that.

4 Q. Were there a number of officers on the scene though?

5 A. Yes, there was.

6 Q. All right. Thank you, sir.

7 THE COURT: All right. Thank you. You may step
8 down, Officer Robinson.

9 MR. WESTON: Your Honor, the state would ask
10 that this witness be allowed to be released from his
11 subpoena.

12 THE COURT: Without objection?

13 MR. CREECH: Without objection, Your Honor.

14 THE COURT: All right. Thank you.

15 MR. WESTON: Your Honor, the state would call
16 Ms. A. J. Deitz.

17 A.J. DEITZ,

18 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. WESTON:

21 Q. Officer Deitz, by whom are you employed?

22 A. I'm sorry.

23 Q. By whom are you employed?

24 A. Oh, Greenville County Forensic Division.

25 Q. And what do you do? Tell the jury what you do?

1 A. I am an evidence technician, meaning that I go to
2 crime scenes when requested by certain agencies, observe,
3 collect, preserve and package those items for that agency
4 to assist them in their investigations.

5 Q. Now how long have you been doing that?

6 A. Four years.

7 Q. All right. Did you have an occasion to -- normally
8 when you go to a crime scene did you interview witnesses?
9 Is that normal?

10 A. No.

11 Q. All right. Did you have an occasion to investigate
12 the death of Mr. Francisco Perez -- excuse me. To go to
13 the crime scene surrounding the death of Mr. Francisco
14 Perez on March 21st of 2006?

15 A. We were requested to go to the scene.

16 Q. All right. And who all -- were you the only crime
17 scene technician there?

18 A. No, I was not. Sergeant Lindway was also with me.
19 We worked the scene together.

20 Q. All right. And what role did you play in working the
21 scene? What type -- what things did you do there,
22 personally?

23 A. Personally when we arrive at the scene we generally
24 do a walk-through with the investigating officers that are
25 on the scene. Myself and Sergeant Lindway would have done

1 that. And then we began to process the scene for
2 potential items of evidence, which includes photographs,
3 diagraming and collection.

4 Q. Was a diagram prepared in this case?

5 A. Yes, it was.

6 Q. Did you assist in the preparation of that diagram?

7 A. Yes, I did.

8 Q. Did you assist in the preparation of -- now, in a
9 diagram, explained to the jury what is the -- what are you
10 doing in a diagram?

11 A. What we do is we take measurements of the scene.

12 This was in an apartment so measurements were taken of the
13 apartment. The measurements are then -- it's sketched out
14 what we see while we are there. Those measurements are
15 applied to a diagram and also the potential items of
16 evidence that were collected are also included in that
17 diagram.

18 Q. All right. Let me show you what has been pre-marked
19 as State's Exhibit number 1 for identification purposes
20 and ask if you recognize this?

21 A. I do.

22 Q. What is that?

23 A. That is the scene diagram from the apartment that
24 Sergeant Lindway completed.

25 Q. And did you help in the preparation of that diagram?

1 A. I did.

2 Q. Did you help in the preparation of the measurements
3 that comprise that diagram?

4 A. Yes.

5 Q. All right. And did you also do a walk-through of the
6 apartment -- I think you said that is the first thing
7 y'all do -- with Sergeant Lindway? Is it Lindway?

8 A. Lindway, yes.

9 Q. -- in determining what should be included in the
10 diagram, what items?

11 A. Yes.

12 Q. All right. Let's talk about first what you saw.

13 When you came to the apartment you were accompanied by a
14 detective or are y'all left in there by yourselves? Or
15 how does that work?

16 A. When we arrive on the scene generally we've been
17 requested to the scene, so investigators are on the scene.
18 Detective Flavell was already on the scene with another
19 officer. They gave us information on what they knew had
20 occurred. We walked through the scene together. And then
21 they exited the scene and myself and Sergeant Lindway
22 began to process the crime scene.

23 Q. All right. And what -- in this case what did
24 processing the crime scene entail, just briefly?

25 A. We always begin with photo documentation of

1 everything as it is, starting from the outside in. And
2 also in this case video documentation was also completed.
3 After photographs are completed then we began to go
4 through and look at potential items of evidence. We
5 placard said items so that we know what they are where we
6 can denote them on our P and E sheets when we turn in the
7 evidence. Everything is marked. We also photograph those
8 items once they are placarded. And we do our measurements
9 for the scene, which includes having the victim there.
10 And once everything is completed then the detectives and
11 the coroner were able to come in and we advised them of
12 what we'd done.

13 Q. About how long does this process take?

14 A. In this particular case we arrived on the scene at
15 twenty-three hundred hours. That would be eleven clock in
16 the evening. And we did not clear the scene until zero
17 four thirty in the morning.

18 Q. All right. Now, the detectives were in before that;
19 would that be correct?

20 A. Yes. They were all on the scene before ---

21 Q. About how long would it have taken y'all to do your
22 thing before letting them come back in?

23 A. Once we arrived on the scene -- can I look at mine to
24 tell you the exact arrival time?

25 Q. Sure.

1 A. We received the call at twenty-three hundred hours.

2 Q. Would that be ten o'clock?

3 A. Twenty-three hundred is eleven.

4 Q. Eleven o'clock?

5 A. Eleven o'clock. We arrived on the scene at eleven

6 twenty and we cleared the scene at four thirty in the

7 morning. So between twenty-three twenty, eleven twenty in

8 the evening, until four thirty in the morning, myself and

9 Sergeant Lindway worked the crime scene.

10 Q. And the document that you identified, State's Exhibit

11 1 for identification, was prepared after you left the

12 scene? Where would that be prepared at? Back at the Law

13 Enforcement Center in your offices?

14 A. Once items are collected, items of evidence are

15 collected, they are transported back to our crime scene

16 office. Each technician has a secure evidence shelf which

17 these items are placed in. In this particular case some

18 items were not dry. They had suspected blood on them so

19 they have to be placed in a drying -- a secured drying

20 area, after which -- and some items still had to be

21 processed that could not be processed at the scene. Once

22 all that is completed those items of evidence are packaged

23 and placed into property and evidence.

24 Q. All right. Back to my question. When would you have

25 prepared the document that you have in front of you there?

1 A. This scene diagram?

2 Q. Yes, ma'am?

3 A. It was completed by Sergeant Lindway at -- I did the
4 report on the incident. He did the diagram. Those are
5 completed and turned in at the same time. So I don't know
6 how long it would have taken him to do the diagram, but he
7 completed it.

8 Q. Okay. And did you review it prior to it being turned
9 in?

10 A. Yes.

11 Q. And as far as you know, is it accurate?

12 A. Yes.

13 Q. Based on your measurements -- y'all's measurements
14 and your review of the scene and the pictures you took?

15 A. Yes.

16 Q. All right.

17 MR. WESTON: Your Honor, the prosecution would
18 offer this as State's Exhibit 1.

19 THE COURT: Any objection?

20 MR. CREECH: Just a brief question, Your Honor,
21 for the witness.

22 THE COURT: All right. Be glad to let you ask a
23 voir dire question about the exhibit.

24 MR. CREECH: Certainly.

25 VOIR DIRE EXAMINATION

1 BY MR. CREECH:

2 Q. Now, Ms. Deats, did you take the measurements
3 personally?

4 A. Sergeant Lindway and I both took the measurements.

5 MR. CREECH: Thank you, Your Honor. I have no
6 objection.

7 THE COURT: All right. Without objection,
8 State's Exhibit 1 is into evidence.

9 (WHEREUPON, State's Exhibit Number 1 was admitted
10 into evidence.)

11 DIRECT EXAMINATION CONTINUED

12 BY MR. WESTON:

13 Q. Okay. Let me hand you this back and let you look at
14 it for a moment while I ask you a couple of questions
15 about it. Does your diagram indicate the location of the
16 deceased body in there?

17 A. Yes.

18 Q. Is it marked with a number or a letter?

19 A. The actual -- the victim is not marked. He is --
20 there is a depiction of him in the diagram, but he is not
21 actually marked with a notation.

22 Q. Okay. And is there a reference, a legend or
23 something that says this is the victim's body?

24 A. I don't believe in the legend it says that it is the
25 victim that is on the scene. The legend is used for the

1 items of evidence.

2 Q. All right. But it's a drawing -- a human body was
3 drawn on it?

4 A. Yes. Yes.

5 Q. Okay. Let me show you what has been marked -- and I
6 want to do these as a group, State's Exhibits 2 through
7 10, and ask you do you recognize these pictures?

8 A. I do. These are photographs that was taken of the
9 scene as we found it.

10 Q. And as far as you can tell to your best -- to the
11 best of your ability, do they accurately depict the state
12 of affairs in the apartment, at different locations in the
13 apartment, on the evening that y'all came to the crime
14 scene?

15 A. Yes.

16 Q. All right.

17 MR. WESTON: Your Honor, may we approach?

18 THE COURT: Yes, sir.

19 (WHEREUPON, Mr. Weston and Mr. Creech approached the
20 bar.)

21 Q. All right. I've shown you what has been described
22 and been pre-marked as State's Exhibits 2 through 10 and
23 you said you do recognize them?

24 A. Yes.

25 Q. And are they accurate depictions of the crime scene

1 on the night that you entered the apartment?

2 A. Yes, they are.

3 MR. WESTON: Your Honor, the state would offer
4 exhibits 2 through 10 into evidence at this time.

5 THE COURT: Subject to the objection.

6 MR. CREECH: Your Honor, if I may ---

7 MR. WESTON: I'm sorry, Your Honor. I've got to
8 show them to counsel again. I apologize.

9 (WHEREUPON, State's Exhibit numbers 2 through 10 were
10 admitted into evidence.)

11 Q. Before we give them to the jury let me approach once
12 again. State's Exhibit 1 depicts what now?

13 A. That is the interior of the apartment as we
14 discovered it when we arrived.

15 Q. All right.

16 MR. WESTON: Your Honor, request permission to
17 publish these to the jury.

18 THE COURT: You may do so, sir.

19 MR. WESTON: Thank you, Your Honor.

20 Q. All right. Let me go through these one at a time
21 with you to just briefly tell the jury what they
22 described. Let me show you State's -- what has been
23 marked State's Exhibit 2. What does that depict as far as
24 you can tell?

25 A. This appears to be the living room area right as you

1 walk in the front door of the apartment and this is the
2 way that we discovered it when we came in. This is what
3 we saw when we came in.

4 Q. Now, does that picture show -- include at least
5 partially a view of the victim's body, where it was?

6 A. Yes.

7 Q. All right. Would you hold that up so they can -- so
8 the jury can see the picture. And would you just
9 generally point to where the body is in the picture.

10 A. There's a coffee table and just beyond the coffee
11 table is the victim.

12 Q. All right. And State's Exhibit number 3, I'll ask
13 you if you would describe to the jury briefly what that
14 is?

15 A. This is another photograph of the living room area
16 just taken from a different angle as we saw it when we
17 came into the scene.

18 Q. All right. State's Exhibit number 4, what room in
19 the apartment does that depict?

20 A. This is the bedroom area.

21 Q. All right. And State's Exhibit number 5, is that
22 another depiction from another angle of the same bedroom
23 area?

24 A. Yes.

25 Q. And this one is a little bit different. Can you tell

- 1 the jury what State's Exhibit number 6 depicts? Well,
2 let's do them together here because there are three shots.
3 Numbers 6, 7 and 8, and would you tell the jury what each
4 one shows? And you can do them in any order you want.
5 A. Do you want me to hold them up and show them?
6 Q. You can hold them up, is fine. I'm going to hand
7 them to the jury after you complete ---
8 A. This was the exterior of the apartment which was I-
9 11. As you can see it's secured with crime scene tape.
10 Within the crime scene tape was a pair of pants on the
11 sidewalk. We observed those. They were left, not
12 touched. We photographed them. These were collected.
13 This was the first item of evidence we collected leading
14 into the crime scene that were out on -- that was outside
15 the actual door.
16 Q. And that's State's Exhibit number 8?
17 A. Yes.
18 Q. All right.
19 A. And the other photographs are just closer shots of
20 the pants lying there on the sidewalk. This was just a
21 little bit closer I think.
22 Q. And that's State's Exhibit number 4?
23 A. Yeah.
24 Q. And number 6?
25 A. And number 6.

1 Q. All right. And all three of these pictures depict
2 the same thing. They're just different angles, ---

3 A. Right.

4 Q. -- different distances?

5 A. Yes, sir.

6 Q. What kind of pants are those?

7 A. Let me refer back so I can tell you if it was a brand
8 name that was inside the pants.

9 Q. Not the brand name, what type of pant?

10 A. Just like blue jeans.

11 Q. All right. And I'm going to show you State's Exhibit
12 number 9. Please tell the jury what that is. It's pretty
13 generic. And just hold it up for the jury. We're going
14 to hand it to them. Just hold it up for them.

15 A. This is just another angle of the exterior of the
16 apartment. Again you can see the crime scene tape. The
17 other photograph that you have was taken from this side.
18 This photograph was taken from the other end of the
19 sidewalk.

20 Q. And State's Exhibit number 10, I think we're back
21 inside. Can you tell the jury what that one depicts?

22 A. This is the living room area. Again, the other
23 photographs that you are looking at were taken from
24 looking in from the front door. This is now a photograph
25 taken from the other end of the living room looking back

1 out. This would be the point of entry, the front door
2 right here.

3 Q. Would the victim's body be somewhere down below here?

4 A. Yes. He would have been very near to where I was
5 taking this photograph ---

6 Q. All right.

7 A. -- from.

8 Q. Thank you, ma'am. Now at the time you took -- that
9 all these pictures were taken, y'all didn't move anything?

10 A. No.

11 Q. All right. And once you -- you indicated that
12 certain items were placed into property and evidence.

13 Were the blue jeans placed into property and evidence?

14 A. Yes, sir.

15 Q. And all the items that would go into property and
16 evidence would have been collected by y'all?

17 A. Yes.

18 Q. All right. Did y'all collect any drugs or monies?

19 A. There were suspected drugs and some money inside the
20 apartment. We do not collect those items. Those are left
21 to the officers on scene or investigators to collect. May
22 I say it was in -- I believe it was in one of the items
23 collected. There were other suspected drugs and those
24 were actually put into property and evidence by us, so
25 they were collected from something after it was taken from

1 the scene.

2 Q. All right. And finally, when you went into the
3 bedroom, you went into the bedroom area to do measurements
4 and to collect evidence?

5 A. Yes.

6 Q. Did you find -- did you see -- did you yourself come
7 upon any money?

8 A. I believe accidentally, yes.

9 Q. Tell the jury what happened and what your actions
10 were?

11 A. We were advised that there were several weapons
12 inside of the residence. I believe it was three possible
13 firearms. Two of those firearms were located inside the
14 residence, but the third was not.

15 Q. Let me stop you right there. And I'll come back.
16 I'm going to kind of digress a little bit. But you
17 mentioned firearms. Where were the two firearms found?

18 A. One of the firearms was found in the bedroom area.
19 The other was also found in the bedroom, but inside of a
20 drawer, like a night stand, next to the bed, I think it
21 was.

22 Q. Now you said you were looking for firearms or
23 possible firearms. Please continue. I apologize for
24 interrupting you.

25 A. While searching various areas to try to locate this

1 third firearm, I was in the closet. There was a lot of
2 clothing hanging in the closet. As I'm going through
3 boxes of things that were scattered about inside the
4 closet area, I hit upon -- something hit me in the arm and
5 it was heavy. I believed it might have been the possible
6 firearm we were looking for inside of a pair of pants. I
7 removed the pants from the hanger and went to open up the
8 pocket where the heavy item was. And it was a sock that
9 appeared to be full of an amount of money. At which time
10 I advised Sergeant Lindway what I had found and Detective
11 Flavell, and that was then turned over to detectives at
12 the scene.

13 Q. Did you yourself finding any other bundles or wads of
14 money?

15 A. I believe there were two inside that one pair of
16 pants on each side of the pocket, I believe, in that one
17 pair. Or another pair. I believe there were two stacks
18 of money in there.

19 Q. And after y'all left the crime scene you went back
20 and put together your report and the diagram, I think you
21 said, over the next day or two?

22 A. Probably over several days. We had to wait till the
23 evidence -- some of the evidence was wet and had to be
24 dried prior to being placed in P and E. So it's a process
25 to do a report and evidence ---

1 Q. All right.

2 A. -- and diagram.

3 Q. After -- and you also, when you left the crime scene,

4 you left the evidence -- the evidence that you left with

5 that you indicated you collected, did y'all then deposit

6 that into property and evidence?

7 A. We would take it to the crime scene office first,

8 place it into our secure areas until at which time it can

9 be packaged -- processed or packaged and then placed into

10 P and E.

11 Q. All right. And did you have any further involvement

12 in this case after that?

13 A. No.

14 Q. Thank you, ma'am.

15 THE COURT: You may cross examine the witness.

16 MR. CREECH: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. CREECH:

19 Q. Ms. Deitz, you work for Greenville County Forensics

20 Division; is that correct?

21 A. Yes.

22 Q. You are not employed by the city police; correct?

23 A. No. I'm not employed by the city police.

24 Q. You're not employed by the Greenville County

25 Sheriff's office; is that right?

1 A. No.

2 Q. Forensics is totally separate from the law
3 enforcement agencies and the sheriff's office and city
4 police; is that correct?

5 A. We fall under the Department of Public Safety. And
6 we're a separate agency.

7 Q. Okay. And your job is to go out and collect
8 evidence; correct?

9 A. As a crime scene technician we process the scene and
10 collect evidence. Yes.

11 Q. Okay. And by evidence, I mean, you collect things
12 like blood; correct?

13 A. We can.

14 Q. Hair samples; is that right?

15 A. We can.

16 Q. DNA?

17 A. Yes.

18 Q. Fingerprints?

19 A. Yes.

20 Q. Carpet fibers?

21 A. Yes.

22 Q. And you can then analyze that evidence; is that
23 correct?

24 A. We don't analyze the evidence. We are the collectors
25 of the items. Once those are submitted the requesting

1 agency that called us to the scene is responsible for
2 testing of said items.

3 Q. In this case you collected approximately twenty-one
4 pieces of evidence; is that correct?

5 A. From the scene, the actual scene itself, twenty-one
6 pieces were collected. Yes.

7 Q. Okay. And some of those pieces of evidence include
8 the Pepsi bottle found outside the apartment; is that
9 right?

10 A. Yes.

11 Q. And from that Pepsi bottle there was a DNA swab
12 taken; is that correct?

13 A. Yes.

14 Q. And a DNA swab is taken to see if there is DNA on
15 that Pepsi bottle; correct?

16 A. The swab is taken and then placed into evidence to be
17 tested if the agency desires it to be so.

18 Q. Okay. You took what you believe to be or suspected
19 to be blood on the wall of the living room; is that right?

20 A. Yes.

21 Q. Blood on the wall in the hall; is that correct?

22 A. I believe so, yes.

23 Q. Blood on the telephone in the back bedroom; is that
24 correct?

25 A. Yes.

1 Q. You took into evidence a Puerto Rican flag; is that
2 right?

3 A. Yes.

4 Q. You took into evidence some turquoise and gray shoes;
5 correct?

6 A. Yes.

7 Q. You took a piece of a broken glass near Paco; is that
8 correct?

9 A. Yes.

10 Q. You took into evidence a broken Bacardi glass?

11 A. Yes.

12 Q. Do you remember seeing other liquor bottles in and
13 around the apartment?

14 A. The apartment had some other liquor bottles that were
15 there that were not broken. I believe they were on the
16 counter top behind where the victim was found.

17 Q. Do you remember seeing crack cocaine or what appeared
18 to be crack cocaine in the apartment?

19 A. I don't remember seeing crack cocaine. I can't
20 advise on that. I don't remember that.

21 Q. You took into evidence a telephone with blood,
22 suspected blood on it; correct?

23 A. Yes.

24 Q. All in all it was twenty-one pieces of evidence that
25 you collected?

- 1 A. From the actual scene twenty-one pieces of evidence.
- 2 Q. At some point you searched in the closet?
- 3 A. Yes.
- 4 Q. And you went into the pockets of the clothing in the
- 5 closet; correct?
- 6 A. After feeling that there was something hitting me,
- 7 yes. Thinking it might have been a firearm, yes.
- 8 Q. You found cash in that pocket; is that right?
- 9 A. Yes.
- 10 Q. And the cash was a substantial wad of cash money; is
- 11 that correct?
- 12 A. It appeared to be so.
- 13 Q. And do you remember what was the predominant
- 14 denomination? Do you remember?
- 15 A. No.
- 16 Q. Do you have any idea how much cash was in the
- 17 apartment?
- 18 A. I do not know how much cash was in there. It was not
- 19 counted in my presence. I do not know.
- 20 Q. And did you find any spent shell casings in the
- 21 apartment?
- 22 A. I do not believe we found any in the apartment.
- 23 MR. CREECH: Thank you, Your Honor. I have no
- 24 further questions for this witness.
- 25 MR. WESTON: Nothing on redirect, Your Honor.

1 We would ask that she be allowed to be released from her
2 subpoena.

3 THE COURT: All right. Without objection.

4 Thank you, ma'am.

5 Madam Forelady, ladies and gentlemen, I think rather
6 than taking another witness, I think we've reached a good
7 time to break for the day, so I'm going to send you home
8 for the evening. We'll start back at nine o'clock in the
9 morning. We'll be ready to hear more testimony at that
10 time. Let me remind you, as I have already, it would be
11 improper for you to discuss this case with anyone.

12 The experience you have of being on a jury and the
13 events that take place, you will have an opportunity to
14 share that with your loved ones when the trial is over and
15 done with. While it's going on that would not be a proper
16 thing to do. They can wait and hear all about it when
17 it's over. But you've made a commitment to the state of
18 South Carolina and to Mr. Henry that you're going to well
19 and truly try this case. You're going to try it on the
20 law and the evidence and that alone. So it would be
21 improper for you to talk to anyone about the case while
22 it's going on.

23 Likewise, I know that sometimes we are curious by
24 nature and we want to do our own little investigation, get
25 on the Internet or check something out or ride by a scene

1 or checked on some words that you heard. That would be
2 improper for you to do that, ladies and gentlemen. These
3 fine attorneys are going to give you everything that they
4 feel is necessary for you to make a good decision on this
5 case. I don't say that to tempt you in anyway, but I say
6 it to instruct you that that would be improper for you to
7 do any of those kinds of things. You are going to decide
8 this case on what takes place in this courtroom and not
9 anywhere else.

10 I don't know whether there will be any press releases
11 as far as information in the newspaper or on television or
12 radio, but again, refrain from watching any of those or
13 reading anything. And if it were to happen your family
14 and loved ones can clip out anything in the paper. You
15 just need to fulfill the commitment you made that you are
16 not going to be influenced by anything except what takes
17 place in this courtroom and what you hear in this room and
18 what you observe in this room.

19 We'll start back at nine o'clock in the morning.
20 Have a good evening, ladies and gentlemen. If you will go
21 with the bailiff at this time. Everyone else remain
22 seated while the jury departs.

23 (WHEREUPON, the jury exited the open court at
24 approximately 4:52 p.m.)

25 THE COURT: For the record Exhibits 2 through 10

1 -- Mr. Creech did have an objection to two of the numbers.
2 Y'all can tell me which two they were, that were related
3 to showing the deceased victim's body. I've reviewed them
4 privately. I find their prejudicial effect cannot be
5 outweighed by their probative value. So I overrule his
6 objection to those two. There was no objection to the
7 other six photographs.

8 MR. CREECH: And, Your Honor, it was number 3, I
9 would state just for objection, as it being unduly
10 prejudicial and inflammatory. And number 2.

11 THE COURT: 2 and 3 were objected to by the
12 defendant. Objection was overruled. I find the probative
13 value outweighs the prejudicial effect.

14 We'll be at ease until nine o'clock in the morning.
15 Have a good evening.

16 (WHEREUPON, court was dismissed for the day at
17 approximately 4:54 p.m.)

18 **February 3, 2009**

19 THE COURT: Thank you very much, ladies and
20 gentlemen. Please be seated. All right. Are we ready
21 for the jury?

22 MR. WESTON: Your Honor, we've got two matters,
23 brief matters, I would like to take up ---

24 THE COURT: All right.

25 MR. WESTON: -- if you don't mind. Your Honor,

1 I will pass up, and I will give Mr. Creech a copy. When I
2 got back to my office yesterday evening after you had
3 adjourned for the day -- I'm giving you the original, Your
4 Honor. I had the original stamped in the right corner
5 from our office. This was in my mailbox. It is a letter
6 to Judge Patterson and accompanying motion. This is the
7 entire package that I've copied and I've given -- handed
8 up to the court and Mr. Creech. It is a letter and
9 accompanying motion for a suppression that Mr. John
10 Garrett sent from the detention center.

11 As you may recall, Your Honor, he was one of the two
12 defendants yesterday that pled guilty with deferred
13 sentencing. In the letter itself, in the first two or
14 three lines of the letter, he indicates something to the
15 effect that he was intoxicated and that his statement was
16 not voluntary, therefore, in some form or fashion.
17 Obviously this has the potential to be Brady material for
18 Mr. Creech. I did want to pass it up. Like I said, I
19 received it in the mail -- in our mailbox yesterday
20 evening in the solicitor's office. It was just hand
21 delivered to our office, I think, from the detention
22 center under whatever, under whatever process they use.
23 So I did want to pass that up and give the court a copy
24 and give Mr. Creech a copy.

25 The other matter, Your Honor, is, and I will just put

1 this on the record, this morning we hand delivered to the
2 clerk of court tracking sheets formally dismissing the
3 charges against Welton Booker, one of the potential
4 witnesses in the state's case. He was charged originally
5 as an accessory in this case and all four of those charges
6 are being -- were dismissed this morning, or we turned
7 them over to the clerk's office for dismissal for their
8 processing. And I wanted to put that on the record. This
9 would -- the rationale behind this is my own, in that I do
10 not think at this point after speaking with him yesterday
11 with the consent of his attorney that we could sustain
12 charges against him in terms of establishing what he knew
13 beforehand. Secondly, Your Honor, given that the
14 charges are going to be dismissed he no longer is in a
15 position to take the Fifth Amendment. We plan to call him
16 as a witness in this case against the defendant as well.
17 So I wanted to put all that on the record for Mr. Creech.
18 That's all we have, Your Honor.

19 THE COURT: Mr. Creech, have you had a chance to
20 review this document?

21 MR. CREECH: Just what he just handed to me
22 right now, judge. I would just ask, judge, that we maybe
23 -- that this witness be called after lunch. You have -- I
24 think as the court you have some control over the order of
25 the witnesses. Just so I can have some time over lunch to

1 look at the ---

2 MR. WESTON: Your Honor, I anticipate he's going
3 to be probably, if not my last witness, my next to last
4 witness. So he will definitely be after lunch.

5 MR. CREECH: So I can have some time to look at
6 this.

7 THE COURT: Yeah. That'll be fine. I'll give
8 you an opportunity to review that.

9 MR. CREECH: And the four charges that were
10 dismissed is accessory after -- and I just want to make
11 sure I understand. It's accessory after the fact to ---

12 MR. WESTON: Each one of the substantive
13 charges, murder, kidnaping, armed robbery and assault and
14 battery with intent to kill against Mr. Brooks and the
15 deceased, Mr. Perrin. Mr. Perez, I'm sorry.

16 MR. CREECH: Thank you, Your Honor.

17 THE COURT: All right. Let's have our jury come
18 back.

19 MR. WESTON: Excuse me, Your Honor. The charges
20 were accessory before the fact. I'm sorry.

21 THE COURT: I understood that.

22 (WHEREUPON, the jury entered the open court at
23 approximately 9:12 a.m.)

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, good morning. We're now ready to proceed with

1 the trial of the case. I'll let the solicitor call his
2 next witness.

3 MR. WESTON: Thank you, Your Honor. The state
4 would call Dr. Michael Ward.

5 MICHAEL WARD, M.D.

6 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WESTON:

9 Q. Dr. Ward, where are you employed?

10 A. I'm employed here in Greenville by Pathology
11 Associates of Greenville. And I'm also employed by the
12 County of Greenville as the Chief Medical Examiner.

13 Q. What is -- would you tell the jury what the Chief
14 Medical Examiner does primarily?

15 A. Right now the Chief Medical Examiner is the only
16 medical examiner, so it's pretty easy to be the chief.
17 But it's my responsibility to investigate deaths that
18 occur in Greenville County to determine cause and manner
19 of death.

20 Q. Will you tell the jury where you went to medical
21 school? Well, let's start with where you went to college.
22 I'm sorry.

23 A. I received my bachelor's degree in biology from the
24 University of Alabama. I have a master's degree in
25 forensic science from the University of Alabama at

1 Birmingham. I went to medical school at the University of
2 South Alabama in Mobile. I did a four year anatomic
3 pathologic residency at the Medical University of South
4 Carolina in Charleston. I did a one year fellowship in
5 forensic pathology at the University of New Mexico in
6 Albuquerque. I'm certified by the American Board of
7 Pathology in both anatomic and forensic pathology.

8 Q. After your -- all of those academic endeavors, have
9 you been employed anywhere else other than here in
10 Greenville?

11 A. I was employed for two and a half years at the Office
12 of the Medical Investigator for the state of New Mexico.

13 Q. What did you do there?

14 A. It was my responsibility to investigate deaths that
15 occurred in the state of New Mexico to determine cause and
16 manner of death.

17 Q. And is part of your -- one of the primary functions
18 and responsibilities of your job to perform autopsies?

19 A. Yes, it is.

20 Q. Approximately how many autopsies have you performed?

21 A. I've performed over two thousand medical legal
22 autopsies.

23 Q. Have you testified in court concerning autopsies that
24 you've performed before?

25 A. Yes, I have.

1 Q. Approximately how many times?

2 A. Over one hundred times.

3 MR. WESTON: Your Honor, the state would offer
4 this witness as an expert in the field of forensic
5 pathology.

6 MR. CREECH: No objections, Your Honor.

7 THE COURT: Without objection.

8 MR. WESTON: Thank you, Your Honor.

9 Q. Dr. Ward, did you have an occasion to perform the
10 autopsy on Francisco Juan Perez?

11 A. Yes, I did.

12 Q. And was that done on March 22nd of 2006?

13 A. It was.

14 Q. And who was present at that autopsy? Do you
15 remember?

16 A. There were representatives of the Greenville County
17 Coroner's Office, Linda Holbrook and Homer Rhodes. There
18 was Officer Sharon Cramer of the Greenville County
19 Criminal Justice Support Department. And Detective Tonya
20 Ebinena of the Greenville County -- Greenville City Police
21 Department.

22 Q. All right. And would you tell the jury, not in too
23 much graphic detail, but basically what an autopsy is and
24 what the purpose of it is?

25 A. An autopsy is a detailed physical examination

1 performed on a person after they die to determine how they
2 died and under what circumstances they may have died. The
3 initial portion of the autopsy is an external examination
4 to look at the outside of the body for any evidence of
5 natural disease or injury that may be present. Document
6 those injuries. And then to proceed with an internal
7 examination, again to determine any trauma that may have
8 occurred as a result of those external injuries. To
9 recover any evidence that may be necessary. And then to
10 documenting any natural disease that may be present.

11 Q. Did you perform a formal autopsy on Mr. Perez's body?

12 A. Yes, I did.

13 Q. Would you tell the jury what your findings were?

14 A. There were four gunshot wounds to the region of the
15 head and chest. The first gunshot wound entered just to
16 the left of the tip of the nose right in this region here,
17 the left cheek, just to the left of the nose. It passed
18 from his front to his back, going through the bones of the
19 face, the bones of the base of the skull and penetrating
20 into the left temple lobe of his brain. This was
21 associated with hemorrhage within the brain and
22 surrounding the brain.

23 The second gunshot wound was to the left chin within
24 this region here. This wound went through the bone of the
25 lower jaw, the mandible, fracturing several teeth. It

1 went through the left side of the tongue and passing
2 backward and penetrated into the first circle of vertebrae
3 which is the first -- our vertebrae form our spinal
4 column. The first circle of vertebrae and the skull sits
5 atop each other. There was a missile recovered from the
6 foramen magnum which is a large hole at the base of the
7 skull that our spinal cord passes through.

8 The third gunshot wound was to the right upper chest
9 just above the underarm, just above the right axilla. It
10 penetrated through the right chest wall, through the upper
11 lobe of the right lung, the heart, the diaphragm, which is
12 the muscle that we used to breathe, the liver, the
13 pancreas and into his aorta. A medium caliber missile was
14 recovered from the left back. So this wound passed from
15 Mr. Perez's right to his left, from his front to his back
16 and downward. There was nine hundred milliliters of blood
17 present in the right chest cavity as well as blood present
18 within the abdominal cavity or the peritoneal cavity.

19 The fourth gunshot wound was to the right upper back
20 of Mr. Perez. It enter the right -- just below the
21 shoulder and did not penetrate into the chest cavity where
22 the lungs are, but passed through the musculature of the
23 right upper back, through the musculature of the chest and
24 was recovered beneath the skin right below -- right above
25 his sternum. So this one passed from his back to his

1 front and from his right to his left.

2 The missiles that were recovered at the time of
3 autopsy were receipted to Detective Tonya Ebinena of the
4 Greenville City Police Department.

5 There were also multiple blunt injuries to the head
6 of Mr. Perez. Gunshot wounds are considered to be
7 penetrating injuries. Blunt injuries are injuries that
8 are made with an object that is not as sharp as a knife
9 and doesn't have as much energy as say a bullet from a
10 gunshot wound. These blunt injuries included bruising of
11 the lips as you might would expect with a punch. There
12 was also a semi-circular laceration or tear in the skin of
13 the right eyebrow with an associated skull fracture of the
14 underlying bone.

15 In the region of the right temple there were two
16 lacerations of the skin which were parallel. And these
17 are -- at the time of the scene investigation, a hammer
18 was recovered near the body, so the semicircular
19 laceration of the skin was consistent with the head
20 portion of the hammer. The parallel marks here to the
21 temple were consistent with the claw portion of the
22 hammer. These defects went through the skin and into the
23 underlying bone causing parallel fractures of the right
24 temporal bone. There were also four areas of bruising and
25 abrasion to the back of the head. These were less

1 specific. They were contused -- I'm sorry. They were
2 bruises of the skin about one inch in diameter and some
3 superficial abrasions on the skin.

4 So it is my opinion that Mr. Perez died as the result
5 of multiple gunshot wounds of the head and chest.

6 Q. Thank you Doctor.

7 THE COURT: You may cross examine the witness.

8 MR. CREECH: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. CREECH:

11 Q. Dr. Ward, also as part of your investigation in this
12 case or your report from this case, you conducted a
13 toxicological examination; is that correct?

14 A. Yes, I did.

15 Q. And the toxicology examination shows what's in a
16 person's blood; is that right?

17 A. That's right.

18 Q. And you found cocaine in Paco's blood; is that right?

19 A. I did.

20 Q. And you were able to tell that that cocaine had been
21 recently ingested; is that correct?

22 A. That's correct.

23 Q. You also found other substances in Mr. Perez's blood;
24 is that right?

25 A. The other substances present in his blood are

1. metabolites of cocaine.

2 Q. And metabolites of cocaine indicate that the usage
3 had been more removed from when you conducted your
4 investigation; is that right?

5 A. Not necessarily in this case. The presence of
6 parent cocaine in blood indicates that that cocaine was
7 ingested relatively recently, probably within an hour to
8 two hours. The presence of metabolites, benzoyl alanine
9 and alanine methyl ester, which are the basic metabolites
10 of cocaine that we can measure, could have been there at
11 the time he died indicating metabolism of this cocaine.
12 But these compounds can also be formed in the post mortal
13 state up until the time of autopsy. So that cocaine could
14 have been ingested very recently prior to death and with
15 the formation of these metabolites after he died. Or the
16 cocaine may have been being ingested over a period of time
17 so that we have metabolites as well as parent cocaine
18 present.

19 Q. Now, in your report you identified four gunshot
20 wounds; is that correct?

21 A. That's correct.

22 Q. And wound number one, you determined it was a
23 circular wound; correct?

24 A. Yes.

25 Q. It was approximately six point five inches from the

1 top of the head; correct?

2 A. That's correct.

3 Q. Two point nine inches to the left of the interior
4 midline?

5 A. That's correct.

6 Q. Four point two inches anterior to the left external
7 auditory meatus; correct?

8 A. That's correct.

9 Q. Approximately twenty-five -- a quarter of an inch in
10 diameter; is that right?

11 A. It was zero point two five inch in diameter, yes.

12 Q. You identified soot on the skin surrounding the
13 wound; is that right?

14 A. Not to gunshot wound number one.

15 Q. You identified unburned gunpowder on the skin; is
16 that right?

17 A. Yes. But I felt like that was associated with
18 gunshot wound number two.

19 Q. As to gunshot wound number one, were you able to
20 conclude from what range the bullet was fired?

21 A. With the absence of gunshot residue that I felt to be
22 associated with gunshot wound number one, that would have
23 put this in the category of a distant range gunshot wound.

24 A distance running gunshot wound is generally greater than
25 two to three feet. Anything past that is the same as two

1 to three feet. So a distant range may be two to three
2 feet, it may be twenty feet.

3 Q. And you say in your report that you determined it to
4 be a distance running; is that right?

5 A. That's correct.

6 Q. And where exactly in your report do you say it was a
7 distant range?

8 A. I may not have said it was a distant range. I'm
9 sorry. But it does not have gunshot residue associated
10 with it. I may not have used the phrase distant range.

11 Q. Now, when it comes to the wounds, you -- are you able
12 to essentially classify these wounds in terms of range in
13 four different categories? Would you agree?

14 A. That's correct.

15 Q. And a contact wound is when a weapon has made contact
16 with the skin; is that correct?

17 A. That's correct.

18 Q. In close range would be fewer than maybe a foot; is
19 that right?

20 A. Generally close range is within a few inches.

21 Q. And intermediate range would be closer than two to
22 three feet; is that correct?

23 A. That's correct.

24 Q. And then you say a distant range is just greater than
25 two to three feet; is that right?

1 A. That's correct.

2 Q. Now, what was the range of wound that you were able
3 to determine for wound number two?

4 A. Gunshot wound number two has associated with it
5 gunpowder stippling on the skin surrounding the wound.
6 When a weapon is discharged several things exit the barrel
7 of the gun along with the bullet. We all know that the
8 bullet comes out of the barrel of the gun, but what also
9 comes out is hot gas. If the barrel or muzzle of the gun
10 is close enough to the skin, that hot gas can sear the
11 skin and burned the skin. And we can see that, not only
12 with our naked eye, but we can see it microscopically.
13 Also coming out of the barrel of the gun is burned
14 gunpowder which is soot. It will travel for a short
15 distance, six to ten inches at the most. Also coming out
16 is gunpowder that did not ignite. So it's traveling as an
17 unburned gunpowder particle. These particles have enough
18 energy to them that if they are close enough to the skin
19 they may impact the skin, causing an abrasion or a scratch
20 of the skin associated with that unburned gunpowder. We
21 call these scratches gunpowder stippling where they have
22 hit the skin, left a mark, and even though time may pass,
23 even though the wound may be washed, these abrasions are
24 not going to go away. Mr. Perez had gunpowder stippling
25 present on the skin surrounding gunshot wound number two

1 to the chin with approximately two and a half radially
2 dimensions around this wound. So two and a half inches
3 this way and roughly two inches this way. I would put
4 this within an intermediate range gunshot wound.

5 Q. So within two to three feet; is that right?

6 A. Less than two to three feet.

7 Q. It was not a contact wound?

8 A. It was not.

9 Q. As to wound number three, were you able to determine
10 the range of this gunshot wound?

11 A. I saw no gunshot residue on the skin or clothing
12 associated with this wound.

13 Q. And as to number four, you determined the range of
14 that wound; is that correct?

15 A. Well, I was unable to identify any gunshot residue on
16 the skin or clothing, so I would have put that at a
17 distant range gunshot wound.

18 Q. Any of the wounds that you examined, did you
19 determined that any of those wounds were contact wounds?

20 A. I did not.

21 Q. Did you determined any of those wounds were close
22 range?

23 A. No, I did not.

24 Q. So number two you determined to be in intermediate
25 range; is that correct?

1 A. That's correct.

2 Q. Now, were you able to determine the order of these
3 gunshot wounds as they occurred?

4 A. I did not.

5 Q. Did you determined, based on your investigation, who
6 fired his gun?

7 A. I did not.

8 Q. Did you determined the time that the wounds were
9 made?

10 A. No, I did not.

11 Q. Did you determined the time of death in this case?

12 A. I did not.

13 Q. Thank you.

14 MR. CREECH: I have no further questions, Your
15 Honor.

16 MR. WESTON: We have no redirect, Your Honor. I
17 would ask that Dr. Ward be released from his subpoena.

18 THE COURT: Without objection Dr. Ward will be
19 released.

20 MR. WESTON: Thank you, Your Honor.

21 Your Honor, state would call Detective Collis
22 Flavell.

23 COLLIS FLAVELL,

24 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. WESTON:

2 Q. Detective Flavell, with whom are you employed?

3 A. Greenville City Police Department.

4 Q. And how long have you been employed there?

5 A. Sixteen and a half years.

6 Q. And what is your rank?

7 A. I'm an investigator in the violent crimes unit.

8 Q. How long have you been doing that?

9 A. Approximately ten years.

10 Q. And tell me what an investigator in the violent
11 crimes unit generally does?

12 A. Basically what we do is we investigate any crimes
13 against the person and that would include what we call
14 circuit court cases which are assault and battery with
15 intent to kill, assault and battery of a high and
16 aggravated nature, shootings, stabbings, criminal sexual
17 conducts, homicides, and kidnappings.

18 Q. All right. Now, did you have an occasion -- were you
19 assigned the investigation of the Francisco Perez
20 shooting?

21 A. Yes, I was.

22 Q. Would you tell the jury how you first received word
23 or notice of the case itself or the incident itself?

24 A. Well, I would have been at home. We're on call
25 twenty-four hours a day. So any time something happens

1 after our day at work, we stay on call. And approximately
2 ten thirty I received a call. Initially it was a call of
3 assault where the victim was unconscious and they was
4 requesting that I respond.

5 Q. And where did you respond to, sir?

6 A. To 260 Pelham Road, apartment I-11.

7 Q. And is that referred to, I think, commonly as
8 Ashworth Apartments?

9 A. Ashworth Apartments.

10 Q. And is that here in Greenville County?

11 A. It is.

12 Q. Now, when you arrive who was on -- do you remember
13 who was on the scene as far as officers or other law
14 enforcement personnel or EMS?

15 A. When I arrived Detective Karais was on scene and I
16 spoke with Sergeant Hawkins who is a uniform patrol road
17 sergeant, supervisor of the road guys.

18 Q. Had they already started to mark off the crime scene?

19 A. Well, the crime scene, no, sir, to mark it off, but
20 it was secured with yellow crime scene tape.

21 Q. And did you enter the residence immediately, or what
22 did you -- what was the protocol when you arrived on the
23 scene?

24 A. I met with Sergeant Hawkins who was a road sergeant
25 and basically he briefed me on what was going on. At the

1 time I arrived -- let me back up. When I was in route, I
2 learned there was a second victim possibly associated with
3 this incident, which was Andre Brooks. He was at St.
4 Francis Hospital. And upon my arrival, and when I talked
5 to Sergeant Hawkins, I learned that Francisco Perez was
6 deceased inside of the apartment.

7 Q. Did you enter the apartment?

8 A. I did.

9 Q. Tell the jury basically what you did, what your
10 actions were as far as the on-scene investigation?

11 A. Once -- basically the way we have it set up is once
12 we get there we wait for a representative from Greenville
13 County Forensics Division and the coroner's office and we
14 all go in together originally. And we do what we call a
15 walk-through of the apartment or of any scene. That's for
16 everybody to get an idea of what happened, get a visual of
17 what evidence is there and what the scene looks like
18 before it's disturbed. Once we do that we come out and we
19 let forensics process that scene and do their -- they do
20 video. On all homicides, we request they do video, take
21 photographs and then collect evidence. Once they are
22 finished collecting evidence the body of the victim is
23 then turned over to the coroner's office. The coroner's
24 office transports that body out of the scene. We then do
25 a second walk-through before forensics leaves to make sure

1 there's nothing -- anything there that we want collected
2 that forensics did not collect. Once that is determined
3 then we all clear the scene.

4 Q. All right. And when you went into the apartment
5 describe to the jury what you found in the living room
6 area? What was the state of the living room?

7 A. The first thing I noticed is as soon as you walk in
8 the entry door, as you walked into the door there is a
9 wall, right across there was blood on the wall. If you
10 look to the right is the living room/dining room area.
11 There's a kitchen separated by a bar and then a short
12 hallway to the bathroom and the bedroom at the rear of the
13 residence. The living area -- the living/dining area was
14 in total disarray. It was -- you could tell there had
15 been a struggle, fight. There were broken chairs. There
16 was a glass bottle that was broken laying by the victim.
17 There was numerous bottles, like empty liquor bottles.
18 There was built-in, like a bookshelf, to the left of the
19 hallway and there was liquor bottles lying on those
20 shelves and there was also liquor bottles on the counter
21 going into the kitchen.

22 Q. Before we get into the bedroom let's talk a little
23 bit more about the living room. Was the deceased located
24 -- body located into the living room?

25 A. Yes, it was. Well, the living/dining area right

1 beside the kitchen by the bar.

2 Q. And let me show you what has been marked as -- what

3 has been entered as state's exhibit 2 and ask you if you

4 recognize that as the crime -- living room area of the

5 crime scene?

6 A. Yes.

7 Q. All right. Would you just hold it up for the jury.

8 Just point to the area where the victim's body was

9 located?

10 A. (Indicating.) The victim would be laying right here.

11 Q. And is this the way it looked when you walk into the

12 crime scene?

13 A. Yes.

14 Q. Okay. Let's talk about the bedroom for a moment.

15 Describe for the jury the state that the bedroom was in

16 when you went in there?

17 A. The same as the living room. The dresser drawers

18 were actually -- several of them were pulled out,

19 completely out of the dresser, and the drawers appeared to

20 have been dumped in the floor of the bedroom. Everything

21 in the bedroom was just disheveled and out of what I would

22 call ordinary for a house.

23 Q. What were your initial conclusions at that time as to

24 what -- what was your initial, what was your initial

25 assessment as to what you believed had happened at that

1 time in terms of the victim?

2 A. As far as injuries?

3 Q. Yes, sir.

4 A. It was obvious that the victim had what we call blunt
5 force trauma, what Dr. Ward just described to you. At
6 that point I didn't see the gunshots. I just saw all --
7 there was suspected blood all over his face and head area.
8 You could tell he had injury to the head. Of course there
9 was a wooden handled hammer propped up beside him and also
10 a broken liquor bottle was laying kind of under this side.
11 The broken part of the glass were under and part of the
12 bottle was still intact. So at that time I assumed it was
13 an assault that had taken place.

14 Q. All right. Now let's talk about your investigation.
15 Initially did you interview anybody on the scene?

16 A. I did. Once -- on the initial walk-through once we
17 came out and forensics was processing the scene, myself
18 and Detective Grice then went around the apartment
19 complex. The first thing I did was went and talked to --
20 I knew that the girlfriend who had found the victim was
21 still present on the scene. She was in -- the apartment
22 where this happened is in the back of the apartment
23 complex. There's no parking lot behind or in front of his
24 apartment. The parking lot is actually in front of the
25 building that his apartment is in. So you have to park

1 out here and walk through the building and go around back
2 to his apartment. The girlfriend was present on the scene
3 in the parking lot with some uniformed patrol officers
4 that were holding her there and her mother was present.
5 So I went up and briefly spoke with her in the front of
6 the parking lot.

7 Q. And what was her demeanor?

8 A. Oh, she was extremely upset, crying, emotional. Just
9 basically got from her what -- how she found the body and
10 what led up to her finding the body. I then sent her home
11 with her mother and told her mother that we would call her
12 back later to get a detailed statement from her.

13 Q. Did you -- was she able to confirm the identity of
14 the victim to you?

15 A. Yes, she did.

16 Q. And she confirmed it as Francisco Perez?

17 A. Yes.

18 Q. And did she describe to you her finding -- how she
19 came about finding the body and what have you?

20 A. Yes.

21 Q. Did you interview any of the neighbors in the area?
22 Or did you have -- did you and other officers on the scene
23 interview neighbors?

24 A. Yes.

25 Q. Would you describe to the jury briefly what that

1 process is like generally or in this particular case?

2 A. At the time of the crime scene we went to the
3 surrounding apartments, knocked on doors and spoke with
4 several of the neighbors to see if they might have heard
5 or saw anything. The neighbors we spoke with did not add
6 anything to our investigation at that time. What happened
7 later, the next morning, my supervisor sent other
8 investigators out to that apartment complex to do what we
9 call a canvas. And what they do is they go from apartment
10 to apartment knocking on doors and asking people did you
11 see or hear anything.

12 Q. As a result of the conversation with neighbors that
13 night or the canvassing the next morning, was there any
14 other information that you received that furthered the
15 investigation?

16 A. From that canvas, no.

17 Q. All right sir. Now you said forensics processed the
18 apartment. I think you said y'all came out after the
19 initial walk-through and let forensics do their thing?

20 A. Correct.

21 Q. Which is videotaping and collecting and photographing
22 and measuring and what have you. That would be -- would
23 that be forensic techs Lindway and Deitz?

24 A. Lindway and Deitz.

25 Q. And you said you examined -- you did sort of a

1 cursory examination of the victim. At that point did you
2 disturb the body or move it around or anything like that?

3 A. No, sir.

4 Q. But this was before forensics had done anything; is
5 that correct?

6 A. That's correct.

7 Q. Did you -- once the forensics had finished, did you
8 -- you went back -- did you go back in and then sort of do
9 a more thorough search of the apartment?

10 A. Yes. Once -- actually once forensics clears the
11 living area, once they are finished in that room, they
12 would move to the bedroom and we would then move into the
13 living room. Once they get what they need -- well,
14 basically what we do, is we tried to stay out of their
15 way. Once they collect what evidence they need, they move
16 to the next room and then we can move into that room and
17 start looking.

18 Q. All right. Now, were you present when the body was
19 actually released to the coroner and moved -- turned over
20 and moved or what have you?

21 A. Yes.

22 Q. Was there anything located underneath the body?

23 A. There was a -- the holster, there was an empty
24 holster that was close to the body.

25 Q. Okay. When you say close, it was in the proximity of

1 where the body was located?

2 A. Yes.

3 Q. All right.

4 A. I can't remember if it was underneath or beside.

5 There was an empty holster laying on the floor.

6 Q. Were there any weapons found, any guns found to match
7 the holster, I guess, found near the body anywhere?

8 A. No. No.

9 Q. Were there any found in the living room at all?

10 A. No.

11 Q. Were there any drugs or drug paraphernalia found in
12 the living room?

13 A. Yes.

14 Q. Would you describe generally to the jury what was
15 found?

16 A. I found several pieces -- I say pieces. I don't know
17 really how to describe it. Marijuana, just kind of -- it
18 wasn't packaged. It was just laying out in the floor kind
19 of scattered. There was a couple of pieces in the hallway
20 and some in the living room. And there was also a small
21 bag of what I suspected at the time to be crack cocaine
22 laying in the living room.

23 Q. Okay. And were the -- tell the jury, there's been
24 some testimony about the bottles that were in the rooms.

25 Tell the jury a little bit about the bottles that were

1 found in the living room area, aside from the one you said
2 you found at the scene next to the victim's head that was
3 broken. Tell the jury a little bit more about the other
4 bottles that were in the living room?

5 A. They were empty liquor bottles that I guess was a
6 collection of liquor bottles that were -- like I say there
7 was a bookshelf, they were just stacked, lined on the
8 shelves. Then also in the kitchen area on the bar there
9 were some bottles stacked.

10 Q. Now, did you search the bedroom area more thoroughly?

11 A. I did.

12 Q. Did you find any guns in the bedroom?

13 A. We did.

14 Q. Could you tell the jury what you, what you saw there?

15 A. There was a pump twelve gauge shotgun leaned up in
16 the closet. And then there was a silver, I believe it was
17 at 38 revolver, in one of the dresser drawer that was
18 open.

19 Q. And forensic technician Deitz testified about bumping
20 into the wad of money in the closet as she was in there.

21 Were you advised of that, about the money?

22 A. She did. Our forensics, they don't collect money or
23 drugs. We have to collect that and put that in evidence.

24 I mean, she notified me that she had found a large sum of
25 money in the closet. She actually took that money and

1 placed it on the dresser. And then once she was finished
2 I collected that money later that night, took it back to
3 the LEC. And myself and another investigator sat there
4 and counted that money.

5 Q. Was that the only wad of money found, was the one
6 that she bumped -- that she found in that one pair of
7 pants? Was that the only money found in the bedroom?

8 A. From that -- yeah, but it was in more than one pair
9 of pants.

10 Q. That's what I mean. Were there wads of money found
11 in other pairs of pants as well?

12 A. Yeah, some jacket pockets, of clothes that were
13 hanging in the closet. It was kind of placed in pockets
14 of clothing, hanging.

15 Q. At some point during the investigation did you have
16 an occasion to have the money counted?

17 A. I did.

18 Q. And approximately -- tell the jury generally how much
19 money it was?

20 A. I believe it was ten thousand nine hundred thirty-
21 eight dollars exactly.

22 Q. And was that money placed into property and evidence?

23 A. Yes.

24 Q. Okay. Now, after you have finished -- after you had
25 done your initial walk-through with forensics, after you

1 had come out and let forensics process the scene and after
2 you had gone back through and collected as much evidence
3 -- the evidence that they didn't collect, was the body
4 then turned over to the coroner?

5 A. Yes.

6 Q. And it was delivered then for the autopsy the next
7 day that Dr. Ward has testified to; is that correct? Is
8 that your understanding?

9 A. Yes. Once the coroner documents what they need off
10 the body, the body is then transported through a company
11 called Upstate Transport, that transport for the coroner's
12 office, and they transport that body to the Greenville
13 County coroner which is located at the Greenville
14 Hospital.

15 Q. All right. Now, after you had finished -- I assume
16 this process took hours?

17 A. Yes.

18 Q. All right. After you have finished at the crime
19 scene did you have an occasion in either the late night
20 hours of March 21st to the early morning hours of March
21 22nd to talk to Andre Brooks?

22 A. I did. When I left the crime scene he was being
23 released from the hospital and I met with him around -- I
24 believe it was around three o'clock at the Law Enforcement
25 Center.

1 Q. All right. Let's talk -- what was his condition
2 physically?

3 A. He had a laceration to the top of his head. He had,
4 of course, already been treated, so he had stitches in the
5 top of his head. Both of his eyes were black, swelling
6 underneath his eyes right here.

7 Q. Okay. And did he indicate to you he was present at
8 the time of the incident?

9 A. Yes, he did.

10 Q. All right. Did you interview him concerning the
11 incident?

12 A. Yes.

13 Q. Did he describe the events that had taken place?

14 A. Yes.

15 Q. Now, at that time did he name the perpetrator -- or
16 did he tell you how many perpetrators there were?

17 A. Yes. He stated four black males rushed in on him.

18 Q. All right. And did he indicate that they were the
19 one -- or one of them was the one that shot Mr. Perez?

20 A. Yes.

21 Q. And did he indicate he was present when the shooting
22 took place?

23 A. Yes.

24 Q. Did he name any of the perpetrators at that time?

25 A. No.

1 Q. All right. Did he tell you why he couldn't name them
2 at that time?

3 A. He stated they were wearing masks.

4 Q. All right. And -- but he did -- did he describe what
5 happened?

6 A. Yes.

7 Q. All right.. And what did he generally say happened?

8 I think you said that they came in on him. What did he --
9 we don't need to go any further in detail on that right
10 now. Did he indicate that anything was taken from him?

11 A. He stated his phone and his clothing. He was forced
12 to disrobe inside the apartment before he ran out. He
13 stated they took his phone.

14 Q. And did they -- did he indicate to you whether they
15 had taken any of his clothing?

16 A. I don't remember if they actually took it. I know
17 they made him take his clothes off.

18 Q. Okay.

19 A. Or he was in the process of taking his clothes off
20 when he was able to flee the apartment.

21 Q. All right. Did he give you his cell phone number?

22 A. Yes.

23 Q. Do you remember -- do you have the number he gave
24 you?

25 A. Yes, I do. Just a second. Let me find it. 232-

1 2293.

2 Q. Did he say who the provider was?

3 A. I'm sorry. Hold on just a second. That's the wrong
4 phone number. Yes. His phone was provided through Bruce
5 mobile.

6 Q. All right. Now, at that time did you take that
7 statement from him?

8 A. Yes.

9 Q. And the statement was consistent with what you just
10 testified he told you about the four men and the masks and
11 what have you?

12 A. Yes.

13 Q. All right. Now, did he indicate to you what he did
14 after he left the apartment, incident scene?

15 A. He did.

16 Q. What did he say he did? What did his story track
17 that he did?

18 A. He ran back to his apartment which was a few doors
19 down from the incident location. Made contact with his
20 girlfriend and his roommate at the time, a guy by the name
21 of Paul Renaud. At that point they got a neighbor to take
22 him and his girlfriend -- they actually went to his
23 girlfriend's mother's house originally. Once they spoke
24 with her they left there and they went to his mother's
25 house. Both mothers indicated he needed to go to the

1 hospital. At that point he went to St. Francis Hospital

2 downtown.

3 Q. All right. Did you -- I'm going to sort of jump

4 ahead a little bit. Did you attempt to confirm his story?

5 A. I did.

6 Q. Did you speak with Janelle Williamson?

7 A. Yes.

8 Q. And who is Janelle Williamson in conjunction with

9 Andre Brooks?

10 A. That's his girlfriend, or ex-girlfriend.

11 Q. Did you have a conversation with her?

12 A. I did.

13 Q. All right. After your conversation with her did you

14 speak to Paul Renaud?

15 A. Yes.

16 Q. And who is Mr. Renaud?

17 A. He was the roommate of Andre and Janelle.

18 Q. And did you speak to Linda, Ms. Linda Brooks?

19 A. Yes.

20 Q. Who is Ms. Linda Brooks?

21 A. That's Andre's mother.

22 Q. And after speaking to her, did you speak to Ms.

23 Virginia Williamson?

24 A. Yes.

25 Q. And who is she?

1 A. That's Janelle's mother?

2 A. Janelle Williamson's mother?

3 A. Yes.

4 Q. After speaking with all four of those people were you
5 able to confirm his story as to what happened after the
6 incident?

7 A. I knew what he said happened after, what was
8 accurate, but when we talked to Paul Renaud, that's -- I
9 learned that possibly Andre had more information than what
10 he had originally given us.

11 Q. All right. Let's go to March 20 -- let's move ahead
12 in the investigation a little bit. Did you have a second
13 interview with Ms. Katrina Haynes?

14 A. Yes. The next day.

15 Q. All right. And this was at the Law Enforcement
16 Center?

17 A. Yes.

18 Q. And was she -- did she tell the exact same story she
19 had told you the night on scene? Or was she a little bit
20 more forthcoming?

21 A. Well, I'm not going to say she was more forthcoming.
22 I didn't ask her -- when I spoke with her on the scene I
23 got limited -- I asked limited information from her. I
24 didn't ask her to go into detail.

25 Q. Was that because she was upset and the circumstances

1 that were going on?

2 A. Yeah. What I got from her was, because she was the
3 complainant, she was the person that found the body, I
4 wanted to know how she found it and what she was doing
5 prior to that. Once I determined that when she came home
6 the body was in the condition it was in, I let her go. I
7 didn't questions her any further about anything that had
8 been going on in that apartment prior. I sent her home
9 with her mother. The next day we brought her back down to
10 the LEC in a controlled environment, sat down and that's
11 when we started really getting into detail questioning her
12 about the activities in that apartment. And that's when
13 she came forward with that information.

14 Q. Did she tell you -- did you question her about -- a
15 little bit more in detail about Mr. Perez and who he was
16 and what he did?

17 A. Yes.

18 Q. Did she indicate to you what his business was?

19 A. Yes.

20 Q. Or how he made his money?

21 A. Yes.

22 Q. What did she tell you was his business?

23 A. Selling dope.

24 Q. All right. And did she talk to you about his -- did
25 she describe the guns that should have been in the

1 apartment? That are normally in the apartment, excuse me?

2 A. She didn't -- no. She stated in one of the comments
3 she made, she stated, I don't know how this happened. She
4 said, he's always got a gun. She didn't -- we didn't go
5 into, that I recall, to talk about the shotgun and the
6 other guns in the rooms.

7 Q. When she said he always had a gun, did she indicate
8 where he kept that gun?

9 A. Yeah. I'm going to back up a little bit. When we
10 got there originally, one thing I noticed on the victim,
11 he had a belt on but it was under his pants. It was just
12 around his waist. It was odd that it wasn't through belt
13 loops or anything. It was just around his waist. And
14 after talking to her I realized why. He always -- she
15 said he always carried a gun and he carried it under his
16 pants. So he put that belt on with the holster and a gun
17 and then put his pants on over it. So that gun held --
18 that belt held that gun up under his pants basically.

19 Q. All right. At this point did the name Welton Booker
20 come up in your conversation with her?

21 A. No.

22 Q. Okay.

23 A. Wait a minute. Yes.

24 Q. Did she indicate who Welton Booker was or -- excuse
25 me, what Welton Booker's nickname was?

1 A. I asked her if she knew who Crum was.

2 Q. And who did she say it was?

3 A. Welton Booker.

4 Q. Okay. Now, after interviewing her I think you said

5 you talked to -- going back a step, you said you talked

6 with Andre Brook's roommate, Mr. Renaud. And I think you

7 said that as a result of that conversation you needed to

8 re-interviewed Andre Brooks?

9 A. Yes. As a result of the, as a result of the

10 conversation with Paul Renaud, I then, as a result of that

11 conversation, I needed to identify Crum. I asked -- when

12 I interviewed Katrina, I asked her if she knew who Crum

13 was and that's when she gave me the name Welton Booker.

14 Q. All right. Did you then have an occasion to

15 interview Andre -- re-interviewed Andre Brooks ---

16 A. Yes.

17 Q. -- at the Law Enforcement Center?

18 A. Yes.

19 Q. And that occurred about -- would you tell the jury

20 when that was?

21 A. That was on the 23rd at approximately twelve forty-

22 five in the afternoon.

23 Q. All right. And at that time was this another

24 interview or did you confront him with new information?

25 How did that go?

1 A. Yeah. Basically I knew I had to get him back in
2 because after these other interviews I knew that he wasn't
3 telling us everything that he knew. So I called him back
4 in to reinterview him.

5 Q. When you confronted him with whatever information you
6 had -- you had learned, what was his reaction? Was he
7 happy to talk about it? Was he afraid? Was he tearful?
8 What was his reaction?

9 A. Originally when I brought him in I told him -- I
10 basically confronted him that I had information that he
11 wasn't telling us the truth. At that point he asked me if
12 he told me the truth could I protect him? I said, what do
13 you mean, can I protect you? He said, can you protect me?
14 If I tell you the truth can you protect me from these
15 guys? I said -- I did, I told him, I said, if you don't
16 tell me the truth, I'm going to put you in jail. And at
17 that point he came with the second story.

18 Q. When you say he said, can you -- if I tell you the
19 truth can you protect me from these guys, at that point
20 had any guys been arrested?

21 A. No.

22 Q. And as far as you knew the perpetrators were still on
23 the street?

24 A. Yes.

25 Q. Okay. So was it your understanding that is what he

1 was talking about, people that were still on the street?

2 A. Yes.

3 Q. All right. After you told him, look, if you tell the

4 truth -- I'm going to put you in jail for not telling me

5 the truth, did he tell you anymore -- give you any more

6 detail as to who the four guys were, specifically who was

7 the shooter, the person who shot Francisco Perez?

8 A. No.

9 Q. So then what happened?

10 A. Basically what he did at that point, he did come

11 forth and he stated that he recognized -- he still stated

12 that they had on masks. But he stated he recognized the

13 voice of one of the assailants as Jermaine. And he gave

14 me the first name Jermaine.

15 Q. All right. And did he indicate -- did he include

16 Welton Booker? Was Welton Booker in his story this time?

17 A. Yes, he did.

18 Q. Now the first time you spoke with him did he mention

19 Welton Booker at all?

20 A. No.

21 Q. And generally was his story still consistent in terms

22 of what had happened?

23 A. Yes.

24 Q. Okay. As the first time he told you?

25 A. As far as the four guys coming in and -- yes.

1 Q. Okay. Now, after you talked to Andre Brooks again,
2 did you have an occasion to interview Welton Booker?

3 A. I did.

4 Q. All right. Now, let's go back to the cell phone for
5 a moment. Andre Brooks, I think you testified, indicated
6 his cell phone had been taken; is that correct?

7 A. Yes, he did.

8 Q. And that there was -- he gave you the phone number
9 and the provider. What do y'all do once you get that
10 information?

11 A. We did two separate things to the cell phone. The
12 first thing I did was I submitted a -- what we call an
13 exigent circumstances form to Bruce Mobile who is actually
14 through Nextel. Now, Sprint Nextel. And what that does
15 is that allows the phone company to basically trace that
16 phone for me. And they're telling me -- they can tell me
17 what tower that phone is hitting. And they call me back
18 with that information. Any time that phone is used and it
19 hits a tower, they will call me and say, okay, that phone
20 was just used, it hit this tower. We did that. But the
21 two times it was hitting a tower ---

22 MR. CREECH: Your Honor, I object to any
23 information that came from the phone company. That's pure
24 hearsay.

25 THE COURT: All right. I'll sustain that

1 objection.

2 MR. WESTON: All right. Your Honor, he's just
3 telling what the process is.

4 THE COURT: He can tell not what they said, but
5 he can tell what his investigation revealed.

6 MR. WESTON: Okay.

7 Q. Well, did you make a request to the phone company
8 concerning numbers that had been called from or to that
9 phone?

10 A. Yes. The second thing we did was order a subpoena
11 for the phone log, which would indicate in-coming and out-
12 going calls from that phone.

13 Q. Did you receive a log ---

14 A. Yes.

15 Q. -- from the phone company with the numbers that that
16 phone had called or numbers that had called that phone?

17 A. Yes.

18 MR. CREECH: Your Honor, I just restate the
19 objection and asked that that be stricken.

20 THE COURT: I overrule your objection. He can
21 testify to his investigation, just not hearsay as to what
22 someone told him. I overrule your objection.

23 Q. After you received that log from the phone company,
24 did you dial the number 422-2392?

25 A. Yes.

1 Q. And whose number did you find that was?

2 A. Queen Cureton.

3 Q. And did you find that information out from your own
4 efforts? Not through any hearsay or from somebody else.

5 Did you find who that number belonged to through your own
6 efforts?

7 A. Yes.

8 Q. Did you speak to Ms. Cureton?

9 A. Yes.

10 Q. Now, who is Queen Cureton in relationship to anybody
11 else involved in this case?

12 A. Mark Cureton's mother.

13 Q. Was Mark Cureton subsequently arrested and charged as
14 one of the principles in this crime?

15 A. Yes.

16 Q. Okay. Now, did you have a conversation with Queen
17 Cureton?

18 A. Yes.

19 Q. After that conversation did you -- what did you --
20 how did you earmark or denote Mark Cureton as it relates
21 to this case as -- by that I mean, did you come to the
22 conclusion he had any involvement in the case? Or suspect
23 at least that he had any involvement in the case?

24 A. The fact that the victim's phone was used within,
25 within two hours of us arriving on the scene -- actually

1 before I arrived on the scene, to make that phone call
2 after my conversation with Ms. Cureton, I learned that her
3 son called her from that number.

4 Q. All right. And her son being Mark Cureton?

5 A. Yes.

6 Q. All right. Now after -- and we'll come back to -- we
7 may come back to the phone in a minute. But let's talk
8 about what you did next. Did you have an occasion to meet
9 with any of the relatives of the victim?

10 A. I did.

11 Q. And when was that?

12 A. It was on the 23rd, three twenty-three oh six, I met
13 with the victim's parents.

14 Q. And did you discuss the victim's habits and traits
15 and the things that he normally would be associated with
16 or things that he normally would have with him?

17 A. Yeah. But basically what that meeting is, is -- of
18 course you've got distraught parents now trying to deal
19 with this loss. And what we do is we meet -- the
20 investigator meets with the parents to explain to them
21 where we are in the investigation and give them limited
22 information on what we know happened just to give them
23 some kind of -- so they know what's going on.

24 Q. All right. And did you, as a result of that meeting,
25 also determine if there were any items that might be

1 missing from the victim's personal effects?

2 A. Yes.

3 Q. And would you describe that please?

4 A. From that meeting I learned that the victim wore a
5 large cross pendant that he never took off. He always
6 wore this necklace with this large cross pendant which was
7 not present at the scene.

8 Q. I'm going to show you what is a brown envelope and
9 ask you to open it, and without showing it to the jury at
10 this point, just tell us do you recognize that?

11 A. Yes.

12 Q. Just hold it out a little further. All right. And
13 did you have an occasion to place that item into property
14 and evidence?

15 A. Yes.

16 Q. I'm going to show you another document and ask you do
17 you recognize that document?

18 A. Greenville County Department of Public Safety
19 property and evidence form. Basically it's a chain of
20 custody form.

21 Q. And where did you get the item that's in the
22 envelope?

23 A. From Mark Cureton.

24 Q. All right. Just hold on to that for a moment. Now
25 on March 24th of 2006 at about three o'clock in the

1 afternoon did you receive any anonymous calls regarding
2 this case?

3 A. Yes.

4 Q. And as a result of that call were you able to develop
5 any suspects?

6 A. Yes.

7 Q. Could you tell the jury the suspects you developed as
8 a result of that conversation?

9 A. John Michael, Jermaine, Fat Albert and Mark Cureton.

10 Q. Now, did Jermaine have a last name at that point?

11 A. No.

12 Q. All right. On -- at about five thirty on that same
13 day did you receive another anonymous call on the county
14 tip line regarding this case?

15 A. Yes.

16 Q. And as a result of that call were you able to
17 identify any vehicles that the suspects might be riding
18 in?

19 A. Yes.

20 Q. Would you tell the jury what vehicle you identified
21 as a possible suspect vehicle?

22 A. It was possibly a silver -- the information we
23 received was a silver, possibly a silver Mitsubishi with
24 South Carolina tag 214UXY.

25 Q. And what did you do with that information?

1 A. Basically I boloed. I put it out to our guys to tell
2 them to look out for this vehicle.

3 Q. All right. Subsequently did you receive a call from
4 Detective Gardner regarding that vehicle?

5 A. Yes.

6 Q. As a result of that conversation were you able to
7 determine if the vehicle had been located?

8 A. Yes.

9 Q. And could you tell the jury where you thought the
10 vehicle was at about that time?

11 A. What's formally known as Jesse Jackson Town Homes.
12 It's 291 and Laurens Road behind the old Beck school.
13 It's a housing project that's called Jesse Jackson Town
14 Homes. And that vehicle was in that project.

15 Q. All right. And did you direct Officer Gardner to
16 make an arrest or a stop on that vehicle subsequent --
17 subsequently?

18 A. No. I didn't direct him to. No.

19 Q. Okay. Was the vehicle subsequently stopped or --
20 excuse me. Let me step back. Did you have an occasion to
21 interview or to -- get to interview Mark Cureton and
22 Frederick Irby later that day?

23 A. Yes.

24 Q. Were they interviewed as a result of an arrest?

25 A. Yes.

1 Q. And as far as you knew were they in that vehicle at
2 the time they were arrested?

3 A. Yes.

4 Q. Okay. Let's go ahead and talk about the interviews
5 for a moment. Now Mark Cureton and Frederick Irby were
6 arrested and brought in to the law enforcement -- the
7 detention center; is that correct?

8 A. That's correct.

9 Q. Were they turned over to you?

10 A. Yes.

11 Q. All right. Were they turned over to you together or
12 individually?

13 A. Well, we have separate interview rooms in the
14 detective division. They were placed -- actually they
15 transported up to the LEC by officers that same -- I was
16 actually working downtown at that time and I left downtown
17 and met them at the Law Enforcement Center.

18 Q. All right. Who did you interview first?

19 A. Mark Cureton.

20 Q. And describe to the jury what the circumstances were.
21 Were they in your office, was it in a cell or where would
22 that have been?

23 A. It's in an interview room. It's a room that's
24 probably, I don't know, fifteen by fifteen. It's just a
25 little square room. It's got a table and some chairs in

1 it.

2 Q. Okay. And prior to interviewing Mark Cureton did you
3 read him his rights?

4 A. Yes.

5 Q. And did he sign a waiver waiving his right?

6 A. Yes.

7 Q. Did he agree to talk to you?

8 A. Yes.

9 Q. That he subsequently -- we're going to talk about
10 this in a little bit more detail. But did he subsequently
11 give you a statement in writing that he signed and that
12 you witnessed?

13 A. Yes, he did.

14 Q. All right. Now, in order to get that statement from
15 Mark Cureton did you promise him anything?

16 A. No.

17 Q. Did you threaten him other than with the fact that he
18 might be arrested, did you threaten him with any kinds of
19 physical violence or anything like that?

20 A. No.

21 Q. Did he seem to be in any distress in any way ---

22 A. No.

23 Q. -- in the sense that he was -- did he have any
24 injuries or did he needs something that you wouldn't
25 provide or anything like that? Did you withhold anything

1 from him?

2 A. No.

3 Q. Did he willingly and voluntarily cooperate and give
4 you a statement?

5 A. Yes.

6 Q. Did he describe what happened?

7 A. Yes.

8 MR. CREECH: I object, Your Honor, to anything
9 from the witness -- anything from Mr. Cureton. That would
10 be hearsay. And also the confrontation clause would be
11 implicated as well.

12 THE COURT: Well, I think the question as asked,
13 I would overrule your objection. But of course he
14 wouldn't be allowed to testify as to the statement.

15 Q. Don't tell us what he said at this point. Did Mark
16 Cureton have anything on him, anything on him that you
17 thought might be related to the investigation?

18 A. Yes.

19 Q. What did he have?

20 A. The necklace that was described by the victim's
21 family.

22 Q. Where did he have it at?

23 A. It was in his pocket.

24 Q. Would you take the piece of -- the item out of the
25 envelope, please. Is that the item that Mark Cureton had

1 on him?

2 A. Yes.

3 Q. And did you, after securing it from him, place it
4 into property and evidence?

5 A. Yes, I did.

6 Q. And has it been in property and evidence until today?

7 A. Yes.

8 Q. All right.

9 MR. WESTON: Your Honor, the state would offer
10 this as Exhibit 11.

11 MR. CREECH: Your Honor, I would object to the
12 foundation -- as proper foundation as to whether it's been
13 identified properly.

14 THE COURT: Well, that's --

15 MR. CREECH: There has been no testimony from
16 anybody that this was ---

17 THE COURT: I will allow you to cross
18 examination -- to cross examine the witness. I think he's
19 identified it as coming from the one he was interviewing.
20 I'll allow it in on that basis.

21 MR. WESTON: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit number 11 was marked and
23 admitted into evidence.)

24 Q. And did the -- did this cross and necklace match the
25 description that the victim's mother had given you as the

1 one her son always wore?

2 A. Yes.

3 Q. Did you, after interviewing Mark Cureton, interview

4 Frederick Irby?

5 A. Yes, I did.

6 Q. And did Mr. Irby -- were they interviewed separately?

7 A. Yes.

8 Q. And Mr. Irby, I think you indicated was in the car

9 along with Mr. Cureton and they were arrested together; is
10 that correct?

11 A. Correct.

12 Q. And when you interviewed Mr. Irby would you describe

13 where that interview took place?

14 A. It would have been in the second interview room in
15 the detective division.

16 Q. And was Mr. Cureton present when you interviewed Mr.
17 Irby?

18 A. No.

19 Q. And did Mr. Irby appear to be in any distress in the
20 sense that he had been beaten, injured, needing something
21 that you withheld from him or in anyway seemed to be
22 uncomfortable with the circumstances surrounding the
23 interview?

24 A. No.

25 Q. Did you read him his rights prior to interviewing

1 him?

2 A. Yes.

3 Q. Did he sign a waiver waiving those right?

4 A. Yes, he did.

5 Q. Did he give you a statement?

6 A. Yes.

7 Q. Did he -- did you type up -- was a statement typed up

8 memorializing what he said, and did he signed that

9 statement?

10 A. Yes.

11 Q. All right. Were there any promises made to Mr. Irby

12 at the time he gave you a statement?

13 A. No.

14 Q. With the exception of the fact that he might be

15 arrested and charged with a crime, did you make any

16 threats toward him whatsoever?

17 A. No.

18 Q. Did you tell either one of these guys what to say?

19 A. No.

20 Q. Did you suggest to them what you wanted to hear from

21 them?

22 A. No.

23 Q. What did you ask them to tell you about?

24 A. Asked both of them to tell me about the murder and

25 what happened on Pelham Road.

1 Q. Did you give them any details to supplant or to
2 encourage their story in any way?

3 A. Matter of fact, especially with Mark Cureton's
4 interview, I was very specific and when I started that
5 interview I told him that I was not going to ask him a
6 bunch of questions. I was going to sit and listen to his
7 story. And he told me his story.

8 Q. Now, after the two of them gave statements, did you
9 prepare arrest warrants?

10 A. Yes.

11 Q. And did you prepare arrest warrants for not only the
12 two of them but anybody else?

13 A. Yes.

14 Q. Could you name the other two people you prepared
15 arrest warrants for?

16 A. John Michael Garrett and William Jermaine Henry.

17 Q. All right. And after that was done -- at this point
18 you've got two of them in custody?

19 A. Correct.

20 Q. Was there any publicity regarding these gentlemen,
21 the other two, John Michael Garrett and William Jermaine
22 Henry being wanted by police?

23 A. There was on -- yes.

24 Q. Okay. The next day, I think it was the next day, did
25 you receive a call from John Michael Garrett or someone on

1 his behalf?

2 A. It was actually on the 28th, on March 28th, he called
3 one of our sergeant -- or actually his mother called one
4 of our sergeants that was in the detective division and he
5 was on his way to turn himself in.

6 Q. All right. And did you meet him at the Law
7 Enforcement Center?

8 A. Yes, I did.

9 Q. Now, was Frederic Irby or Mark Cureton present when
10 you met with Michael Garrett?

11 A. No.

12 Q. And they both had been in -- once they gave
13 statements and you finished interviewing them, were they
14 arrested?

15 A. Yes.

16 Q. Were they then secured in the detention center?

17 A. Yes.

18 Q. As far as you know did they have any opportunity to
19 communicate with Michael Garrett ---

20 A. No.

21 Q. -- or anybody else for that matter?

22 A. No.

23 Q. All right. On the 28th when Michael Garrett turned
24 himself in, would you describe for the jury where that
25 took place and what the circumstances surrounding that

1 interview was?

2 A. It was in the Law Enforcement Center in the detective
3 division interview room. He turned himself in and he was
4 placed in the interview room just like the two prior and
5 we took a statement from him.

6 Q. All right. And did Michael -- tell the jury what
7 Michael Garrett's condition was when he turned himself in,
8 initially? Was he in a condition to be interviewed?

9 A. Yeah, to the best of my ability, yeah, that I
10 remember.

11 Q. Let me show you -- do you remember whether you took
12 his statement on the 28th or the 29th?

13 A. I took his statement on the 28th.

14 Q. And tell me about -- did you read him his rights?

15 A. Yes.

16 Q. And did he sign a waiver waiving his rights?

17 A. Yes.

18 Q. Did you promise him anything or threaten him in any
19 way in order to take a statement from him with the
20 exception of the fact that he might be arrested and
21 charged with these crimes?

22 A. No.

23 Q. Did you, did you withhold any kind of medical
24 treatment or any kind of basic necessities that he might
25 have needed in order to get this statement?

1 A. No.

2 Q. In your opinion was the statement given voluntarily?

3 A. Yes.

4 Q. Did you give him any information concerning what --
5 did you prep him or supplant or provide any information to
6 help him give this -- to help him word or give this
7 statement?

8 A. No.

9 Q. How did the interview go in terms of getting this
10 statement from him, just generally?

11 A. Basically the same as the others. He came in.
12 Obviously he knew that he was charged with this at this
13 point and he turned himself in. He was arrested. So he
14 knew why he was there. So once we did the rights waiver
15 and if he signs the rights waiver and agrees to talk,
16 basically we asked him to tell us what happened. And we
17 took a statement from him.

18 Q. And did you memorialize that statement in writing?

19 A. Yes.

20 Q. And did he sign it?

21 A. Yes.

22 Q. All right. Now, after the three of them had given
23 statement, you had already taken -- you had already signed
24 the warrant for Mr. Garrett as well; is that correct?

25 A. That's correct.

1 Q. Now let's talk about the thirty-one pieces of
2 evidence that forensic tech Deitz referred to. She talked
3 about blood spatter and other things that were collected
4 and she indicated I think that those things are collected
5 by them and turned over to P and E or to y'all for process
6 -- for the items to be processed. Was there any, in your
7 investigation -- so this investigation took about, what,
8 three or four days before you actually signed arrest
9 warrants?

10 A. Yes.

11 Q. And in that period of time is there any indication
12 that the perpetrators were injured in any way?

13 A. No.

14 Q. So that the blood on the scene, your initial
15 assessment, what was your initial assessment as to whose
16 blood that was on the scene?

17 A. Francisco Perez or Andre Brooks.

18 Q. All right. And was there any other forensic evidence
19 that you looked at that you analyzed initially with the
20 exception of maybe the hammer and maybe a broken bottle,
21 the belt, and the money and drugs or whatever, did you
22 find anything that needed to be immediately processed from
23 a DNA standpoint or a forensic standpoint that would have
24 helped you find the perpetrators?

25 A. No. No.

1 Q. And so in terms of your investigation of this case,
2 did the investigation break toward testimony, people
3 giving statements basically?

4 A. Yes.

5 Q. And did that happen rather quickly in a case like
6 this?

7 A. Yes, it did.

8 Q. Is that normal? Or does it normally take a lot
9 longer?

10 A. I mean it all depends. We work a lot of cases. And
11 some of them end up quick and some of them are drug out,
12 you know, months and some of them years.

13 Q. Once you got the statements from these codefendants
14 and charged the four people that you thought were the
15 perpetrators, was there any need to process this evidence
16 any further? The other evidence, the blood, what have
17 you, any further?

18 A. No. Because we had four suspects and there was no
19 indication that they were injured.

20 Q. All right. Was that evidence, was that evidence
21 maintained in the event you were to -- you found that
22 these were not the perpetrators?

23 A. That evidence is still maintained in P and E.

24 Q. And as of today has there -- any information come to
25 your attention that would lead you to believe that these

1 are not the perpetrators and that this evidence --
2 something else needed to be done with this evidence?

3 MR. CREECH: I object to the form of the
4 question.

5 THE COURT: I overrule your objection.

6 MR. WESTON: Thank you, Your Honor.

7 Q. Let me repeat the question. As of today has any
8 information come to your attention that would change your
9 opinion that these four suspects were the perpetrators of
10 this incident and that you needed to do something else
11 with this other evidence that's sitting in P and E?

12 A. No.

13 Q. Thank you sir.

14 MR. WESTON: Your Honor, could we approach
15 before Mr. Creech begins?

16 THE COURT: We're going to take a short break
17 before that, so we can talk about any legal matters.

18 Ladies and gentlemen, I'll send you back to your jury
19 room. We'll take a short break. Don't discuss the case
20 at this time.

21 (WHEREUPON, the jury exited the open court at
22 approximately 10:21 a.m.)

23 THE COURT: Officer Flavell, you can step down.
24 Let me remind you not to discuss your testimony with
25 anyone.

1 We are glad to have a school group with us. Mr.
2 Woodward and your class.

3 MR. WOODWARD: Thank you.

4 THE COURT: Southside Christian School. We'll
5 be glad for you to stay a little while longer. We're
6 going to take a short break now. We'll take about a
7 fifteen minute break. I'll be glad to talk with any of
8 you who want to hang around here. I don't know how long
9 you're going to get to stay with us.

10 MR. WOODWARD: We can stay as long as we need
11 to.

12 THE COURT: We'll take a short break. I'll be
13 glad to talk with you just a few minutes.

14 (WHEREUPON, court stood at recess for a short break.)

15 THE COURT: Are we ready for the jury?

16 MR. WESTON: Yes, sir, Your Honor.

17 THE COURT: Let's have our jury come back
18 please.

19 (WHEREUPON, the jury entered the open court at
20 approximately 10:43 a.m.)

21 THE COURT: Mr. Creech, you may cross examine
22 the witness.

23 MR. CREECH: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. CREECH:

1 Q. Investigator Flavell, now you just testified before
2 the break that none of the forensic evidence that was
3 gathered in this case was tested; is that correct?

4 A. Not the DNA evidence.

5 Q. Okay. And the -- none of the DNA evidence was
6 tested; is that correct?

7 A. Yes. I did not submit any DNA.

8 Q. And the blood sample evidence was not tested; is that
9 right?

10 A. What?

11 Q. The blood sample evidence that was gathered, that was
12 not tested; correct?

13 A. That would be the same as DNA. No.

14 Q. And there were no other evidence -- the gunshot
15 residue; is that correct, that was never tested?

16 A. On?

17 Q. From the victim, Mr. Paco?

18 A. No.

19 Q. Now, you said that you thought you didn't need to get
20 that stuff tested based on your investigation; is that
21 right?

22 A. Yes.

23 Q. And you met with Mr. Cureton who was one of the so-
24 called accomplices; is that correct?

25 A. That's correct.

1 Q. And you met with him in a room there at the Law
2 Enforcement Center; is that right?

3 A. That's right.

4 Q. And when you met with him you noticed on his hands
5 that he had cuts on both of his hands; is that correct?

6 A. I believe they were old cuts that had been -- his
7 hands were swelled up. Yes.

8 Q. And you noticed that he had cuts on both of his hands
9 so you wanted to photograph those cuts on his hands; is
10 that right?

11 A. I did photograph his hands. I got a look at what the
12 injury was. I have documented injuries that you can point
13 out.

14 Q. And those injuries were photographed; is that right?

15 A. Yes.

16 Q. And did you photograph those injuries?

17 A. I did.

18 Q. Mr. Cureton became irate when you tried to photograph
19 his injuries; is that right?

20 A. I wouldn't say irate. He got mad.

21 Q. Okay. Do you remember writing in your report and
22 said, he became irate?

23 A. He got -- he was in the process of signing a
24 document, not a statement form but a different document.

25 And when I questioned him about his hands, his knuckles

1 swollen up, the document he had just signed, he grabbed a
2 pen and tried to scribble out his signature, and I grabbed
3 the pen from him.

4 Q. And you used the word -- in your report you used the
5 word irate?

6 A. Possibly, yes.

7 Q. On having his -- after you wanted to photograph his
8 injuries; correct?

9 A. Yes.

10 Q. Did you ever, did you ever believe that those
11 injuries may have come about as a result of this incident
12 that you were investigating?

13 A. They possibly could have, yes.

14 Q. Is that why you wanted to photograph them?

15 A. Yes.

16 Q. Now, as part of the investigation there were brown
17 paper bags that were put on Paco's hands; is that right?

18 A. Yes.

19 Q. And forensics placed those brown paper bags on his
20 hands; correct?

21 A. Yes.

22 Q. And you saw those brown paper bags on his hands;
23 right?

24 A. Yes. That's common in homicides. We bag the
25 victim's hands.

1 Q. And they were there to preserve any kind of gunshot
2 residue that may have been on his hands; correct?

3 A. Any kind of evidence, anything under his fingernails,
4 anything that could be on his hands.

5 Q. Including gunshot residue; is that right?

6 A. Yes.

7 Q. And the presence of gunshot residue could indicate
8 whether somebody had fired a firearm or handled one; is
9 that right?

10 A. Yes.

11 Q. It could also indicate whether a firearm was fired
12 near a person's hands; is that correct?

13 A. Possibly, yes.

14 Q. Now, the forensics took those samples from Paco's
15 hands; is that right?

16 A. I'm not sure if they took GSR kits at the hospital or
17 not. They would have done -- if they did they would have
18 done it during autopsy.

19 Q. And would that have been part of your file, whether
20 they took those swabs?

21 A. It would be in their report, yes.

22 Q. And that report -- their report would have been in
23 your file; correct?

24 A. Yes. I don't remember if they did that or not.

25 Q. Okay. But as far as you know those swabs were never

- 1 tested; correct?
- 2 A. No. I did not submit them.
- 3 Q. Now, when you went into the apartment, as you went in
- 4 the first time you smelled marijuana; right?
- 5 A. Yes.
- 6 Q. And in that apartment you found money; correct?
- 7 A. Yes.
- 8 Q. And the money that you found in that apartment, there
- 9 were twenty-five one hundred dollar bills; correct?
- 10 A. Yes.
- 11 Q. There were three fifty dollar bills; correct?
- 12 A. That's correct.
- 13 Q. There were four hundred and four twenty dollar bills;
- 14 is that right?
- 15 A. That's correct.
- 16 Q. Twenty ten dollar bills?
- 17 A. Yes.
- 18 Q. A five dollar bill?
- 19 A. Yes.
- 20 Q. And three one dollar bills; correct?
- 21 A. Correct.
- 22 Q. So there was almost eleven thousand dollars in cash
- 23 found in the apartment?
- 24 A. Yes. Ten thousand nine hundred and thirty-eight
- 25 dollars.

1 Q. And that cash was found in the pants pockets of Mr.

2 Perez; correct?

3 A. Yes.

4 Q. Now, forensics gathered DNA samples at the scene; is

5 that right?

6 A. Yes.

7 Q. And a person's DNA can obviously be found in blood;

8 correct?

9 A. Yes.

10 Q. Be found in hair; is that correct?

11 A. Yes.

12 Q. Sweat?

13 A. Yes.

14 Q. Saliva?

15 A. Yes.

16 Q. DNA evidence could have been used to determine whose

17 blood was on the wall; correct?

18 A. Yes.

19 Q. You noticed marijuana filled cigars in the apartment;

20 is that correct?

21 A. Yes.

22 Q. DNA evidence could have been used to determine who

23 was smoking that cigar; is that correct?

24 A. Could have been, yes.

25 Q. You could have taken the blood samples from the blood

1 on the wall; is that right?

2 A. We did take samples. All that stuff was collected

3 and we have those samples in our P and E.

4 Q. And the DNA could have been tested from that blood;

5 is that right?

6 A. We could have obtained a DNA profile possibly from

7 that blood. Yes.

8 Q. Now, you took DNA from Andre Brooks in this case;

9 correct?

10 A. I did.

11 Q. And you took a sample of his DNA to see if it matched

12 with anything in the apartment; is that right?

13 A. I took a saliva swab of Andre Brooks I believe when I

14 first interviewed with him because at that point I didn't

15 know what his involvement was in this case. And so I took

16 a saliva swab before we let him go. Yes, I did.

17 Q. So you did not take DNA from Mark Cureton; correct?

18 A. No.

19 Q. Did not take DNA from Frederick Irby; correct?

20 A. No.

21 Q. Did not take DNA from John Michael Garrett; correct?

22 A. No.

23 Q. But you took DNA from Andre Brooks?

24 A. Yes.

25 Q. There was a bottle, Pepsi bottle, that was found

1 outside the apartment; is that correct?

2 A. That's correct.

3 Q. DNA was taken from that; is that correct?

4 A. That is correct.

5 Q. Did you know the response of the test results from
6 that DNA?

7 A. I did not submit DNA for any testing.

8 Q. In this case there was also fiber evidence that was
9 collected and gathered; is that right?

10 A. Not that I'm aware of.

11 Q. Were you aware -- you did not know that fibers were
12 taken from the car, from the Lincoln Town Car?

13 A. No.

14 Q. Now, when you arrived on scene do you remember seeing
15 or did you see any footprints or muddy footprints outside
16 the apartment?

17 A. I did not walk -- what you are indicating, I did not
18 walk that far down.

19 Q. Okay. Do you remember -- you were the lead
20 investigator on this case; is that correct?

21 A. That is correct.

22 Q. Detective Conroy was involved in the case; is that
23 right?

24 A. I believe he got called the next day.

25 Q. Detective Karais was involved in this case?

1 A. He was involved that night with me.

2 Q. Detective Bruce was involved in this case; is that
3 right?

4 A. Bruce and Allgood came approximately eight o'clock
5 the next morning and they did a canvas of the
6 neighborhood.

7 Q. And are you aware of any investigator seeing muddy
8 footprints leading to the door of Paco's apartment?

9 A. Muddy footprints leading to the door?

10 Q. Or from the door, either one?

11 A. There was a footprint impression that was noted, I
12 believe, by Detective Bruce at a hole in the fence that
13 was a common travel path between the apartment complexes.

14 Q. And Detective Bruce noted in his report that they
15 lead up to the apartment; is that right?

16 MR. WESTON: Objection, Your Honor.

17 THE COURT: What's your objection?

18 MR. WESTON: Your Honor, he can't testify as to
19 what Detective Bruce put in his report. That's hearsay.

20 THE COURT: Well, I will allow him to ask the
21 question -- just rephrase the question if you would, Mr.
22 Creech. I'll be glad for him to ask the question of this
23 witness.

24 Q. You read Detective Bruce's report; is that right?

25 A. From my recollection of that report, he indicated

1 there was a footwear impression in the mud at the hole in
2 the fence. I was on scene that night. I did not see any
3 footprint -- muddy footprints leading to that apartment.

4 Q. There was a shoe impression footprint at the fence
5 between -- separating the two apartment complexes;
6 correct?

7 A. To my knowledge there's a hole in the fence somewhere
8 down past the victim's apartment. When they went out the
9 next day they documented a footprint that was in the mud.

10 Q. And forensics came out and took a picture of that
11 footprint; is that right?

12 A. They did.

13 Q. They also found cigars filled with marijuana at that
14 footprint; is that right?

15 A. Not to my knowledge.

16 Q. Forensics never gathered those marijuana cigars down
17 where the footprint was?

18 A. We obtained marijuana cigarettes inside the apartment
19 that night.

20 Q. Have you seen pictures of the footprints that were
21 taken there at the fence?

22 A. No.

23 Q. Now, as stated earlier, you were the lead
24 investigator in the case; is that correct?

25 A. That's correct.

1 Q. And you supervised and directed the investigation; is
2 that right?

3 A. Yes.

4 Q. And as the lead investigator you have a duty to be
5 fair to anyone you investigate; is that correct?

6 A. That's correct.

7 Q. Now, at some point during the investigation a person
8 named Tarzan was provided to law enforcement; is that
9 right?

10 A. That's correct.

11 Q. And Tarzan was Paco's drug supplier; is that correct?

12 A. We had two local prostitutes for that apartment
13 complex that stated that Tarzan was a drug supplier. Yes.

14 Q. And you learned that Tarzan had sold Paco three
15 pounds of heroine this same night; is that right?

16 A. I have no confirmation on that. One of the girls we
17 took a statement on gave us that information. It never
18 was confirmed.

19 Q. Tarzan liked to rob the people that he sold drugs to;
20 is that right?

21 MR. WESTON: Objection, Your Honor.

22 THE COURT: What's your objection?

23 MR. WESTON: There's no foundation that this
24 witness has any knowledge that Tarzan, whoever that is,
25 liked to rob anybody. He doesn't have any basis for

1 asking that question.

2 THE COURT: I'll overrule your objection. I'll
3 allow him to ask the question on cross examination.

4 Q. Tarzan liked to rob the people that he sold drugs to?
5 Basically what you saw from your investigation ---

6 A. From the information -- from the statements we took
7 from the two girls that came to us at the Law Enforcement
8 Center, they gave us information on this Tarzan guy.

9 Q. What information? A main ---

10 A. What information -- I mean, none of that was ever
11 confirmed who -- I think we actually did identify him
12 later. But it never was followed up on because this came
13 to a close pretty quick.

14 Q. Okay. Tarzan was spotted at the scene that night, is
15 that your understanding?

16 A. From -- yes.

17 Q. You had that information; is that right? When you
18 conducted this investigation; correct?

19 A. Later we got that information, yes.

20 Q. And you talked with Ms. Haynes that night; correct?

21 A. Yes.

22 Q. Ms. Marlon?

23 A. Yes. I spoke with Ms. Haynes briefly in the parking
24 lot.

25 Q. This Marlon person; is that right?

1 A. Yeah. But that was -- I don't remember if I actually
2 spoke to Marlon. That would have been the next day if I
3 did. I know Marlon was spoken with, but I'm not sure who
4 took that statement.

5 Q. Okay. And you spoke with Chris or Chris was spoken
6 to by investigators; is that correct?

7 A. Someone spoke with Chris, yes.

8 Q. And Amber, as well?

9 A. I'm not sure I remember who Amber is.

10 Q. Ms. Chastain, Audra Chastain; is that correct?

11 A. That's the two girls that came to us that I was
12 referring to earlier and gave us this information on
13 Tarzan.

14 Q. And after you got that information on Tarzan, you
15 tried to locate him; is that right?

16 A. Yes.

17 Q. And you had his first name; is that right?

18 A. I don't remember if we had his first name or not. I
19 know we ended up getting a photo of him.

20 Q. You obtained a photo of him. Did you get an address
21 for him?

22 A. It wasn't -- it was a photo that somebody gave us,
23 like one of these nightclub photos where the guys group up
24 and get their picture made. There wasn't any names with
25 it. But somebody -- they said that's Tarzan. I'm not

1 sure we ever identified who actually he was.

2 Q. So you never tried to contact him; is that correct?

3 A. Yeah. We were trying to identify him until the
4 information came in on the four suspects that we arrested.

5 Q. Okay. Now, you say that you had information about
6 Tarzan. Did you put that anywhere in your report?

7 A. I have a -- whenever we do our investigations we have
8 lead files and any lead that comes in we start a lead file
9 on that information. So I have a lead file on that. It
10 would have that information in it.

11 Q. So you felt at that point it was important to try to
12 find him; is that right?

13 A. Every lead is important. Every lead that comes in we
14 follow up on.

15 Q. And you were -- you ruled out Tarzan; is that right?

16 A. Yes.

17 Q. And you ruled out Tarzan based on the word of
18 Cureton?

19 A. Based on the information we had of the four suspects
20 involved, the arrest and the evidence we had in the
21 statements. Yes.

22 Q. But it was primarily the statements of these people;
23 is that right?

24 A. And the information that we gathered to lead us to
25 them. Yes.

1 Q. Investigator Flavell, Detective Allgood was also
2 involved in the investigation of the case; is that right?

3 A. Minimal involvement as far as doing a -- again, the
4 Allgood groups were assigned the next day to go out to the
5 apartment complex and do a canvas.

6 Q. And it's your testimony that you don't know that
7 Allgood saw footprints, muddy footprints, leading to the
8 victims apartment?

9 A. I do not recall that. No.

10 MR. CREECH: I have no further questions of this
11 witness.

12 THE COURT: Anything on redirect?

13 MR. WESTON: Just a few, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. WESTON:**

16 Q. With regard to gunshot residue that counsel ask you
17 about found on Mr. Cureton and Irby and these folks, was
18 there any need to take -- do gunshot residue on these
19 people four or five days after the incident?

20 A. SLED will only test gunshot residue tests that are
21 collected within six hours of an incident. So anything
22 older than that we don't even collected.

23 Q. All right. Now with regard to the DNA sample from
24 Andre Brooks you took, that counsel asked you about, did
25 he voluntarily give a sample?

1 A. Yes, he did.

2 Q. Did he raise any objection whatsoever to cooperate
3 with you in that regard?

4 A. No.

5 Q. All right. Now, on Mr. Irby, Mr. Garrett and Mr.
6 Cureton, counsel asked you did you take DNA from them.
7 After they confessed to the crime was there any need to
8 take DNA from them?

9 A. No.

10 Q. Thank you, sir. Nothing else.

11 MR. CREECH: Just brief recross, Your Honor.

12 THE COURT: Very brief.

13 **RECROSS EXAMINATION**

14 **BY MR. CREECH:**

15 Q. You asked Andre Brooks for a DNA sample; is that
16 right?

17 A. I did.

18 Q. And he gave you one?

19 A. He did.

20 Q. And you did that to corroborate their stories? Is
21 that right?

22 A. I did that because that was early on in the
23 investigation and I knew he was in the scene and in case
24 this case went to a DNA case where we're looking for
25 suspects, I knew that he was present and his DNA was

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1 possibly -- and he was bleeding in the scene. And all
2 indications, the blood in the bedroom that was on the
3 telephone between the dresser and the bed was Andre
4 Brooks's, because that was where he was originally
5 assaulted, was in that bedroom. And there was blood
6 present. So I did collect his DNA from him for that
7 reason. Yes.

8 Q. Well, you don't believe everything that Andre Brooks
9 told you, do you?

10 A. Everything he told me?

11 Q. Yeah?

12 A. No. But what he told me about being assaulted in
13 that bedroom matched the evidence that we saw at the
14 scene.

15 Q. And just because somebody comes in and tells you
16 something, that doesn't mean you're just going to stop
17 your investigation?

18 A. No.

19 Q. Thank you.

20 THE COURT: All right. Thank you, sir. You may
21 step down, Officer Flavell.

22 MR. WESTON: Your Honor, state would call
23 officer Craig Gardner.

24 CRAIG GARDNER,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1

DIRECT EXAMINATION

2 BY MR. WESTON:

3 Q. Officer Gardener, with whom are you employed?

4 A. I'm employed with the City of Greenville. I work for
5 the Greenville Police Department.

6 Q. How long have you been there?

7 A. For eighteen years.

8 Q. And where are you assigned right now?

9 A. I'm currently assigned at J.L. Mann High School as a
10 school resource officer.11 Q. And back in March of 2006 were you -- where were you
12 assigned? What was your assignment?13 A. I was assigned on the gang task force with Alcohol,
14 Tobacco and Firearms Bureau.15 Q. And were you -- did that require that you work on the
16 streets and make these street level contacts with
17 individuals?

18 A. Yes, sir.

19 Q. All right. Did you have an occasion on March 24th of
20 2006 to be involved in a traffic stop on a silver
21 Mitsubishi, license number 214DXY, South Carolina plates?

22 A. Yes, sir.

23 Q. Would you describe how you came to stop this car?

24 And you may want to go back a little bit beforehand. Had
25 you received any information about this car before the

1 stop?

2 A. Yes, sir. I was working at the area of the
3 Nickletown Community on this specific night. I was
4 actually supposed to be working this assignment with
5 Detective Flayell. He wasn't able to come out and work
6 this assignment with me on this night, so I had called him
7 and he told me he was tied up working -- still working on
8 a homicide investigation. But he asked me to keep my eyes
9 open for a silver vehicle which he thought may be a
10 Mitsubishi which had a tag number that he thought to be
11 214UXY. So while I was working this assignment I rode
12 through the area of Jesse Jackson Town Homes and saw a
13 vehicle parked in there. I couldn't tell what type it
14 was, but I could tell it was silver and it had a tag on it
15 which was very close to the tag he had given me. I saw a
16 tag which was 214UXJ.

17 Q. All right. And was it a South Carolina plate?

18 A. Yes, sir, it was.

19 Q. Okay. Did you, for lack of a better word, sit on the
20 vehicle?

21 A. I drove up the street from where the vehicle was
22 parked since there's a one-way in/one-way out road to that
23 complex and I sat and waited to see if the vehicle would
24 leave the area.

25 Q. And did the vehicle subsequently leave the area?

1 A. About five minutes after I had parked and set up, it
2 came driving out of the complex.

3 Q. Did you recognize the driver?

4 A. Yes, sir, I sure did. It just so happened to be that
5 where I was sitting the car turned in my direction and
6 came and drove right past me. And I was able to look at
7 the driver and I recognize him to be Frederick Irby.

8 Q. Had you had past dealings with Mr. Irby before?

9 A. Because he was one of the persons -- the names that
10 was provided to me who was a possible suspect in this
11 homicide, I ran and checked his record while I was setting
12 up and found that he currently had a driver's license that
13 was suspended, so I knew if he was driving that his
14 license was suspended.

15 Q. So did you initiate a traffic stop?

16 A. Yes, sir, I did.

17 Q. Did you have any other officers involved in the
18 traffic stop?

19 A. Yes, sir. Once I got behind the vehicle -- I was
20 actually driving an unmarked vehicle. I was in a vehicle
21 that was unmarked and it didn't look like a police
22 vehicle, so I had to call for a marked unit to stop the
23 vehicle. So I followed the vehicle several miles until
24 the marked unit could come and assist me.

25 Q. All right. And was the vehicle blue lighted and did

1 it stop?

2 A. Yes, sir. Once the marked car got there he turned on
3 past me and got behind this silver vehicle which was
4 actually a Lincoln. He turned on the blue lines. The car
5 proceeded to go through the intersection and pulled off to
6 the shoulder of the road.

7 Q. And were the occupants of the car identified?

8 A. Yes, sir.

9 Q. Tell the jury who was in the car?

10 A. In the vehicle was Frederick Irby who was the driver.
11 The passenger was Mark Cureton. And the person sitting in
12 the rear seat, I believe his name was Jermaine Henry.

13 Q. All right. And were all three of the men taken to
14 the detention center -- to the Law Enforcement Center?

15 A. Yes, they were.

16 MR. CREECH: Objection, Your Honor.

17 THE COURT: What's your objection?

18 MR. CREECH: As to the relevancy of the
19 question.

20 THE COURT: I overruled your objection.

21 Q. Were all three of the men taken to the Law
22 Enforcement Center?

23 A. Yes, sir.

24 Q. And were they turned over to Detective Flavell?

25 A. Yes, sir. They were turned over to Detective Flavell

1 and other officers.

2 Q. And was that the extent of your involvement in this
3 case?

4 A. At that time, yes, sir.

5 Q. All right. Thank you, sir.

6 **CROSS EXAMINATION**

7 **BY MR. CREECH:**

8 Q. Detective Gardner, this traffic stop that you
9 conducted happened on March the 25th; is that correct?

10 A. No, sir. It occurred on March the 24th.

11 Q. 24th?

12 A. Yes, sir.

13 Q. And the car was held for processing by forensics; is
14 that correct?

15 A. It was taken to forensics and left in their custody.

16 Q. Okay. Thank you. I have no further questions.

17 MR. WESTON: No redirect, Your Honor. I ask
18 that this witness be allowed to be released from his
19 subpoena.

20 THE COURT: Without objection, he may be
21 released. Thank you very much, sir. You may step down.

22 MR. WESTON: State would call Mr. Welton Booker,
23 Your Honor.

24 **WELTON BOOKER,**

25 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

1 DIRECT EXAMINATION

2 BY MR. WESTON:

3 Q. Mr. Booker, if you would speak a little bit louder.

4 Move a little bit closer to the microphone so we can be

5 sure we hear what you're saying. Okay?

6 A. All right.

7 Q. Would you state your name again please?

8 A. Welton Booker.

9 Q. Mr. Booker, do you have a nickname?

10 A. Shorty or Crum.

11 Q. And let's sort of get the preliminaries out of the

12 way first. Do you know the defendant ---

13 A. Yes.

14 Q. -- in this case? What is his name?

15 A. Jermaine.

16 Q. Jermaine Henry?

17 A. Yes.

18 Q. Is that him seated in the middle of this table across

19 the way from me here?

20 A. Yes.

21 Q. How long have you known him generally?

22 A. Probably a couple of months.

23 Q. I'm sorry?

24 A. Probably about a couple of months, about three, four,

25 five months.

1 Q. Three, four, five months?

2 A. Yes.

3 Q. You didn't know him back in 2006?

4 A. Yes.

5 Q. Okay. That's more than a couple of months ago.

6 That's years.

7 A. Well, yeah.

8 Q. Okay. Let's go back again. How long have you known

9 this man?

10 A. Well, ever since, I would say, beginning of 2005.

11 Q. Okay. And how did you know him?

12 A. From living in the same apartment complex.

13 Q. All right. What apartment complex is that?

14 A. Breckenridge.

15 Q. All right. Did you also know the deceased in this

16 case that is referred to as Paco?

17 A. Yes.

18 Q. How did you know him?

19 A. He lived in the apartment complex next to mine.

20 Q. Did you buy drugs from him?

21 A. Yes.

22 Q. On a not everyday basis, but from time to time?

23 A. From time to time.

24 Q. All right. Now, on March 21st of 2006, the date that

25 Mr. Perez was killed, he was killed that evening, earlier

1 that day did you have telephone conversations with William
2 Henry?

3 A. Earlier that day.

4 Q. All right. And did he call you or did you call him?

5 A. He called me.

6 Q. And tell the jury what he called you for?

7 A. He wanted me to go ---

8 MR. CREECH: Object, Your Honor.

9 THE COURT: What's your objection?

10 MR. CREECH: As to the hearsay.

11 THE COURT: I overruled your objection.

12 MR. WESTON: Thank you, Your Honor.

13 Q. Tell the jury what he called you for?

14 A. He wanted, he wanted me to find out did Paco have any
15 hydro.

16 Q. What is -- tell the jury what hydro is?

17 A. Weed.

18 Q. Marijuana?

19 A. (Affirmative nod.)

20 Q. All right. And how many times did he call you that
21 day?

22 A. Twice. I think it was twice.

23 Q. And do you know why he didn't call Perez himself to
24 find that out?

25 A. Well, they had had a falling out.

1 Q. Let's talk about the falling out now. Were you
2 present when they had the falling out?

3 A. Yes.

4 Q. Tell the jury about how long before Mr. Perez was
5 killed that that falling out took place?

6 A. Well, I think the falling out took place, I'm not for
7 sure, but I want to say November.

8 Q. Okay. Tell the jury what happened?

9 A. Perez and another guy came to rob the defendant.

10 Q. Were you there?

11 A. Yes, sir. It took place in front of my apartment.

12 Q. And were y'all in the apartment, standing outside, in
13 the car, where were y'all at?

14 A. I was standing outside the car and Mr. Henry, he was
15 inside the car.

16 Q. Tell the jury what happened?

17 A. They walked up behind the car ---

18 Q. And by they you mean Mr. Perez and someone else?

19 A. Yes.

20 Q. Did you know the other guy, by the way?

21 A. No.

22 Q. Okay. And so what happens when they walked up to the
23 car?

24 A. I was on the side of the car, at the back of the car,
25 and the guy pulled a gun on me and walked me to the front

1 of the car. And I had the passenger door open.

2 Q. Where was Mr. Henry?

3 A. He was under the wheel.

4 Q. Okay. So you were with Mr. Henry when this started?

5 A. Yes.

6 Q. All right.

7 A. And he -- Paco told the dude to let me go because he
8 knew I didn't have no drugs or nothing because I ---

9 MR. CREECH: Your Honor, I object to that
10 hearsay and asked the jury to disregard it.

11 THE COURT: I sustain the objection.

12 Q. Were you -- did you remain a part of the robbery or
13 were you released?

14 A. I was released.

15 Q. All right. And when you were released what did you
16 see happen then? What did you see Mr. Henry do next?

17 A. He bailed out of the car. The dudes didn't really
18 get to rob him or nothing. Paco, he didn't do anything,
19 he was sitting in the back of the car. But we knew he had
20 tried to point the defendant out there.

21 Q. Okay. And when Mr. Henry bailed out of the car, as
22 you say, did he walk away or did he run away?

23 A. He ran.

24 Q. All right. Did he say anything as he was running
25 away?

1 A. He asked Paco what was going on, like why he was
2 trying to, you know, pull something another like that.

3 Q. Okay. And that was -- so now let's go back to March
4 21st now, the night that Paco was killed. You've already
5 testified that you spoke to William Henry. He called you
6 twice that day; right?

7 A. Yes.

8 Q. And he wanted you to get some marijuana from Paco?

9 A. Yes.

10 Q. Is that right?

11 A. He wanted me to find out did he have any.

12 Q. All right. Did you try to reach Paco?

13 A. Yes.

14 Q. Were you able to reach him?

15 A. He wasn't at home.

16 Q. Okay. And you tried more than once?

17 A. Yes. I tried twice.

18 Q. All right. And now you live in Breckenridge
19 Apartments; is that correct?

20 A. Yes, sir.

21 Q. And that's right next to Ashworth; is that correct?

22 A. Yes, sir.

23 Q. And there's a little fence that divides the two
24 apartment complexes?

25 A. Yes, sir.

1 Q. All right. Later that night did you see Mr. Perez,
2 Francisco Perez, in his apartment?

3 A. Yes.

4 Q. Paco?

5 A. Yeah.

6 Q. When you -- about what time did you go to his
7 apartment?

8 A. I guess it might have been about seven.

9 Q. All right. When you -- I'm sorry. Go ahead. I'm
10 sorry.

11 A. It was between seven and eight. It was dark.

12 Q. When you went in the apartment was anybody else
13 there?

14 A. Andre Brooks.

15 Q. Do they call him Shorty?

16 A. Shorty, yes.

17 Q. Okay. And what were they doing?

18 A. Just sitting around.

19 Q. Okay. And when you came in -- why did you come in?

20 A. There was another guy had came and he wanted
21 something -- some more drugs and I went over there to get
22 it for him.

23 Q. Okay. Now was that -- you're not saying that was
24 William Henry?

25 A. No.

1 Q. That was another guy?

2 A. Yes.

3 Q. And you were going to buy some drugs from who?

4 A. From Paco.

5 Q. So you came -- and did you buy the drugs?

6 A. No. Paco didn't have none what I wanted, so I got it
7 from Andre.

8 Q. All right. So you bought some drugs from Andre.

9 Now, as you were leaving did anybody come into the
10 apartment?

11 A. Before I left, yes.

12 Q. Who came in? How many people came in?

13 A. Two, two guys come in.

14 Q. Did you know them?

15 A. I had seen them around, but at that time I didn't
16 know their names or nothing.

17 Q. All right. Once you got outside did you see anybody
18 else?

19 A. Yes.

20 Q. How many people?

21 A. Two.

22 Q. So you saw two of them come in as you were leaving
23 and there were two still outside?

24 A. Yes, sir.

25 Q. Was William Henry one of the people standing outside?

1 A. Yes.

2 Q. Any doubt in your mind about that?

3 A. Well, it was kind of dark, but I kind of figured it
4 was him.

5 Q. All right. And did you say anything to him?

6 A. Asked him what he was doing, but he really didn't
7 respond. I asked ---

8 Q. Go ahead.

9 A. I asked him what he was doing and he didn't really
10 respond. As I was walking off he just said, just take
11 your ass on home.

12 Q. I'm sorry. Who said that to you?

13 A. I think he did.

14 Q. All right. Did you recognize his voice?

15 A. In a way. But it was, you know, it's an apartment
16 complex. There was some noise going on.

17 Q. But there were two people inside, two people outside,
18 and you believe this man outside was William Henry?

19 A. Yes.

20 Q. And you've known him for a long time, since early
21 2000, I think you said, early 2000s? 2005, excuse me?

22 A. Yeah.

23 Q. All right. What was your -- what was this man doing?

24 Where was he at? Was he standing by the door? Where was
25 he at?

1 A. He was like on the side of the apartment.

2 Q. Okay. And so after -- so what did you do?

3 A. I just kept walking, because going beside the
4 apartment and going up the sidewalk, it's dark.

5 Q. Okay.

6 A. So you know, and I had drugs in my pocket. And I
7 wasn't trying to stop and hang around and have no
8 conversations or nothing.

9 Q. Okay. So is there any doubt in your mind that there
10 were two people that came in as you left and that there
11 were at least two other people outside?

12 A. Yeah.

13 Q. No doubt?

14 A. No doubt.

15 Q. All right. Thank you, sir.

16 **CROSS EXAMINATION**

17 **BY MR. CREECH:**

18 Q. Now, Mr. Booker, you were charged in this incident;
19 weren't you?

20 A. Yes.

21 Q. You were charged as an accessory; is that right?

22 A. Yes.

23 Q. You were charged as an accessory before the fact of
24 murder; correct?

25 A. Correct.

1 Q. You could have gotten thirty years in jail for that;

2 is that correct?

3 A. That's what they tell me.

4 Q. You were charged with accessory before the fact of

5 kidnaping; is that right?

6 A. Correct.

7 Q. And you could have gotten fifteen years for that?

8 A. Yeah.

9 Q. Accessory before the fact of armed robbery; is that
10 right?

11 A. Yeah.

12 Q. And you could have gotten ten to thirty years for
13 that; is that right?

14 A. Yeah.

15 Q. You were also charged with accessory before the fact
16 of assault and battery with intent to kill; correct?

17 A. Yeah.

18 Q. And you could have gotten twenty years for that?

19 A. Pretty much.

20 Q. Is that right?

21 A. Yeah.

22 Q. Now, those charges have been dismissed; is that
23 right?

24 A. Well, I can't really plan on that -- respond on that

25 right now because I haven't signed a plea agreement. As

1 of right now I'm still charged with it, to my knowledge.

2 Q. Those charges have been dismissed; isn't that
3 correct?

4 MR. WESTON: Asked and answered, Your Honor. He
5 said he can't -- he doesn't -- he says he doesn't know for
6 sure what is happening.

7 THE COURT: I believe he answered that.

8 Q. Well, have you gone to check the clerk's office to
9 see if the charges have been dismissed?

10 A. No.

11 Q. So as far as you know, there could be tracking
12 sheets, there could be sheets, paperwork over in the
13 clerk's office that dismiss the charges?

14 A. I don't know nothing about going to the clerk of
15 court's office.

16 Q. You want the charges dismissed against you; isn't
17 that right?

18 A. Yes. Because I didn't have anything to do with that
19 what happened.

20 Q. Now, you've also got on your record a possession with
21 intent to distribute heroine; is that right?

22 A. Yeah.

23 Q. You also have on your record unlawful weapon
24 carrying; is that correct?

25 A. Yeah.

1 Q. You have on your record strong armed robbery; is that
2 right?

3 A. Yeah.

4 Q. You have on your record possession of crack; is that
5 correct?

6 A. There's a lot of things on my record.

7 Q. You're a criminal; correct?

8 A. If you say so. I was young back then.

9 Q. You're a criminal; right?

10 MR. WESTON: Objection, Your Honor. Asked and
11 answered.

12 MR. CREECH: He didn't answer. He said if you
13 say so. I'm asking him yes or no.

14 THE COURT: I'll allow him to ask the question.

15 Q. You're a criminal; is that right?

16 A. I don't consider myself a criminal.

17 Q. You don't consider yourself a criminal?

18 A. No.

19 Q. Nothing wrong with going and committing robbery?

20 A. Well, I was young. All that took place before I even
21 turned twenty-five.

22 Q. Nothing wrong with distributing heroine?

23 MR. WESTON: Objection, Your Honor.

24 THE COURT: What's your objection?

25 MR. WESTON: Your Honor, he can impeach him on

1 his convictions, but he can't, he can't editorialize with
2 the witness about them.

3 THE COURT: Ask a question of the witness --
4 I'll allow you to ask a question of him on cross
5 examination.

6 Q. You don't consider distributing heroine a criminal
7 act?

8 A. Yeah, it's a criminal act.

9 Q. Do you consider possessing crack a criminal act?

10 A. Yeah.

11 Q. Now, you gave a statement to law enforcement in this
12 case; is that right?

13 A. Yes.

14 Q. And you knew when you talked to law enforcement you
15 had to be truthful; is that right?

16 A. Depending on the circumstances.

17 Q. Depending on the circumstances? Well, you knew that,
18 you knew that it was important to tell the police
19 everything you knew; isn't that right?

20 A. If my life was at jeopardy, I'm going to do whatever
21 it takes to maintain my safety and my fiance's safety, me
22 and my family.

23 Q. You knew to tell the whole truth to the police; is
24 that right?

25 A. Yeah.

1 Q. You say you were a witness on this night; correct?

2 A. I say I was a witness?

3 Q. You say you were there?

4 A. Yeah.

5 Q. You gave a statement to Detective Flavell; isn't that
6 correct?

7 A. Yeah.

8 Q. And you've seen your statement; is that right?

9 A. Have I seen it?

10 Q. They gave you a copy of it that night; correct?

11 A. Yeah.

12 Q. And isn't it true in your statement that you said you
13 saw two people when you were leaving the apartment; is
14 that right?

15 MR. WESTON: Your Honor, I'm going to objection
16 to him asking him -- once again, the same objection as
17 from yesterday. If he's going to ask him about a specific
18 night in a two year old statement, I think he's got a --
19 the witness has a right to at least see it. He can't
20 remember every word he said in that statement from two
21 years ago. In fairness, he should be allowed to see the
22 statement.

23 THE COURT: If you're asking him questions about
24 his statement, let him see a copy of the statement.

25 Q. Does this look like your statement, Mr. Booker?

1 A. Yeah.

2 Q. And you've had time -- do you need some time to read
3 it? Have you had enough time to look at it?

4 A. Pretty much.

5 Q. Okay. And isn't it true that you said in your
6 statement that as you were leaving the apartment neither
7 of the dudes that came in when I was leaving was Jermaine.
8 That's what you said; is that right?

9 A. Yeah.

10 Q. And let me ask you this. You say you think you saw
11 Jermaine that night; is that right?

12 A. Yeah.

13 Q. And it was dark; correct?

14 A. Yeah.

15 Q. And you're saying that you're certain that it was
16 Jermaine?

17 A. You're asking me or are you telling me this?

18 Q. I'm asking you ---

19 A. You just asked me did I ---

20 THE COURT: Let him ask the question.

21 Q. Are you certain ---

22 THE COURT: Ask him in the form of a question so
23 he can give you an answer.

24 MR. CREECH: Certainly, Your Honor.

25 Q. Were you certain that it was Jermaine that you saw

1 that night?

2 A. I wouldn't put my life on it, no.

3 Q. In fact in your statement you didn't say anything

4 about seeing Jermaine that night; is that true?

5 A. The detectives, they was asking me so many questions.

6 Q. But in your statement you never said you saw Jermaine

7 that night?

8 A. If it was in the statement then I said it.

9 Q. Okay. And if it's not in the statement then it's not

10 true; is that right?

11 MR. WESTON: Objection, Your Honor. That's not

12 what he said.

13 THE COURT: All right. Rephrase your question.

14 Make sure that you ask a question -- responsive -- you

15 want to ask him about what he said, make it responsive to

16 what he just said.

17 Q. What you said in your statement was true; is that

18 right? Is that what I just understood you to say?

19 A. Well, some of it might be true. Some of it might not

20 be true.

21 Q. Okay. You've had a chance to look at your statement.

22 You can look at it again.

23 A. I don't need to look at it again. It's just like I

24 said.

25 Q. There's nothing in this statement that says Jermaine

1 -- where you say Jermaine was there that night; right?

2 And what was your answer for the record, please?

3 A. Ain't nothing in there that says he was there.

4 Q. And your statement was given just two days after this
5 alleged incident; is that right?

6 A. Yeah.

7 MR. CREECH: Your Honor, I have no further
8 questions for this witness.

9 THE COURT: Any redirect?

10 MR. WESTON: Yes, sir, Your Honor.

11 THE COURT: All right.

12 **REDIRECT EXAMINATION**

13 **BY MR. WESTON:**

14 Q. Mr. Booker, you just said in response to counsel's
15 questions that, yeah, you said some things because you
16 didn't want to put your life in jeopardy. What do you --
17 what did you mean by that in terms of this statement?

18 A. I had just seen on the news what had happened no less
19 than fifty yards away from my house. And the detectives
20 were trying to say that I had something to do with it. I
21 wasn't trying to get involved with it.

22 Q. But what do you mean by putting your life in
23 jeopardy?

24 MR. CREECH: I object, Your Honor. He's asked a
25 question. He's given an answer.

1 THE COURT: Overruled.

2 MR. WESTON: Thank you, Your Honor.

3 Q. What do you mean by putting your life in jeopardy?

4 A. I ain't gonna say what the detectives wanted me to
5 say at that time. They -- I would have had some kind of
6 consequences or repercussions or whatever.

7 Q. Are you still worried about suffering consequences or
8 repercussions and your life is in jeopardy?

9 A. As of right now I spent two months in jail. I done
10 paid a couple grand to get out on bond for something I
11 didn't have nothing to do with it. So I'm just here to
12 tell the truth.

13 Q. All right.

14 MR. WESTON: That's all I have, Your Honor.

15 MR. CREECH: Just briefly, Your Honor.

16 THE COURT: Briefly.

17 **RECROSS EXAMINATION**

18 **BY MR. CREECH:**

19 Q. You just said that you didn't want to say what the
20 detectives wanted you to say; is that what I heard you
21 just testified to?

22 A. Say what now?

23 Q. You didn't want to say what the detectives wanted you
24 to say; is that right?

25 A. Exactly.

1 MR. CREECH: Thank you, Your Honor. No further
2 questions.

3 MR. WESTON: Nothing further from the state,
4 Your Honor. I ask that he be released from his subpoena.

5 THE COURT: Any objection?

6 MR. CREECH: No objection.

7 THE COURT: All right. Without objection.
8 Thank you, sir. You've dismissed.

9 MR. WESTON: Your Honor, may we approach?

10 THE COURT: Yes, sir.

11 (WHEREUPON, Mr. Weston and Mr. Creech approached the
12 bar.)

13 THE COURT: Ladies and gentlemen, we need to
14 take just a very short break to make sure the next witness
15 is available. If you'll go back to your jury room. Let
16 me remind you not to discuss the case at this time. We'll
17 call you back in just a few minutes.

18 (WHEREUPON, the jury exited the open court at
19 approximately 11:30 a.m.)

20 THE COURT: We'll be at ease for about ten
21 minutes.

22 (WHEREUPON, court stood at recess for a short break.)

23 THE COURT: Let's have our jury in.

24 (WHEREUPON, the jury entered the open court at
25 approximately 11:38 a.m.)

1 THE COURT: Thank you, ladies and gentlemen.
2 What I mentioned to you yesterday about when we normally
3 break for lunch has not proven to be true today either.
4 We're going to take an early lunch break. We need to
5 logistically get some of the things done about getting the
6 next witnesses here and there are some legal matters that
7 just come up this morning that we need a little time to
8 take care of as well.

9 So I'm going to let you go to lunch and we'll have a
10 little -- you'll have a little extended lunch and we'll
11 get some of these other matters taken care of. If you'll
12 be back at one thirty, hopefully we'll be ready to have
13 the next witness be here to testify at that time.

14 Let me remind you again not to discuss the case with
15 anyone. Don't let anyone discuss the case with you. Have
16 a good lunch. I'll see you back here at one thirty.

17 (WHEREUPON, the jury exited the open court at
18 approximately 11:39 a.m.)

19 THE COURT: We'll be at ease till one thirty.

20 (WHEREUPON, court stood at recess for a lunch break.)

21 THE COURT: Ready for our jury?

22 MR. WESTON: Your Honor, I have one that I need
23 to take up. I think Mr. Creech has one that he needs to
24 take up as well.

25 THE COURT: All right.

1 MR. WESTON: Your Honor, this -- at lunch time
2 when I went back to my office -- I'm always discovering
3 things when I go back to my office -- I got an email from
4 another prosecutor in my office concerning Officer Craig
5 Gardner. Apparently, and I recalled this after I saw the
6 email, I'd forgotten it, and I in good faith represent to
7 this court I had forgotten it, that he was the subject of
8 an internal investigation wherein he gave a false
9 statement to law enforce -- to an internal investigator.
10 He subsequently corrected that. I think was reprimanded.
11 Was not fire.

12 I'm passing over to Mr. Creech what our normal
13 discovery response would have been in that case. And I
14 think Mr. Creech will attest that Mr. -- Officer Gardner
15 was not a part of our initial discovery response because
16 he was not anticipating as being called in this case. We
17 talked about him over the last couple of weeks. We sent
18 Mr. Creech a copy of his incident report in the -- on the
19 theory that he might be called.

20 I neglected to mention this -- what is contained in
21 the document I just handed up as part of the Brady
22 notification to Mr. Creech. So he has already testified.
23 I will put into Mr. Creech's and the court's hands as to
24 how y'all want to resolve it. If you want us to call him
25 back so Mr. Creech can ask him questions concerning the

1 fact that he gave a false statement as part of an internal
2 investigation. If the court feels that his testimony
3 should be discredited altogether and instruct the jury to
4 discount or to not consider his testimony, we would not
5 object to that.

6 But Your Honor, it came to me at lunch time today as
7 a result of an email that another prosecutor sent to me
8 about an unrelated case involving him. And she mentioned
9 that in her email. As a result I made some inquiries and
10 confirmed that this was the state of affairs. So I'm just
11 advising the court of it and just want -- however you wish
12 to resolve it.

13 I don't think his testimony was, was material as it
14 relates to the evidence that would convict this defendant.
15 All he did was participate in an arrest and deliver it --
16 the defendant and two co-defendants to law enforcement.
17 However, if Mr. Creech wants us to call him back so that
18 he can recall him so that we can ask him the question, we
19 can get him back here and he can be our last witness. It
20 shouldn't take but a few minutes. But however y'all wish
21 to handle this is fine with me.

22 THE COURT: Mr. Creech.

23 MR. CREECH: Your Honor, I would move for a
24 mistrial, would be my first motion, as to this issue. And
25 if you decide not to grant that, then I would ask ---

1 THE COURT: I deny that motion.

2 MR. CREECH: Okay. At this point, Your Honor, I
3 would ask that the, that the court just instruct the jury
4 to disregard his entire testimony and strike his testimony
5 from the record.

6 MR. WESTON: And Your Honor, I don't have any
7 objection to that. I would just add to that that the only
8 argument in closing to where it would come up would be the
9 possibility that I would say something to the effect that
10 they were arrested together, which I will agree not to
11 mention. Or reinforce it that they were arrested in the
12 same car in conjunction with each other. So that his --
13 that part of his testimony does not affect their
14 deliberations any further.

15 THE COURT: All right. I'll just instruct them
16 that they'll disregard the testimony in its entirety. It
17 was fairly brief testimony, as I recall, anyhow. I'll
18 give them instructions to that effect.

19 Mr. Creech, is there something you had?

20 MR. CREECH: Yes, Your Honor. There was -- when
21 I was cross examining Mr. Booker he said something about
22 he didn't know the charges had been dismissed against him
23 or something like that. There's obviously no question
24 that they have been dismissed. I mean, the solicitor
25 represented that to us this morning. I would just ask

1 that you -- represented to the court they've been
2 dismissed. I'd ask that you take judicial notice that
3 those charges have been dismissed and explain that to the
4 jury and publish that to the jury, tell them that his
5 charges have been dismissed and are no longer active
6 charges. So that there's not a question at all about the
7 status of his cases.

8 THE COURT: That was announced on the record by
9 the solicitor. Is there an agreed stipulation? Or I can
10 state to the jury that it's been stipulated, as a matter
11 of fact, that all charges related to this incident against
12 Mr. Booker have been dismissed?

13 MR. WESTON: Yes, sir, Your Honor, just for --
14 technically what I said was, and what I still represent,
15 is that we deliver them to the clerk. I think I mentioned
16 that we cannot control when the clerk actually enters them
17 into the computer formally dismissing them.

18 THE COURT: Right.

19 MR. WESTON: But it was our clear intention and
20 aim to dismiss the charges. They have been delivered to
21 the clerk of court's office.

22 THE COURT: I'll just say that the solicitor's
23 office has dismissed the charges then.

24 MR. WESTON: That's fine, Your Honor. I won't
25 object to that. We'll agree to that stipulation.

1 THE COURT: I'll just state that for the benefit
2 -- saying that a stipulation of everybody that those have
3 been done. I'll do that when they first come back.
4 That'll clear that up. And I'll talk about Officer
5 Gardner's testimony and the charge.

6 MR. WESTON: That's fine, Your Honor.

7 THE COURT: Any other housekeeping matters?

8 MR. WESTON: Nothing from the state, Your Honor.

9 MR. CREECH: No, Your Honor.

10 THE COURT: Okay. Let's have our jury come
11 back, please.

12 MR. WESTON: Your Honor, before they come in,
13 just one other -- this is not so much housekeeping. Mr.
14 Creech went through a litany of convictions that Mr.
15 Booker had. Each of the defendants -- co-defendants who
16 are getting ready to testimony have prior convictions. It
17 might be a good idea if we went through those now, because
18 I do not think all of them are admissible, and I want to
19 make sure that we don't -- that they aren't asked about
20 offenses that are outside of ten years or not crimes of
21 moral turpitude or whatever.

22 THE COURT: Have them wait a little bit.

23 Is there any issue on that, Mr. Creech?

24 MR. CREECH: Let's see, as to Irby, we would --
25 he's got a lynching second degree charge.

1 MR. WESTON: That's 1992, Your Honor.

2 MR. CREECH: Yeah, that's from 1992. I would
3 ask in the court's discretion to allow us to ask him.

4 THE COURT: It's too remote. I won't allow
5 that.

6 MR. CREECH: Then he's got a, he's got a 1993
7 unlawful carrying of pistol.

8 MR. WESTON: Your Honor, we would argue that is
9 also too remote.

10 THE COURT: That's too remote.

11 MR. CREECH: Let's see, as to Mr. Cureton ---

12 MR. WESTON: Your Honor, there are some other
13 convictions I want to make sure that he's not going to ask
14 him about any others.

15 THE COURT: Let's just go over everything on Mr.
16 Irby first.

17 MR. CREECH: Your Honor, he has a defrauding an
18 innkeeper from 1997. Of course, that's a crime of
19 dishonesty.

20 THE COURT: I'll allow that.

21 MR. CREECH: All right. He has a resisting
22 arrest from 1997 as well.

23 MR. WESTON: Your Honor, the state would take
24 the position that is twelve years, beyond the ten year
25 period, and therefore too remote.

1 THE COURT: I presume he -- does anybody know
2 about his release date on that? By itself I won't allow
3 that, Mr. Creech.

4 MR. CREECH: They have not provided me ---

5 THE COURT: -- stayed in jail longer ---

6 MR. WESTON: Your Honor, we just have resisting
7 arrest of -- it has convicted, fifteen days. Which Mr.
8 Creech -- we did provide him. It has fifteen days written
9 there.

10 MR. CREECH: All right. That's got fifteen
11 days, Your Honor.

12 MR. WESTON: That would be the sentence that
13 he's aware of, Your Honor.

14 THE COURT: I'll allow that.

15 MR. CREECH: Your Honor, he has a lynching from
16 7/20 of '05, that I'm not seeing any kind of disposition
17 on. So there's no -- I don't know if that charge is
18 pending or if it's going to be dismissed as a result of
19 his cooperation here. From what I can tell from this NCIC
20 report.

21 MR. WESTON: Your Honor, it is not a probable
22 plea agreement, number one. And number two, as far as I
23 can tell, Your Honor, it is, it is not a conviction, as
24 far as we know.

25 THE COURT: We'll leave that one alone then.

1 MR. CREECH: I'm sorry, Your Honor?

2 THE COURT: If it's not a conviction ---

3 MR. CREECH: No.

4 THE COURT: -- then it won't be used.

5 MR. WESTON: Your Honor, the next defendant --

6 if that's all with him, our next witness would be Mark
7 Cureton, Your Honor.

8 MR. CREECH: Your Honor, he has a burglary
9 second from 1997. He received seven years ---

10 MR. WESTON: Your Honor, the state would take
11 the position that it's more than ten years. Another
12 thing, it's too ---

13 THE COURT: Well, he got a seven year sentence.
14 Of course, again, I don't know his release date. I'm
15 assuming it was ---

16 MR. WESTON: More than two years. I understand,
17 Your Honor.

18 THE COURT: -- more than two years I would
19 suspect. So I'll allow him to use that.

20 MR. CREECH: Your Honor, he has a -- Mr. Cureton
21 has a February 6th, 1998 trafficking charge. He received
22 an eighteen year sentence on it. So he was paroled -- my
23 guess is he was paroled after about four years for that
24 sentence.

25 MR. WESTON: Your Honor, we would also concede

1 that it was probably more than two years and ---

2 THE COURT: I'll allow that.

3 MR. CREECH: And he also received a being in
4 possession of a pistol with a worn down serial number in
5 1998 as well. I think he received a five year sentence
6 for that.

7 THE COURT: I'll allow that.

8 MR. CREECH: Your Honor, there have been a
9 number of charges that have been dropped in this case. He
10 was charged, I think, with some form of child neglect that
11 was dismissed.

12 THE COURT: As part of the plea agreement?

13 MR. WESTON: No, sir, Your Honor.

14 MR. CREECH: There were -- Mr. Cureton has pled
15 guilty in front of another judge.

16 THE COURT: So it wasn't dropped, I don't guess.

17 MR. CREECH: Well, he pled on July 18th of 2007
18 to this manslaughter charge. It might be 2008. The
19 transcript says 2007. But that -- soon after that, I
20 think it was the -- beg the court's indulgence just one
21 second. Yeah, this is the printout from the clerk of
22 court public index search. He had a number of charges,
23 including the charges from this case dismissed on 8/29 of
24 '07. But yeah, we have not been -- I mean, if he's
25 representing to the court that those -- all those other

1 charges were not part of this plea agreement -- I just
2 want to bring this to the attention of the court, that all
3 of these charges were dismissed at one time.

4 MR. WESTON: Your Honor, I have the plea
5 agreement in 2007, a year and a half ago. I did -- we did
6 on the record, because I remember specifically in
7 conjunction with Mr. Cureton's attorney, talk about those
8 charges were being dismissed as part of the plea
9 agreement. If -- and this is a year and a half ago, but
10 if Mr. Creech is saying that there were other charges
11 dismissed that same day as these were dismissed, I would
12 have to take the position that I'm the one that dismissed
13 them at the same time. And so I would -- I have no
14 problem with the court taking them into consideration.

15 THE COURT: Well, what's the plea date?

16 MR. CREECH: The plea date is 8/20 -- the plea
17 date on this, on the manslaughter charge, judge, for Mr.
18 Cureton was July the 18th of 2007.

19 THE COURT: And the dismissal was the next
20 month?

21 MR. CREECH: It was on August 29th of '07.

22 THE COURT: Were there other charges dismissed
23 on the scene date, August 29th?

24 MR. CREECH: Yes, Your Honor.

25 MR. WESTON: All right. If they were, Your

1 Honor, like I said, I don't recall any of these charges
2 except I'm ---

3 THE COURT: I'll let, I'll let you go into that
4 as -- I'm sure he can't remember that. I'll let you go
5 into that as another part of the deal, since the dates are
6 the same.

7 MR. CREECH: I've got one number I817540, armed
8 robbery, dismissed, August 29th of '07. I817541, ABWIK,
9 dismissed, 8/29/07. I817542, kidnaping, dismissed on
10 August 29th of '07. The child neglect charge of H942126
11 dismissed, 8/29/07. CDV hand, warrant H942127, dismissed
12 on August 29th of 2007. There was lawful interference, I
13 think, with a custodial order dismissed that same day,
14 August 29th of '07, it's H942128. Two counts of CDV
15 third, dismissed August 29th, 2007.

16 MR. WESTON: Your Honor, like I said, I don't
17 recall any of those other charges. However, I would have
18 to concede that I would have been the one ---

19 THE COURT: I'm not sure the witness might
20 recall all of that. But I'll allow you to ask those
21 questions on everything that was dismissed on that day.
22 How about Mr. Garrett? Is that everything on Mr. Cureton?

23 MR. CREECH: Yes, Your Honor. Except let me --
24 just going back quickly, judge, to Mr. Irby. The only
25 charge that you'll allow me to ask him about is that

1 defrauding an innkeeper; is that correct?

2 THE COURT: Yes.

3 MR. CREECH: Your Honor, from what I can tell as
4 to Mr. Garrett, the only conviction that he has is for a
5 criminal domestic violence first offense. This was a
6 conviction date of 11/17/04. If I'm not mistaken, I think
7 the appellant courts of this state upheld that. Even
8 though it's a thirty day charge, it's admissible to
9 impeach the witness. I think, I think -- now I could be
10 wrong about this, but I thought that it was a -- they've
11 held that that was some sort of common dishonesty that
12 could be used. So I would ask, I would ask to be able to
13 ask him about that.

14 THE COURT: CDV is a crime of dishonesty?

15 MR. CREECH: Yeah. I know it doesn't make
16 intuitive sense, Your Honor, it's not like a theft charge.
17 But if I'm not mistaken there may be an appellant court
18 case out there that allows that.

19 OFF RECORD DISCUSSIONS

20 MR. WESTON: Your Honor, Mr. Garrett is going to
21 be our third witness of the three of them.

22 THE COURT: All right. I'll check on that. The
23 way it stands right now, Mr. Creech, I won't allow you to
24 interrogate or cross examine on the CDV. If I find
25 something to the contrary, you present me something, then

1 I'll bring you up to the bench beforehand and let you know
2 that it will be allowed.

3 MR. CREECH: Thank you, Your Honor.

4 THE COURT: Now let's bring our jury in.

5 (WHEREUPON, the jury entered the open court at
6 approximately 1:58 p.m.)

7 THE COURT: Thank you very much for your
8 patience, ladies and gentlemen. I apologize. We took a
9 little longer getting rid of some -- taking care of some
10 legal matters that we had to take care of.

11 For your information, sometimes there's agreements
12 between counsel, and in this particular case, counsel has
13 agreed to what's called a stipulation basically, and the
14 stipulation is that one of the witnesses who testified,
15 Mr. Booker, had some question about whether or not the
16 charges pending against him relating to this matter,
17 whether they had been dismissed or not. The solicitor has
18 informed the court, stipulated on the record, that those
19 charges against Mr. Booker have in fact been dismissed.
20 So whether he knew that or not, that has happened from the
21 solicitor's office.

22 I've also made a determination during the course of
23 our legal discussions that the testimony that's been
24 offered earlier during the course of this trial by Officer
25 Craig Gardner is to be disregarded, be deleted from the

1 record. So anything that you heard of his testimony in
2 direct examination or cross examination should just be --
3 it will be deleted from the record and should not be
4 considered by you in anyway. I'll try to remind you about
5 that before the deliberation starts. That testimony is no
6 longer pertinent to the case.

7 Solicitor, you may call your next witness.

8 MR. WESTON: Thank you, Your Honor. The State
9 would call Mr. Frederick Irby.

10 **FREDERICK LAMONT IRBY,**

11 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MR. WESTON:**

14 Q. Mr. Irby, do you know the defendant, William Jermaine
15 Henry?

16 A. Yes, sir.

17 Q. Do you see him in the courtroom?

18 A. Yes, sir.

19 Q. Would you point him out to the jury, please, and tell
20 us what he has on?

21 A. He has on a light button-up shirt. He's sitting next
22 to the guy over here.

23 Q. And how do you know Mr. Henry?

24 A. We used to hang out together.

25 Q. How long have you known him, just generally?

- 1 A. A pretty good while.
- 2 Q. Years?
- 3 A. Years.
- 4 Q. All right. Did you have an occasion to be with him
- 5 on March 21st of 2006?
- 6 A. Yes, sir.
- 7 Q. Could you speak up a little bit ---
- 8 A. Yes, sir.
- 9 Q. -- and move a little bit closer to the microphone.
- 10 Thank you, sir. When did you get with him on that date?
- 11 About what time, that morning, that afternoon, that
- 12 evening, what?
- 13 A. I would say early that afternoon.
- 14 Q. All right. Did y'all have an occasion -- well, let
- 15 me step back a second. Do you know the victim in this
- 16 case, Francisco Perez?
- 17 A. Yes.
- 18 Q. How do you know him?
- 19 A. I used to buy weed from him.
- 20 Q. All right. Did they call him Paco?
- 21 A. Paco.
- 22 Q. All right. And so you were just sort of a street
- 23 customer of his; is that correct?
- 24 A. Yes, sir.
- 25 Q. Now, as far as just from your knowledge of Mr. Henry

1 and your knowledge of Mr. Perez, did they know each other?

2 A. From my understanding, yeah.

3 Q. Okay. And on March the 21st, 2006, did the defendant
4 ask you to contact Mr. Perez?

5 A. Yes.

6 Q. Why?

7 A. Because we were gonna rob him.

8 Q. And was this your idea?

9 A. No, sir.

10 Q. Whose idea was it?

11 A. Mr. Henry.

12 Q. All right. Did Mr. Henry tell you why he wanted to
13 rob Mr. Perez?

14 A. Yes.

15 Q. Why did he say he wanted to rob him?

16 A. Because he robbed him.

17 Q. Okay. And were you present during that first
18 robbery?

19 A. No, sir.

20 Q. Did you have anything to do with that?

21 A. No, sir.

22 Q. Were you mad at Mr. Perez?

23 A. No, sir.

24 Q. Okay. So you said the defendant wanted you to
25 contact him, that y'all was gonna rob him. What do you

- 1 mean? Why did he want you to contact him? What was the
2 purpose of you contacting him?
- 3 A. So we could see was he home.
- 4 Q. And did you -- were you able to contact him at home?
- 5 A. At the time he was not at home.
- 6 Q. All right. Did you try again later?
- 7 A. Yes.
- 8 Q. Did Mr. Henry, in your presence, make any other
9 efforts to see if Mr. Perez was home through anybody else?
- 10 A. As far as I know, no.
- 11 Q. Okay. Did y'all end up -- did you go to Mr. Perez's
12 apartment in Ashworth Apartments that evening?
- 13 A. Yes.
- 14 Q. Who all -- well, let's start with, whose car were
15 y'all in?
- 16 A. It was mine.
- 17 Q. And who was with you at first?
- 18 A. It was me, John Michael, Marcus Cureton and Mr.
19 Henry.
- 20 Q. All right. Were John Michael -- you say John
21 Michael. Is that John Michael Garrett?
- 22 A. Yes.
- 23 Q. John Michael Garrett and Michael Cureton, were they
24 with y'all to begin with?
- 25 A. At first, no. We called them up.

1 Q. All right. And did you talk to them or did Mr. Henry
2 talk to them?

3 A. I talked to, I talked to Mr. Cureton and he talked to
4 Mr. Garrett.

5 Q. All right. And did y'all go pick them up?

6 A. Yes.

7 Q. Where did y'all pick up -- who did y'all pick up
8 first?

9 A. Mr. Cureton.

10 Q. And then who did y'all -- where did y'all pick him up
11 from? Do you remember?

12 A. Out in the hood.

13 Q. I'm sorry?

14 A. Jesse Jackson.

15 Q. Okay. And where did y'all pick up Mr. Garrett? Over
16 in Jesse Jackson or somewhere else?

17 A. Somewhere on Pelham.

18 Q. Okay. Was it near the -- Mr. Perez's apartment, in
19 the same area?

20 A. It was in the same area.

21 Q. All right. And when they got in the car did Mr.
22 Henry tell them what he wanted -- what he was going to do?

23 A. We had talked about it.

24 Q. All right. What did Mr. Henry say to them about what
25 he wanted to do?

- 1 A. I can't say what he said to them because I was
2 driving.
- 3 Q. Okay. All right. Once y'all got to the apartments,
4 tell the jury what happened?
- 5 A. Which apartment?
- 6 Q. When y'all got to Paco's apartment?
- 7 A. Okay. I went in to buy some weed.
- 8 Q. Did you go in alone?
- 9 A. No. Mr. Cureton came in behind me.
- 10 Q. All right. Then what happened? Was anybody -- first
11 of all, who was in the apartment?
- 12 A. There was Crum or Booker.
- 13 Q. All right. Let's make sure we're straight on who's
14 who. Crum, is Crum Welton Booker?
- 15 A. He's known as Booker, yes.
- 16 Q. All right. And who else was in the apartment?
- 17 A. Andre Brooks.
- 18 Q. All right. Do they call him Shórtty?
- 19 A. I don't know a nickname by him.
- 20 Q. Okay. But it was Andre Brooks?
- 21 A. Andre Brooks.
- 22 Q. All right. And was Mr. Perez there?
- 23 A. Yes.
- 24 Q. All right. What were they doing when y'all got
25 there?

1 A. They were just doing normal activity, weighing out
2 weed, you know, having fun.

3 Q. All right. And so you and Mr. Cureton you said went
4 in first; is that correct?

5 A. Yes.

6 Q. Tell the jury in your own words what happened then?

7 A. Okay. After that Paco got ready to weigh out my weed
8 and Crum left out and that's when John Michael and Mr.
9 Henry came in behind me. We got into it with Andre Brooks
10 and that's when ---

11 Q. Excuse me. Let me interrupt you. When you say we
12 got into it with Andre Brooks, who is we?

13 A. Me and Mr. Cureton.

14 Q. So you and Mr. Cureton were -- when you say you got
15 into it, tell the jury what you mean by that?

16 A. We had, we had a little fight, like a little fight.

17 Q. So y'all were fighting Andre Brooks?

18 A. Yes, sir.

19 Q. All right. What was Mr. Henry and Mr. Garrett doing?

20 A. Mr. Garrett was in the back searching around.

21 Q. And what was Mr. Henry doing?

22 A. Mr. Henry was already on Paco.

23 Q. All right. Tell the jury what you mean by already on
24 Paco?

25 A. What I mean by he was already on Paco?

- 1 Q. Yeah. What does that mean, on him?
- 2 A. He was standing on top of him, over him.
- 3 Q. All right. Was he holding him against his will?
- 4 A. I can't say that he was because like I said, I was
5 already in a confrontation with Mr. Brooks.
- 6 Q. Okay. So then what happened next?
- 7 A. I heard a shot fired and we all turned around and
8 froze and looked and there was Mr. Henry standing over Mr.
9 Perez.
- 10 Q. And when you say Mr. Henry, you're talking about the
11 defendant?
- 12 A. Yes.
- 13 Q. And did Mr. Henry have a gun in his hand?
- 14 A. Yes.
- 15 Q. All right. And so then what did you do?
- 16 A. I just froze.
- 17 Q. And when did -- do you remember what Mr. Brooks did
18 after the gunshot?
- 19 A. He left.
- 20 Q. Okay. Y'all were on him, but he kind of got out at
21 that time?
- 22 A. Yes.
- 23 Q. All right. After the gunshot, what happened next?
24 After you became unfrozen, so to speak, after you kind of
25 realized what was happening, what happened next?

- 1 A. Okay. I heard two more shots and then everybody
- 2 left.
- 3 Q. All right. When you left where did you go?
- 4 A. Went to the store, grabbed some beer.
- 5 Q. Okay. I assume you got back in the car?
- 6 A. Yeah.
- 7 Q. Who all got back in the car?
- 8 A. Everybody.
- 9 Q. Mr. Garrett too?
- 10 A. Yes. Mr. Garrett, he left on foot.
- 11 Q. Okay. So he didn't get back in the car?
- 12 A. No, he didn't. He left on foot.
- 13 Q. All right. Did you see him again?
- 14 A. No.
- 15 Q. All right. And you went to the store and bought some
- 16 beer?
- 17 A. Yes, sir. We left and went to my aunt's house.
- 18 Q. Okay. Did you shoot anybody?
- 19 A. No, sir.
- 20 Q. When you went in there, was it your, was it your
- 21 thinking that somebody was gonna get shot?
- 22 A. No, sir.
- 23 Q. What did you think was -- Mr. Henry was gonna do?
- 24 A. Just rob Paco.
- 25 Q. Okay. Did Mr. Henry have a gun when he entered the

- 1 residence?
- 2 A. That I'm aware of, no.
- 3 Q. Did anybody have a gun as far as you know?
- 4 A. As far as I know Mr. Cureton did.
- 5 Q. Okay. And it was your understanding this was gonna
- 6 be a robbery?
- 7 A. Yes.
- 8 Q. Was this in Mr. Perez's own home?
- 9 A. Yes.
- 10 Q. Do you know where Mr. Henry got the gun from that he
- 11 shot him with?
- 12 A. No, sir.
- 13 Q. Once y'all left the place did Mr. Henry take the gun
- 14 with him?
- 15 A. Yes.
- 16 Q. All right. Now, you were arrested for this incident
- 17 some days later; is that correct?
- 18 A. Yes.
- 19 Q. And do you remember meeting with Deputy Flavell here
- 20 ---
- 21 A. Yes.
- 22 Q. -- and discussing the incident with him?
- 23 A. Yes.
- 24 Q. Did you give him a statement at that time?
- 25 A. Yes, I did.

1 Q. Okay. Once you were arrested -- excuse me, let's go
2 back to Michael Garrett. Once Michael Garrett ran off and
3 the three of y'all went in the car, from that point to the
4 time you were arrested, did you see Michael Garrett again?

5 A. No.

6 Q. Did you talk to him again?

7 A. No, sir.

8 Q. Did you in anyway confederate with him to talk about
9 what had happened and what you were gonna say happened?

10 A. No, sir.

11 Q. All right. Now, once you were arrested -- once
12 y'all left the place, who got out of the car first? Did
13 Michael Cureton and Mr. Henry go to the same place with
14 you or did you let them out ---

15 A. We all went to the same location.

16 Q. And where was that?

17 A. That was my auntie's house.

18 Q. And how long did y'all stay there?

19 A. Well, it was a pretty good while. I can't say.

20 Probably maybe three or four hours.

21 Q. All right. Did -- okay. Did somebody take Mr.

22 Brooks's cell phone?

23 A. My understanding Mr. Cureton took it.

24 Q. Okay. And that was during the time he was getting

25 beat up?

1 A. Yes.

2 Q. Okay. Did Mr. Cureton agree to this beat down or was
3 he trying to fight y'all off or whatever?

4 A. He didn't try to fight us off.

5 Q. Okay. Now, you were originally charged with murder,
6 armed robbery, kidnaping and assault and battery with
7 intent to kill. Murder of Francisco Perez, armed robbery,
8 kidnaping and assault and battery with intent to kill on
9 Mr. Brooks. Is that correct?

10 A. Correct.

11 Q. Now, you have since entered a plea to a less offense
12 of voluntary manslaughter; is that correct?

13 A. Correct.

14 Q. And the other three charges, armed robbery, kidnaping
15 and assault and battery with intent to kill have been --
16 are being dismissed; is that correct?

17 A. Correct.

18 Q. Now, you have not been sentenced yet; is that
19 correct?

20 A. Correct.

21 Q. Under the terms of your plea agreement, did you
22 understand when you pled guilty, you're still facing up to
23 thirty years in prison?

24 A. Correct.

25 Q. And was part of the agreement that the state would

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1 recommend, however, if you testified truthfully and

2 completely in this trial, a count of fifteen years?

3 A. Correct.

4 Q. But do you understand you could get up to thirty

5 years?

6 A. Correct.

7 Q. Are you telling the same story today that you told

8 pretty much to Detective Flavell when you were arrested?

9 MR. CREECH: I object to that question, Your
10 Honor.

11 THE COURT: I sustain the objection. Rephrase
12 it, if you would.

13 Q. All right. Are you lying today on Mr. Henry to try
14 to save yourself?

15 MR. CREECH: I object to the form of that
16 question. That's a -- that's for the jury to decide, Your
17 Honor.

18 THE COURT: I sustain the objection. Just ask
19 another question, if you would, Mr. Weston.

20 Q. Is it your belief today that you have testified
21 truthfully and completely in this matter?

22 A. Yes, sir.

23 Q. Thank you, sir.

24 THE COURT: You may cross examine the witness,
25 Mr. Creech.

1 MR. CREECH: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. CREECH:

4 Q. Now, Mr. Irby, you were looking at life in prison;
5 correct? Is that right, for your role in this; correct?

6 A. Correct.

7 Q. And now you've got a plea deal with the prosecutor,
8 the state here, they're gonna ask the judge to give you no
9 more than fifteen years; correct?

10 A. I can face up to thirty years.

11 Q. But the prosecutor has made a -- is gonna make a
12 recommendation that you're to get no more than fifteen; is
13 that right?

14 A. From my understanding I'm gonna face up to thirty
15 years.

16 Q. Okay. Did you hear the question I just asked you?

17 A. Yes.

18 Q. Okay. Do you understand that the solicitor is making
19 a recommendation to the court that you get no more than
20 fifteen years? Do you understand that?

21 A. Yeah.

22 Q. The charge that you pled guilty to varies from two to
23 thirty years; isn't that right?

24 A. Correct.

25 Q. So you can get less than fifteen years; correct?

- 1 A. It's possible.
- 2 Q. You can get all the way down to two years; correct?
- 3 A. Correct.
- 4 Q. You were also charged with kidnaping; is that right?
- 5 A. Correct.
- 6 Q. That charge has been dismissed; correct?
- 7 A. Correct.
- 8 Q. You're also charged with armed robbery; is that
- 9 right?
- 10 A. Correct.
- 11 Q. That charge has been dismissed; correct?
- 12 A. Correct.
- 13 Q. You were charged with assault and battery with intent
- 14 to kill. That charge has been dismissed; correct?
- 15 A. Correct.
- 16 Q. On kidnaping you could receive twenty years; is that
- 17 right?
- 18 A. Correct.
- 19 Q. Armed robbery you could have received anywhere from
- 20 ten to thirty years; is that right?
- 21 A. That's correct.
- 22 Q. On the ABWIK, you could have received anywhere up to
- 23 twenty years; is that right?
- 24 A. (Affirmative nod.)
- 25 Q. And all those charges have been dismissed; correct?

1 A. Correct.

2 Q. Now, you admit that you hit this guy in the head,
3 Brooks, with a pistol; is that right?

4 A. No, I didn't hit him in the head with a pistol. We
5 got into a confrontation.

6 Q. Did you hit him?

7 A. Yes, I did.

8 Q. Did anybody else hit him?

9 A. Marcus Cureton.

10 Q. So you and Marcus Cureton hit Mr. Brooks; is that
11 correct?

12 A. Correct.

13 Q. And Mr. Cureton hit Mr. Brooks with a pistol; is that
14 right?

15 A. I can't say. I didn't see that.

16 Q. Okay. Now, this plea deal that you were offered, was
17 that the, was that the first plea deal?

18 A. Was that the first plea deal?

19 Q. Yeah? Did the solicitor come to you and say, all
20 right, we'll offer you fifteen years in exchange for your
21 testimony? Was fifteen years the first offer that you
22 received?

23 A. Yes, sir.

24 Q. You never received an offer for twenty-five years for
25 sharing your testimony?

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- 1 A. No, sir.
- 2 Q. Never received one for twenty years?
- 3 A. No, sir.
- 4 Q. So fifteen was the only offer that you received; is
- 5 that right?
- 6 A. (No verbal response.)
- 7 Q. Now, you've already served three years in jail;
- 8 correct?
- 9 A. Correct.
- 10 Q. And you did that down at the detention center; right?
- 11 A. Yeah.
- 12 Q. So you're gonna get credit on any sentence that you
- 13 have to serve; is that right?
- 14 A. Correct. Hopefully anyway.
- 15 Q. Now, you, in October 2006, while you were down at the
- 16 jail -- well, let me ask this. In October 2006 you saw a
- 17 psychiatrist; is that right?
- 18 A. Yes.
- 19 Q. And you were evaluated by a psychiatrist; is that
- 20 correct?
- 21 A. Correct.
- 22 Q. And a psychiatrist determined that you were
- 23 incompetent; is that right?
- 24 A. Correct.
- 25 Q. You were incompetent to stand trial; is that right?

- 1 A. That's right.
- 2 Q. And that psychiatrist found that you needed
3 medication; is that right?
- 4 A. That's correct.
- 5 Q. And are you taking your medication?
- 6 A. Yes, I am.
- 7 Q. And when you take your medication, that makes you
8 think clearly; is that right?
- 9 A. That's correct.
- 10 Q. Now, on March 21st of 2006, you weren't taking
11 medication; right?
- 12 A. Correct.
- 13 Q. When you were evaluated by the psychiatrist they
14 determined that you had a delusional disorder; is that
15 right?
- 16 A. That's correct.
- 17 Q. You would make things up; correct?
- 18 A. I didn't make anything up, but that's what they said.
- 19 Q. Well, isn't it true that you wanted to commit suicide
20 at one point in time at the jail?
- 21 A. No.
- 22 Q. You were in red pod at the time; is that right?
- 23 A. That's correct.
- 24 Q. Red pod is where the dangerous people are; is that
25 right?

1 A. Yes.

2 Q. And you didn't want to commit suicide while you were
3 in the red pod?

4 A. No.

5 Q. Is it true that you made up that suicide attempt to

6 ---

7 A. Yes.

8 Q. -- try to get out of the red pod?

9 A. Yes.

10 Q. So you made up the fact that you wanted to commit
11 suicide; is that right?

12 A. Correct.

13 Q. And you did that to try to get out of the red pod;
14 correct?

15 A. Correct.

16 Q. Now, Mr. Irby, you -- when you got out of the car you
17 went in the apartment; right?

18 A. Correct.

19 Q. And Mr. Cureton was with you; is that right?

20 A. That's correct.

21 Q. And you and Mr. Cureton had been in the apartment
22 for, how long, five minutes?

23 A. Under five minutes.

24 Q. And then you saw Mr. Garrett come in; is that right?

25 A. Correct.

1 Q. Mr. Garrett went into the back bedroom; is that
2 right?

3 A. That's correct.

4 Q. And when you say you heard a shot, Mr. Garrett was in
5 the back bedroom when you heard that shot; is that right?

6 A. That's correct.

7 Q. You didn't have a gun on you, is that your testimony?

8 A. That's correct.

9 Q. Okay. Now, you -- when you met with police you gave
10 them a statement; is that right?

11 A. Yeah.

12 Q. And you knew to tell the officers everything you knew
13 about the case; is that right?

14 A. That's correct.

15 Q. And you weren't under the influence of any drugs or
16 alcohol when you gave your statement; is that right?

17 A. Right.

18 Q. And you were truthful with the law enforcement
19 investigators; is that correct?

20 A. That's correct.

21 Q. You didn't leave out any important details; is that
22 right?

23 A. That's correct.

24 Q. You testified just a minute that you saw -- you say
25 you saw Jermaine Henry with a gun in his hand; is that

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- 1 correct?
- 2 A. That's correct.
- 3 Q. You saw him with a gun?
- 4 A. Standing over Paco.
- 5 Q. You saw him with a gun?
- 6 A. Yes, sir.
- 7 Q. All right. What was the caliber gun you saw him
- 8 with?
- 9 A. I can't say that, what kind it was. He had his hand
- 10 over it.
- 11 Q. But you saw -- that image of him with a gun is burned
- 12 in your brain; is that right?
- 13 A. Say that again.
- 14 Q. There's no question you saw him with a gun; is that
- 15 right?
- 16 A. That's correct.
- 17 Q. That's a very important part of this case; isn't it?
- 18 A. Yes.
- 19 Q. I'm handing you what -- tell me, is that your
- 20 statement that you gave to law enforcement?
- 21 A. Correct.
- 22 Q. You want a minute just to look at it?
- 23 A. That's it.
- 24 Q. Nowhere in this statement did you say Jermaine Henry
- 25 had a gun; is that right?

- 1 A. That's correct.
- 2 Q. You didn't think to tell law enforcement that he had
3 a gun?
- 4 A. At that time I was just giving the information to the
5 best of my knowledge.
- 6 Q. That was an important detail, wouldn't you admit?
- 7 A. Yeah.
- 8 Q. Now, in your statement did you ever say that you saw
9 Mr. Henry pull the trigger?
- 10 A. I said I saw Mr. Henry standing over Paco.
- 11 Q. Did you ever say that you saw Mr. Henry pull the
12 trigger? Did you say that in your statement?
- 13 A. No, I didn't.
- 14 Q. Did you ever say that you saw Mr. Henry shoot Paco in
15 your statement?
- 16 A. I said I saw Mr. Henry standing over Paco.
- 17 Q. Did you say you saw Mr. Henry shoot Paco in your
18 statement to law enforcement given a few days after this
19 incident? Did you say that to them, did you tell them?
- 20 A. Uh-uh (negative).
- 21 Q. John Michael Garrett, according to your testimony,
22 was in the back bedroom when you heard shots; is that
23 right?
- 24 A. Yes.
- 25 Q. Are you still seeing a psychiatrist?

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1 A. No, sir.

2 MR. CREECH: Thank you, Your Honor. I have no
3 further questions.

4 MR. WESTON: No redirect, Your Honor.

5 THE COURT: All right. Thank you, sir. You may
6 step down.

7 MR. WESTON: Your Honor, state would call Mr.
8 Mark Cureton.

9 THE COURT: All right. Bring Mr. Cureton in,
10 please.

11 MARK CURETON,

12 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. WESTON:

15 Q. Good afternoon, Mr. Cureton. Let me get straight to
16 it, Mr. Cureton. Do you know the defendant, William
17 Jermaine Henry?

18 A. Yes, sir.

19 Q. How do you know him?

20 A. We used to grow up in a neighborhood called Jesse
21 Jackson Town Homes.

22 Q. I'm sorry?

23 A. We grew up together.

24 Q. All right. And did you know -- I don't know what you
25 answer is. Did you know Mr. Perez, Francisco Perez, known

1 as Paco?

2 A. No, sir.

3 Q. Had you ever been in his house before March 21st of
4 2006?

5 A. No, sir.

6 Q. All right. Were you present when Mr. Perez was
7 killed?

8 A. Yes, sir.

9 Q. Okay. Let's talk about that. How did you -- were
10 you with William Jermaine Henry when Mr. Perez was killed?

11 A. Yes, sir.

12 Q. Was Freddie Irby with y'all?

13 A. Yes, sir.

14 Q. And was Michael Garrett with y'all?

15 A. Yes, sir.

16 Q. How did you get with these four people that afternoon
17 or evening or whatever?

18 A. They picked me up from my house. Just getting out of
19 work and they picked me up at my sister's house.

20 Q. Let me stop you right there. And I'm gonna interrupt
21 you as I need to ask you questions. I apologize in
22 advance. Okay? How did -- did you know they were coming
23 to pick you up?

24 A. No, sir.

25 Q. Well, when they arrived, how did you end up getting

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1 with them? What was said by them to get you to go with
2 them?

3 A. They told me ---

4 Q. You need to speak a little louder, so move the
5 microphone a little bit closer to you.

6 A. They told me that they was ---

7 MR. CREECH: Objection, Your Honor.

8 THE COURT: What's your objection?

9 MR. CREECH: Hearsay.

10 THE COURT: I sustain the objection.

11 MR. WESTON: Your Honor, I would argue that
12 these are statements by co-conspirators in furtherance of
13 the criminal act.

14 THE COURT: Well, he can state who it was
15 telling him.

16 MR. WESTON: All right, sir.

17 Q. Did William Jermaine Henry tell you about where y'all
18 were going or what y'all were going to do? Not anybody
19 else, just him?

20 A. Yes, sir.

21 Q. What did William Jermaine Henry say?

22 A. Told me that he was going to rob Francisco Perez.

23 Q. I'm sorry. Speak a little louder.

24 A. He told me that he was going to rob Francisco Perez.

25 Q. Did he say why?

- 1 A. No, sir.
- 2 Q. And you went with him?
- 3 A. Yes, sir.
- 4 Q. Now, when they came and got you, who was in the car?
- 5 A. Just Henry and Frederick Irby.
- 6 Q. All right. And I'm gonna get a little ahead of
- 7 myself. After they got you, where did y'all go?
- 8 A. Went to Willow Creek Apartments.
- 9 Q. And who did you pick up?
- 10 A. John Michael Garrett.
- 11 Q. Okay. Did you know John Michael Garrett?
- 12 A. Yes, sir.
- 13 Q. All right. And did you know Frederick Irby before
- 14 this, too?
- 15 A. Yes, sir.
- 16 Q. All right. So once you picked up John Michael
- 17 Garrett, then what happened?
- 18 A. We left there and went to an apartment that Mr.
- 19 William Henry know a female from. And she wasn't there.
- 20 Once we left there, we went to a Publix right across the
- 21 street, got a twelve pack of Budweiser.
- 22 Q. Okay. Then what happened?
- 23 A. We left there and then tried -- they called somebody
- 24 named Crum, which is known as a crack head name of Crum
- 25 and asked him where was Francisco Perez.

1 Q. Okay. And after y'all -- where were y'all? Were

2 y'all still in the Publix parking lot or whatever?

3 A. We was -- we went from there to ride around in the

4 apartments across the street, the apartments that

5 Francisco Perez lived in.

6 Q. Okay. And did you ultimately go to Francisco Perez's

7 apartment?

8 A. Not just initially. They had to call and see if

9 Francisco Perez -- Mr. Irby called Francisco Perez on his

10 cell phone and ---

11 Q. Don't say what Mr. Perez said now. But he called Mr.

12 ---

13 A. I said Irby, Mr. Irby called Francisco Perez.

14 Q. Okay.

15 A. And asked Francisco Perez did he have any weed.

16 Q. Okay. And after that conversation what did y'all do?

17 A. He told him to wait to come to get weed, they didn't

18 have no weed.

19 Q. So then what happened?

20 A. He just sat there until he -- then he told him that

21 he needed it then at the moment.

22 Q. Did he call him back and say that?

23 A. Yeah.

24 Q. Okay.

25 A. He told him he was in the area and he needed it. So

1 he told him to come on.

2 Q. All right. And so did y'all go to the apartment
3 then?

4 A. Yes, sir.

5 Q. All right. Mr. Cureton, tell the jury what happened
6 once y'all got into the parking lot, who got out and who
7 did what and exactly what happened that evening?

8 A. Okay. Got to the parking lot, got out of the car,
9 got out of the car, then went in. William Henry and Mr.
10 Irby went in. They opened the door, they went in ---

11 Q. Excuse me. Let me interrupt you there. I'm sorry
12 again. So the two of them went in first?

13 A. Yes, sir.

14 Q. And then what happened?

15 A. Once they went in I guess they was robbed. Once they
16 was robbed -- once they got in they called me and Mr. John
17 Michael Garrett.

18 Q. Did you see any -- when you got into the apartment --
19 excuse me. Before you were in the apartment, did you see
20 anybody in the apartment or see anybody come out?

21 A. Mr. Crum, the crack head. He came out. Once they
22 was going in, he came out.

23 Q. Okay. And did he pass right by you?

24 A. Yes, sir.

25 Q. From your vantage point, was he able to see them and

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- 1 recognize them?
- 2 A. Yes, sir.
- 3 Q. No doubt in your mind about that. He was close
- 4 enough to them?
- 5 A. Yes, sir.
- 6 Q. Mr. Welton Booker, or Crum?
- 7 A. Yeah. A/k/a Mr. Crum, he was close enough to see and
- 8 identify he was one of them.
- 9 Q. Okay. And so after they called -- after you came in,
- 10 tell the jury what you saw when you got in the apartment.
- 11 What was going on?
- 12 A. Mr. Andre Brooks was running. Mr. William Henry was
- 13 on top of -- shooting Mr. Francisco Perez.
- 14 Q. Now, where was Andre Brooks going or running to?
- 15 A. Run into the back room.
- 16 Q. Okay. And when you say William Henry was shooting
- 17 Mr. Fernando -- Francisco Perez, where were they at?
- 18 A. They was over by the bar.
- 19 Q. Okay. And how was -- were they standing up or was
- 20 one on top of the other? How were they situated?
- 21 A. He was standing in front of him with a gun. Empty
- 22 gun first.
- 23 Q. Okay. Let's talk about the empty gun. When y'all
- 24 came in did you have a gun?
- 25 A. No, sir.

- 1 Q. Who had a gun?
- 2 A. William Henry.
- 3 Q. Was it loaded?
- 4 A. No, sir.
- 5 Q. How do you know it wasn't loaded?
- 6 A. Because in the car he told us it wasn't loaded.
- 7 Q. Okay. And so once he got in there, how did he shoot
- 8 Francisco Perez?
- 9 A. With his own gun.
- 10 Q. With whose own gun?
- 11 A. Francisco Perez's own gun.
- 12 Q. And so now you're going out -- did you -- what were
- 13 you doing?
- 14 A. I was following Mr. Andre Brooks into the back room.
- 15 Q. All right. Did you catch up with him?
- 16 A. Yes, sir.
- 17 Q. What did you do?
- 18 A. I took him back into the front room. When I took him
- 19 back to the front room, I looked over to my right and I
- 20 seen William Henry shooting Mr. Francisco Perez again.
- 21 Q. After the first shot you saw him shoot once or twice
- 22 more?
- 23 A. Yes, sir.
- 24 Q. Did you specifically see William Henry firing the
- 25 shots that killed Francisco Perez?

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- 1 A. Yes, I did.
- 2 Q. Any doubt in your mind about that?
- 3 A. No, sir. I seen him shoot him. Once I seen him
- 4 shoot him, I checked to see if Mr. Francisco Perez was
- 5 dead, he shot him again.
- 6 Q. All right. Now, what happened to Mr. Brooks?
- 7 A. Mr. Brooks got away.
- 8 Q. How did he run away?
- 9 A. Once he heard the shots, he ran out. Everybody ran
- 10 out.
- 11 Q. Okay. Were you expecting there to be shooting?
- 12 A. No, sir.
- 13 Q. What were you expecting to happen?
- 14 A. Attempting armed robbery.
- 15 Q. Okay. Once -- what happened to Michael -- let's talk
- 16 about Michael Garrett. Where was he in all of this?
- 17 A. Michael Garrett came in, and once he heard the shots
- 18 he ran back out.
- 19 Q. Did y'all get back in the car?
- 20 A. Michael Garrett did not get back in the car.
- 21 Q. What did he do?
- 22 A. He ran away. Far away.
- 23 Q. Okay. Who got back in the car?
- 24 A. Me, Frederick Irby and William Henry.
- 25 Q. Did Mr. Henry say anything in the car on the way back

- 1 to wherever y'all were going about why he shot him?
- 2 A. No, sir.
- 3 Q. Okay. Y'all didn't talk much?
- 4 A. No, sir.
- 5 Q. Why didn't you talk?
- 6 A. I was in shock. I never saw somebody be killed
- 7 before, sir.
- 8 Q. All right. Now, where did y'all go?
- 9 A. Went to Frederick Irby's aunt's house.
- 10 Q. Huh?
- 11 A. Went to Frederick Irby's aunt's house. Her name was
- 12 Patricia Irby.
- 13 Q. How long did y'all stay there, just generally?
- 14 A. We stayed there till the next morning.
- 15 Q. Okay. And during that time y'all didn't talk about
- 16 the shooting?
- 17 A. No, sir.
- 18 Q. You didn't want to talk about it with him?
- 19 A. No, sir.
- 20 Q. Were you afraid?
- 21 A. Yes, sir.
- 22 Q. Now, once the next morning came, did you leave them
- 23 or did y'all go somewhere else together or what?
- 24 A. No, sir. I left. I had to be at family court the
- 25 next morning.

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- 1 Q. All right. And did you, during the night -- well,
- 2 did you take Andre Brooks's cell phone?
- 3 A. No, sir.
- 4 Q. Who took Andre Brooks's cell phone?
- 5 A. Mr. Garrett.
- 6 Q. Did you have an occasion to get his cell phone?
- 7 A. Yes, sir, I used it.
- 8 Q. Did you call your mother?
- 9 A. Yes, sir.
- 10 Q. All right. And after you left the gentleman and went
- 11 to family court, went about your business, did you see
- 12 Michael Garrett anymore? Let's back up from that. After
- 13 he ran off that night out of the apartment, did you see
- 14 him anymore after that?
- 15 A. No, sir.
- 16 Q. You were arrested about three, four, five days later;
- 17 is that correct?
- 18 A. Three days later.
- 19 Q. And between the time Michael Garrett ran off ---
- 20 A. Yes, sir.
- 21 Q. -- and the time you were arrested, did you see
- 22 Michael Garrett?
- 23 A. No, sir.
- 24 Q. Did you communicate with him in anyway?
- 25 A. No, sir.

1 Q. After you left Mr. Irby and -- I don't want to ask
2 you that. I'm sorry. I apologize. When you were
3 arrested you were interviewed by Detective Flavell; is
4 that correct?

5 A. Yes, sir.

6 Q. And you have been in the detention center since that
7 time?

8 A. Yes, sir.

9 Q. And you have entered into a plea agreement with my
10 office; is that correct?

11 A. Yes, sir.

12 Q. Under the terms of the plea agreement, is it true
13 that you've agreed to plead guilty, or you pled guilty to
14 voluntary manslaughter, which is a lesser included offense
15 of murder; is that correct?

16 A. Yes, sir.

17 Q. And as a part of the plea agreement, did -- is our
18 office going to recommend that a cap or no more than a
19 fifteen year sentence for you; is that correct?

20 A. Yes, sir.

21 Q. Do you understand that that is just the
22 recommendation?

23 A. Yes, sir.

24 Q. You understand, and the judge explained to you when
25 you pled guilty, that you could get up to thirty years and

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1 he could disregard the recommendation and give you up to
2 thirty years?

3 A. Yes, sir.

4 Q. And knowing that you still pled guilty?

5 A. Yes, sir.

6 Q. And for your part of the deal, what were you asked to
7 do?

8 A. I was asked to testify against William Henry.

9 Q. All right. Were you asked -- were you told what to
10 say?

11 A. No, sir.

12 MR. CREECH: I object to that, Your Honor.

13 THE COURT: Overruled.

14 Q. Any doubt in your mind William Henry is the man that
15 killed Paco?

16 A. Yes, sir.

17 Q. Now, how did you know -- you've known him for a long
18 time?

19 A. Yes, sir.

20 Q. Is it easy for you to come in here and testify
21 against him and call him a murderer?

22 A. No, sir.

23 Q. But you -- were you expecting him to kill somebody
24 that night?

25 A. No, sir. I never expected that, sir.

1 Q. Aside from what I just went through as far as the
2 terms of your plea agreement, is there any other reason or
3 motivation you've got to lie on William Henry?

4 MR. CREECH: I object, Your Honor.

5 THE COURT: What's your objection?

6 MR. CREECH: Object to the form of the question.
7 He's bolstering his witness essentially.

8 MR. WESTON: I'm going to ask him about -- I'm
9 basically trying to remove any question about any
10 potential bias, Your Honor, or prejudice.

11 THE COURT: Rephrase your question.

12 Q. Are you mad at William Henry about anything other
13 than getting you in this?

14 A. No, sir.

15 Q. Does he owe you money?

16 A. No, sir.

17 Q. Have you been involved in -- did you find out
18 anything bad about him that would hurt you and your
19 family, anything that would cause you to not like him?

20 A. No, sir.

21 Q. And y'all were good friends up until this happened?

22 A. Yes, sir.

23 Q. And had y'all been good friends for a long time
24 before this happened?

25 A. Yes, sir.

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1 Q. By the way, what did William Henry do for a living?

2 A. Sold dope.

3 MR. CREECH: Objection, Your Honor.

4 THE COURT: Overruled.

5 MR. CREECH: For the same grounds, Your Honor.

6 THE COURT: Yes, sir.

7 MR. WESTON: Thank you, sir.

8 THE COURT: You may cross examine the witness.

9 **CROSS EXAMINATION**

10 **BY MR. CREECH:**

11 Q. Mr. Cureton, now you just testified that you -- that

12 Mr. Irby and Mr. Henry went into that apartment before
13 you?

14 A. Yes, sir.

15 Q. And they had been in there for a while; is that
16 right?

17 A. They was in there for about five, five to ten
18 minutes.

19 Q. Mr. Irby and Mr. Henry had; is that right?

20 A. Yes, sir.

21 Q. And then you say you got -- somebody called Mr.
22 Garrett; is that right, from inside?

23 A. Yes, sir.

24 Q. Who was that?

25 A. Mr. Frederick Irby.

- 1 Q. Mr. Irby called; is that right?
- 2 A. Yes, sir.
- 3 Q. And you're one hundred percent certain of that?
- 4 A. Yes, sir.
- 5 Q. And you were sitting in the car there with Garrett?
- 6 A. Yes, sir.
- 7 Q. And you had been in that -- you were in the car for
- 8 five minutes after Henry, Mr. Henry and Mr. Irby got out;
- 9 is that right?
- 10 A. Yes, sir.
- 11 Q. So you didn't go into the apartment first; is that
- 12 right?
- 13 A. Yes, sir.
- 14 Q. You received -- Mr. Garrett received the call on his
- 15 cell phone?
- 16 A. Yes, sir.
- 17 Q. And do you remember what his cell phone number was?
- 18 A. No, sir.
- 19 Q. Well, if that call had been placed, it would be in
- 20 his records; is that right?
- 21 A. Yes, sir.
- 22 Q. And they talked for how long, a minute, two minutes?
- 23 A. Talked for about a minute.
- 24 Q. And you're certain that that phone call took place;
- 25 is that right?

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Mark Cureton - Cross Examination by Mr. Creech

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- 1 A. Yes, sir.
- 2 Q. And that's why you were out in the car; right?
- 3 A. Yes, sir.
- 4 Q. While Mr. Henry and Mr. Irby were in the apartment?
- 5 A. Yes, sir.
- 6 Q. So Mr. -- you and Mr. Garrett were in the car?
- 7 A. Yes, sir.
- 8 Q. Now, and you didn't go in first, you're certain about
- 9 that?
- 10 A. Yes, sir.
- 11 Q. Now, Mr. Cureton, you are no stranger to the law;
- 12 isn't that right?
- 13 A. Yes, sir.
- 14 Q. Matter of fact, in 1997 -- well, 1998 you got
- 15 arrested for trafficking in crack cocaine; didn't you?
- 16 A. Yes, sir, but it was reversed in the courts of
- 17 appeals. It was thrown out of the courts of appeals in
- 18 2001 in November.
- 19 Q. Okay. Well, trafficking cocaine is a serious crime;
- 20 isn't it?
- 21 A. It was reversed in the courts of appeals in 2001 in
- 22 November. It was thrown out by the courts of appeals.
- 23 The supreme court judge -- it's Cureton versus State.
- 24 Q. And you had an eighteen year sentence for that
- 25 charge; is that right?

1 A. It was reversed in the courts of appeals, sir. It's
2 no longer pending. I got released from the penitentiary
3 in 2001, November. It was thrown out by the courts of
4 appeals.

5 Q. And that's according to you; is that right?

6 A. It's court documented.

7 Q. Now, the charges that you received, you were charged
8 with murder in this case?

9 A. Yes, sir.

10 Q. And you were charged with assault and battery with
11 intent to kill?

12 A. I was charged with murder, but I didn't do it. I was
13 charged with assault and battery with intent to kill. I
14 didn't do it.

15 Q. You never hit somebody over the head with a gun?

16 A. No, sir.

17 Q. So you didn't do anything?

18 A. No, sir.

19 Q. You should have never been charged; is that right?

20 A. I should have been charged with attempted armed
21 robbery and I was charged with armed robbery.

22 Q. Well, you pled guilty to manslaughter?

23 A. Yes, sir.

24 Q. Isn't that right?

25 A. Yes, sir.

1 Q. Are you saying you didn't commit manslaughter?

2 A. No, sir.

3 Q. But you pled guilty to it?

4 A. That's correct, yes, sir, because I was in part of
5 the crime.

6 Q. Well, do you remember the day that you pled guilty?

7 A. Yes, sir.

8 Q. It was back in 2007; wasn't it?

9 A. 7/18/07.

10 Q. And you raised your hand and swore to tell the truth?

11 A. Yes, sir.

12 Q. And now you're saying that you didn't commit
13 manslaughter?

14 A. I said I was a part of the crime. I committed
15 manslaughter because I was a part of the crime.

16 Q. Well, let me ask you this. The charge that you got
17 and the deal that you got, you're looking at as little as
18 three years and the state is recommending no more than
19 fifteen years; isn't that right?

20 A. It's better than taking a charge of murder. Right?

21 Q. Well, you tell me?

22 A. Yes, sir.

23 Q. And you say you committed manslaughter; correct?

24 A. Because I was there.

25 Q. Because you were there? Now, if you had been

1 convicted of murder, you would get life in prison; isn't

2 that right?

3 A. Yes, sir.

4 Q. So the deal that you got was a pretty sweet deal;

5 wouldn't you say?

6 A. It was a deal, sir. It was a deal for better than
7 murder, but I pleaded to manslaughter because I was there.

8 And I wasn't man enough to have the decency to call the
9 police and let them know that someone was killed. And I
10 can own up to that.

11 Q. And in fact, you never called the police; isn't that
12 right?

13 A. That's right. That's why I pleaded to manslaughter,
14 because I was a part of that.

15 Q. And you saw this and you never called the police;
16 correct?

17 A. Yes, sir.

18 Q. Now, you say that Jermaine was shooting Paco; is that
19 right?

20 A. Yes, sir.

21 Q. Shooting him when you walked in the apartment; ---

22 A. Yes, sir.

23 Q. -- is that right?

24 A. Yes, sir.

25 Q. And Mr. Irby was already in there; is that right?

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Mark Cureton - Cross Examination by Mr. Creech

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- 1 A. Yes, sir.
- 2 Q. So Jermaine and Irby went in first?
- 3 A. Yes, sir.
- 4 Q. Not you and Irby?
- 5 A. That's correct.
- 6 Q. Now, when you met with the police, how many times did
- 7 you tell the police you saw Jermaine supposedly shoot
- 8 Paco?
- 9 A. I told the police once, sir.
- 10 Q. Was that accurate?
- 11 A. It wasn't accurate because I was in shock. I was
- 12 still shocked and still scared of what I seen, sir. Have
- 13 you ever seen, have you ever seen somebody get murdered?
- 14 Q. Mr. Cureton, I'm gonna ask the questions in this
- 15 case. Okay? All right. You answer the questions that I
- 16 ask.
- 17 A. Yes, sir.
- 18 Q. So you were so scared and you were so shocked; isn't
- 19 that right?
- 20 A. Yes, sir.
- 21 Q. Is that why you went over and ripped the necklace off
- 22 of Paco?
- 23 A. I didn't rip the necklace off Paco, sir.
- 24 Q. Is that why you had the necklace on your person?
- 25 A. Right. I had the necklace on me because somebody

1 gave it to me and I was hoping initially to give it back.

2 Q. And is that why you had those injuries to your hands?

3 A. The injuries to my hands was, sir, when I had an
4 accident when I busted out the window at my house.

5 Q. So you got mad at the officers when they tried to
6 take pictures of that; didn't you?

7 A. Because I told them that they wasn't -- this right
8 here wasn't a part of the incident that took place in the
9 apartment, sir.

10 Q. Now, before you say you went into the apartment, you
11 were smoking marijuana; correct?

12 A. We was smoking marijuana a couple of hours before we
13 went to the apartment.

14 Q. So were you high when you went into the apartment?

15 A. No, I wasn't.

16 Q. When you and Mr. Garrett went into the apartment, you
17 say you saw this shooting take place. Mr. Garrett wasn't
18 in the back room?

19 A. He ran in and ran back out, sir.

20 Q. So when you saw the shooting take place, Mr. Garrett,
21 was he in the back room?

22 A. No, sir.

23 Q. Now, later on I think you testified that you saw
24 Jermaine with a pistol; is that right?

25 A. Yes, sir.

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Mark Cureton - Cross Examination by Mr. Creech

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1 Q. And you're familiar with guns; is that right?

2 A. No, sir, I'm not familiar with guns, but I've seen a
3 couple.

4 Q. Okay. Well, do you know what a 38 caliber looks
5 like?

6 A. Yes, sir.

7 Q. Do you know what a 32 caliber looks like?

8 A. Yes, sir.

9 Q. Do you know the difference between the two?

10 A. Yes, sir.

11 Q. And you say that you saw Jermaine with a 32 caliber;
12 is that right?

13 A. Yes, sir. I saw him with a 38 caliber.

14 Q. And that 38 caliber was unloaded; wasn't it?

15 A. Yes, sir.

16 Q. The 38 caliber was unloaded; is that right?

17 A. Yes, sir.

18 Q. And you saw that before he went in the apartment;
19 correct?

20 A. Yes, sir.

21 Q. And you saw him later with a 32 caliber, according to
22 you; is that right?

23 A. Yes, sir.

24 Q. And do you know what the -- what you say Paco was
25 shot with?

1 A. No, sir. I can't say what he was shot with, because
2 when I seen him shooting, I just seen him shooting a gun.

3 Q. Well, you say the 38 was unloaded before you went in;
4 right?

5 A. Yes, sir.

6 Q. So then he would have had to have been shot with the
7 32, according to you?

8 MR. WESTON: Objection, Your Honor.

9 THE COURT: What's your objection?

10 MR. WESTON: He's basically calling -- he's
11 testifying and calling for a conclusion that he has to be
12 shot -- when he's already said I don't know what he was
13 shot with.

14 THE COURT: I'll allow him to ask the question
15 on cross examination.

16 Q. So according to you, he would have had to have been
17 shot with the 32; is that right?

18 A. Yes, sir.

19 Q. And do you know what bullets were found in Paco?

20 MR. WESTON: Objection, Your Honor.

21 THE COURT: What's your objection?

22 MR. WESTON: There's no foundation for this man
23 knowing what bullets were found in the body. He's already
24 testified he left and he was not there at the autopsy.

25 THE COURT: I'll allow him to answer the

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1 question if he knows the answer.

2 Q. You don't know what bullets were found in Paco; is
3 that right?

4 A. No, sir.

5 Q. Now, Mr. Cureton, you're also known as Lunatic; isn't
6 that right?

7 A. Yes, sir.

8 Q. And you're known as that on the street; correct?

9 A. Not that well, sir.

10 Q. But you're known as Lunatic because you do crazy
11 things; isn't that right?

12 A. No, sir.

13 Q. Okay. People just call you Lunatic for no reason;
14 huh?

15 A. That was a nickname given to me when I was young.

16 Q. And you're saying you never had a gun that night; is
17 that right?

18 A. Yes, sir.

19 MR. CREECH: Your Honor, I have no further
20 questions.

21 THE COURT: Any redirect?

22 MR. WESTON: Just a couple, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. WESTON:**

25 Q. Counsel asked you about a necklace?

- 1 A. Yes, sir.
- 2 Q. Where did you get that necklace from?
- 3 A. I got the necklace from Frederick Irby.
- 4 Q. And when did he give you the necklace?
- 5 A. The night of the murder.
- 6 Q. Does this look like the necklace?
- 7 A. Yes, sir.
- 8 Q. And you got this from Frederick Irby?
- 9 A. Yes, sir.
- 10 Q. Do you know where Frederick Irby got it from?
- 11 A. Yes, sir.
- 12 Q. I'm sorry?
- 13 A. Yes, sir.
- 14 Q. Where did he get it?
- 15 A. From Francisco Perez.
- 16 Q. While he was begin shot?
- 17 A. After he was shot.
- 18 Q. Thank you, sir.

19 MR. CREECH: Just brief, Your Honor.

20 THE COURT: Yes, sir.

21 **RECROSS EXAMINATION**

22 **BY MR. CREECH:**

- 23 Q. Now, you say you never saw John Michael Garrett
- 24 again; is that right?

25 MR. WESTON: Objection, Your Honor. He can only

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1 go into recross on what I brought up on redirect.

2 THE COURT: That's not beyond the scope of the
3 redirect?

4 MR. CREECH: Your Honor, he testified about Mr.
5 Garrett, never seeing Mr. Garrett again. And Mr. Cureton
6 is going to use the phone in this case afterwards. So if
7 he never -- if he didn't take the phone and saying Mr.
8 Garrett did take the phone ---

9 THE COURT: Well, the redirect was related to
10 the necklace; wasn't it?

11 MR. CREECH: It was, Your Honor.

12 THE COURT: All right. I'll sustain the
13 objection.

14 MR. WESTON: Thank you, Your Honor.

15 MR. CREECH: Well, Your Honor, we'd ask in the
16 court's discretion to let me ask these questions about the
17 phone.

18 THE COURT: What ---

19 MR. CREECH: Under cross examination.

20 THE COURT: All right. I'll allow you briefly
21 to go into that.

22 MR. CREECH: Thank you, Your Honor.

23 Q. Now, you say Garrett took the phone; is that right?

24 A. Yes, sir.

25 Q. But you used the phone?

1 A. Yes, sir.

2 Q. Okay. You said you never saw Garrett again?

3 A. That's right, sir.

4 Q. So how did you get the phone from Garrett if he took
5 it and you never used it again?

6 A. Sir?

7 Q. How did you use the phone if you didn't get it from
8 Garrett and you never saw him again?

9 A. I used the phone after he gave it to me.

10 Q. You testified you never saw Garrett again?

11 A. That's right.

12 Q. So how did you get the gun from him -- I mean, the
13 phone from him?

14 A. He gave it to me.

15 Q. After you saw him?

16 A. No, in the house.

17 MR. CREECH: Your Honor, I have no further
18 questions.

19 MR. WESTON: No further questions, Your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 MR. WESTON: Your Honor, the state would call
22 Mr. John Garrett.

23 JOHN MICHAEL GARRETT,

24 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. WESTON:

2 Q. Mr. Garrett, do you know the defendant, William

3 Jermaine Henry?

4 A. Yes, sir.

5 Q. Move a little bit closer to the microphone and move

6 it a little bit closer to you so we can make sure we hear

7 what you're saying?

8 A. Yes, sir.

9 Q. Tell the jury how you know him?

10 A. We grew up together and he have a baby by my sister.

11 Q. So your sister is the mother of his child?

12 A. Yes, sir.

13 Q. All right. So y'all were somewhat close?

14 A. Yes, sir.

15 Q. All right. Did you know Francisco Perez?

16 A. No, sir.

17 Q. Had you ever seen him before March 21st, 2006?

18 A. No, sir.

19 Q. Had you ever been to his place of residence before

20 2006?

21 A. No, sir.

22 Q. Did you have an occasion to be present when Francisco

23 Perez was shot on March 21st, 2006?

24 A. Yes, sir.

25 Q. Okay. I'm gonna have you tell the jury what

1 happened. But I'm gonna ask you some specific questions.

2 Okay?

3 A. Yes, sir.

4 Q. How did you -- well, let's start with the bottom line

5 question. Who shot Francisco Perez?

6 A. William Jermaine Henry.

7 Q. Would you point to him and describe him to the jury,

8 please?

9 A. He's the man that's sitting right over here.

10 Q. This is the man who's the father of your sister's

11 child?

12 A. Yes, sir.

13 Q. And did you see him shoot Francisco Perez?

14 A. Yes, sir.

15 Q. Let's go back a couple of hours. How did you get to

16 be in this mix?

17 A. Well, I was, I was at a friend's house early that

18 day. Mr. Henry called me on the phone and said that he

19 had something, he had something for me. And I was like,

20 what's up? And he asked me where I was. So I told him

21 where I was. And I walked out to meet him. And I got in

22 the car with him and ---

23 Q. Excuse me. Let me interrupt you right there. I'm

24 sorry. Who else was in the car?

25 A. Frederick Irby and Mark Cureton.

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1 Q. All right. And when you got in the car, where did --
2 did Mr. Henry tell you where y'all were going and what
3 y'all were going to do?

4 A. Yes, sir.

5 Q. What did Mr. Henry say? Just tell us what Mr. Henry
6 said, not the other two gentlemen. Where did Mr. Henry
7 say y'all were going or what were y'all going to do and
8 why?

9 A. Well, he said that him, and I guess the dude,
10 Francisco Perez, or whatnot, they had had some kind of
11 altercation with each other. And he said that they was
12 going to, you know, rough him up a little bit.

13 Q. Did he say why he was going to do that? Why he had
14 to go do that?

15 A. Yeah. He said that he had tried to rob him or
16 something.

17 Q. Okay. And what was your understanding as to why you
18 were getting in the car to go with him?

19 A. I was just, I was just going basically to watch his
20 back.

21 Q. Okay. Were you armed?

22 A. No, sir.

23 Q. Were there -- was anybody else armed?

24 A. Yes, sir.

25 Q. Who was armed?

- 1 A. Mark Cureton.
- 2 Q. All right. And was the gun loaded; do you know?
- 3 A. No, sir.
- 4 Q. Was there some discussion about going to rob somebody
- 5 with an unloaded gun?
- 6 A. Yes, sir.
- 7 Q. What did you think about that?
- 8 A. I thought it was, I thought it was real stupid. I
- 9 thought it was really like a suicide mission.
- 10 Q. All right. So did y'all go to Ashworth Apartments
- 11 that evening?
- 12 A. Yes, sir.
- 13 Q. Before you went there how did y'all know Mr. Perez
- 14 would be home?
- 15 A. Jermaine or either Frederick Irby, they called some
- 16 dude name Crum or something and asked him was he at home
- 17 and ---
- 18 MR. CREECH: Objection, Your Honor.
- 19 THE COURT: What's your objection?
- 20 MR. CREECH: Hearsay.
- 21 Q. Do you remember which one it was that called?
- 22 A. Both of them called.
- 23 Q. Well, let's talk about when Jermaine called. What
- 24 did he ask -- what did he say to Crum on the phone?
- 25 A. I can't recall, sir.

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- 1 Q. Okay. Did y'all go straight to the apartment?
- 2 A. No. We went to, we went to some other lady's
- 3 apartment.
- 4 Q. Okay. And then where did you go?
- 5 A. After that Mr. Perez had called back and told Mr.
- 6 Irby to come on.
- 7 Q. So did y'all go on over there then?
- 8 A. Yes, sir.
- 9 Q. And when you got there did you see anybody outside or
- 10 coming out or anything?
- 11 A. Yes, sir.
- 12 Q. Who did you see?
- 13 A. The dude named Crum.
- 14 Q. All right. And where were y'all when you saw him?
- 15 A. We was walking up.
- 16 Q. Okay. And was it the four of y'all walking up?
- 17 A. Sir?
- 18 Q. Was it the four of y'all walking up?
- 19 A. No, sir.
- 20 Q. Who was walking up?
- 21 A. Me and Jermaine.
- 22 Q. Jermaine Henry?
- 23 A. Yes, sir.
- 24 Q. Did y'all walk past Crum?
- 25 A. He walked past us.

- 1 Q. I'm gonna come up here and I want you to be -- how
2 close was Crum or Welton Booker to y'all? Let me know
3 when to stop?
- 4 A. He walked right toward us that way.
- 5 Q. Was he this close pretty much?
- 6 A. No. He wasn't that close.
- 7 Q. About this far?
- 8 A. A little bit backwards.
- 9 Q. About right here?
- 10 A. Yes, sir.
- 11 Q. Did y'all acknowledge each other, like make eye
12 contact?
- 13 A. I looked at him.
- 14 Q. Did he look at y'all?
- 15 A. Yeah. He looked.
- 16 Q. Was there anything to keep him from seeing y'all or
17 recognizing y'all? Any trees?
- 18 MR. CREECH: I object, Your Honor, to the form
19 of the question.
- 20 THE COURT: Overruled.
- 21 Q. Were there any trees or any obstacles to keep Welton
22 Booker from seeing y'all?
- 23 A. No, sir.
- 24 Q. And you recognized him?
- 25 A. Yes, sir.

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1 Q. Okay. Did y'all say anything to each other or did he

2 say anything to Mr. Henry?

3 A. No, sir.

4 Q. All right. After he walked out and the two of y'all

5 were walking towards the apartment -- how far were y'all

6 from the apartment door when y'all passed him, by the way?

7 Assuming that back door there is the apartment door?

8 A. How far -- what's the question?

9 Q. Where did y'all pass him at? Was he at the door, the
10 apartment door?

11 A. He was coming, he was coming out of the door.

12 Q. So he was just coming out of the door as y'all were
13 maybe about this far from him, somewhere around this far?

14 A. Probably a little bit backwards -- a little bit
15 further. Probably about like right there.

16 Q. So y'all were about ten or fifteen feet from the
17 door?

18 A. Yes, sir.

19 Q. All right. Now, why was it just the two of y'all at
20 that point? Where were the other two guys?

21 A. They was already in the apartment.

22 Q. Okay. And that would be Mr. Irby and Mr. Cureton?

23 A. Yes, sir.

24 Q. All right. And so did y'all go right on in or did
25 you wait outside or what?

- 1 A. We walked in.
- 2 Q. All right. When you came in tell the jury who was in
3 the apartment?
- 4 A. It was Frederick Irby, Francisco Perez and Mark
5 Cureton and some other, some other guy, Andre Brooks.
- 6 Q. Did you know Andre Brooks?
- 7 A. I went to school with him a long time ago. I hadn't
8 seen him in a while though.
- 9 Q. Okay. What were they doing in there when y'all came
10 in?
- 11 A. When we came in Mr. Cureton had the gun on Francisco
12 Perez.
- 13 Q. And then what happened?
- 14 A. And then we walked in, Mr. Henry walked over to him
15 and they was saying, where the gun at, where the gun at?
- 16 Q. They were saying that to who?
- 17 A. To Perez, Francisco Perez.
- 18 Q. Okay. Now, where were you standing in all of this or
19 what were you doing?
- 20 A. I was standing by the door with a beer in my hand.
- 21 Q. All right. And then what happened?
- 22 A. And then he took the gun from him.
- 23 Q. Where did he get it from?
- 24 A. From his waist.
- 25 Q. He took it from Francisco Perez's waist?

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- 1 A. Yes, sir.
- 2 Q. And you saw that?
- 3 A. Yes, sir.
- 4 Q. Who did you see take the gun from his waist?
- 5 A. Mr. Henry.
- 6 Q. All right. And then what happened?
- 7 A. And he, he shot him.
- 8 Q. Where did he shoot him?
- 9 A. Sir?
- 10 Q. Where did he shoot him, in the chest, the head,
- 11 where?
- 12 A. I don't, I don't know. I mean, the only thing I know
- 13 he pointed the gun and the gun went off.
- 14 Q. And when he shot him did Mr. Perez fall?
- 15 A. Yes. He was already down on the ground.
- 16 Q. Okay. So was Mr. Henry over him?
- 17 A. Yes, sir.
- 18 Q. Where had Mr. Cureton gone at this point?
- 19 A. Mr. Cureton, Mr. Cureton once -- Mr. Cureton had went
- 20 in the back room and grabbed the other dude, Andre Brooks,
- 21 out of the room.
- 22 Q. All right. Did they bring Mr. Brooks back into the
- 23 living room?
- 24 A. Yes, sir.
- 25 Q. All right. And where were you standing -- assuming

1 this is the door to the apartment here again, the entry
2 door. I know there's a living room area out here and at
3 some point over here goes into the back. But assume this
4 is the door to the apartment. I'm gonna start walking
5 towards you. I want you to tell me to stop when I get to
6 about how far you were into the apartment?

7 A. About right there.

8 Q. Okay. Did you fight with Mr. Brooks?

9 A. No, sir.

10 Q. Did you hold Mr. Perez down?

11 A. No, sir.

12 Q. Did you struggle with him?

13 A. No, sir.

14 Q. Were you just standing there with your beer in your
15 hand?

16 A. Yes, sir.

17 Q. Were you expecting any of this?

18 A. No, sir.

19 Q. Once you saw this -- Mr. Henry shoot this man, what
20 did you do?

21 A. I took off running and ran out of the house.

22 Q. Did you go get back in the car?

23 A. No, sir.

24 Q. Where did you go?

25 A. I ran back down the street from where I was.

1 Q. And ---

2 A. Like right down the street, about three minutes down
3 the street.

4 Q. And after you went back to wherever you were, did you
5 see Mark Cureton -- well, let's go on through your story.

6 After you ran away, tell me what you were thinking?

7 A. I was fixing to go to jail.

8 Q. Okay. Were you scared?

9 A. Yes, sir, I was scared.

10 Q. All right. Now, how did you find out about the
11 investigation into this murder?

12 A. I watched the news the next morning and that's when I
13 found out. I didn't know that the man had got killed. I
14 found out the next morning when I watched the news.

15 Q. Did you find out subsequently that there was a
16 warrant for your arrest outstanding sometime later?

17 A. Yes, sir.

18 Q. How did you find that out?

19 A. Somebody, somebody called me and told me that they
20 seen my face on the news.

21 Q. And so what did you do?

22 A. I called my mother and told her where I was. Well, I
23 had got drunk, you know, I was so nervous. And I called
24 my mother and told her where I was and they came and got
25 me and I came and turned myself in.

- 1 Q. All right. Once you turned yourself in did you at
2 some point meet with Detective Flavell?
- 3 A. Yes, sir.
- 4 Q. Did you give him a statement?
- 5 A. Yes, sir.
- 6 Q. Okay. Did you have any beef with Francisco Perez?
- 7 A. No, sir.
- 8 Q. Did you expect to kill him?
- 9 A. No, sir.
- 10 Q. Not you, but did you expect that he was gonna be
11 killed?
- 12 A. No, sir.
- 13 Q. Did you know Andre Brooks was gonna even be in the
14 apartment?
- 15 A. No, sir.
- 16 Q. Now, Andre Brooks, was he beaten when all this was
17 going on?
- 18 A. Yes, sir.
- 19 Q. All right. And who was doing the beating on him?
- 20 A. Mark Cureton and Frederick Irby.
- 21 Q. And they were over in the corner kind of once he was
22 brought back out of the bedroom?
- 23 A. Yes, sir.
- 24 Q. Now, once the shot rang out, did you see Andre Brooks
25 leave?

1 A. When I ran out, when I ran out, I had -- the beer I
2 had in my hand, I dropped the beer and before I got -- as
3 soon as I ran out, I recognized that I had dropped my --
4 dropped the beer, I went back in. And when I got the --
5 when I was getting ready to go back in, that's when he ran
6 out.

7 Q. And was he still dressed?

8 A. No, sir.

9 Q. Tell the jury what he looked like in terms of his
10 clothing?

11 A. I mean, he had on some boxer shorts and some socks
12 and he didn't have no shirt on.

13 Q. All right. And when you first came in did he have on
14 a shirt and pants?

15 A. Yes, sir.

16 Q. All right. So this happened to him during the
17 beating?

18 A. I guess so.

19 Q. Once you came in there and grabbed your beer, what
20 did you do?

21 A. I ran back out, I ran back out of the apartment.

22 Q. All right. Now, you have pled guilty to voluntary
23 manslaughter; is that correct?

24 A. Yes, sir.

25 Q. And that is a reduction from the murder charge; is

1 that correct, sir?

2 A. Yes, sir.

3 Q. And in exchange for your plea, the state has agreed
4 to recommend a fifteen year sentence tops, a cap of
5 fifteen years, no more than fifteen years against you; is
6 that correct?

7 A. Yes, sir.

8 Q. And you are awaiting sentencing?

9 A. Yes, sir.

10 Q. And the other charges against you in this matter have
11 been dismissed?

12 A. Yes, sir.

13 Q. And as far as you know, you have no other charges
14 pending in Greenville County right now?

15 A. No, sir.

16 Q. All right. And in exchange for that testimony what
17 are you, what are you required to do?

18 A. Would you ---

19 Q. What are you required -- excuse me. In exchange for
20 that deal, what are you required to do?

21 MR. CREECH: I object, Your Honor. I would
22 object to this question, Your Honor.

23 THE COURT: Overruled.

24 MR. WESTON: Thank you.

25 Q. Tell the judge -- tell the jury what you're required

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1 to do to get that deal?

2 A. Testify truthfully about what happened.

3 Q. And are you doing that?

4 MR. CREECH: Object, your objection, to the form
5 of the question.

6 THE COURT: Overruled.

7 Q. I'm sorry. Repeat that. Are you doing that?

8 A. Yes, sir.

9 Q. Aside from this incident here -- this has affected
10 your life, obviously, significantly; is that correct?

11 A. Yes, sir.

12 Q. Aside from the effect that this shooting has had on
13 your life, prior to that moment in time, had you any beef
14 with William Jermaine Henry?

15 A. No, sir.

16 Q. Y'all were okay, like brother-in-laws?

17 A. Yes, sir.

18 Q. And did you have any beef with Francisco Perez?

19 A. No, sir.

20 MR. WESTON: Excuse me one second, Your Honor.

21 THE COURT: Yes, sir.

22 MR. WESTON: Thank you, sir.

23 THE COURT: You may cross examine the witness.

24 MR. CREECH: Thank you, Your Honor.

25

CROSS EXAMINATION

1 BY MR. CREECH:

2 Q. Now, Mr. Garrett, you say you were just there; is
3 that right?

4 A. Yes, sir.

5 Q. And you didn't know any of this was going to take
6 place; is that right?

7 A. I didn't know no killing was gonna take place.

8 Q. Never expected for anybody to get killed; is that
9 right?

10 A. Yes, sir.

11 Q. Never planned it?

12 A. Yes, sir.

13 Q. That's right?

14 A. Yes, sir.

15 Q. Okay. Now, at the time when all this was going down,
16 were you, were you employed anywhere?

17 A. No, sir.

18 Q. And in fact, you were having to make child support
19 payments at that time; is that right?

20 A. Yes, sir.

21 Q. But you weren't working anywhere to make those
22 payments; correct?

23 A. Yes, sir.

24 Q. So you made the decision that you were going to start
25 selling drugs; is that right?

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- 1 A. No, sir.
- 2 Q. Prior to this happening, you weren't selling drugs?
- 3 A. No, sir.
- 4 Q. And you remember when you met with investigators; is
- 5 that correct?
- 6 A. Yes, sir.
- 7 Q. And you remember telling the investigators that you
- 8 sold drugs?
- 9 A. I probably told him I have sold drugs. But at the
- 10 time I was not selling drugs.
- 11 Q. Okay. You signed a statement; is that right?
- 12 A. Yes, sir.
- 13 Q. And the statement that you signed, is this it?
- 14 A. Yes, sir.
- 15 Q. And that statement says that you're in a financial
- 16 bind right now; correct?
- 17 A. Yes, sir.
- 18 Q. You're behind on your child support payments; right?
- 19 A. Yes, sir.
- 20 Q. And food stamps got cut; correct?
- 21 A. Yes, sir.
- 22 Q. That was not enough to feed your child; is that
- 23 right?
- 24 A. Yes, sir.
- 25 Q. It says the only income I have is from the streets;

1 is that correct?

2 A. Yes, sir.

3 Q. You left the drugs alone a while back and you can't
4 make it; is that right?

5 A. Yes, sir.

6 Q. So how were you paying child support if you weren't
7 working?

8 A. I mean, there's all kind of, there's all kind of
9 different ways of hustling in the street, sir. Gambling,
10 all kind of things you can do.

11 Q. But you were at one point selling drugs; is that
12 right?

13 A. Yes, sir.

14 Q. And when you sold drugs you chose not to work; is
15 that right?

16 A. No. The only time I sold drugs, sir, is when I
17 didn't have a job. But I mostly kept a job, you know. If
18 I did, if I did sell drugs it wasn't that long, because
19 I'd end up getting me a job.

20 Q. But every time you sold drugs you knew you were
21 breaking the law?

22 A. Yes, sir.

23 Q. And you had to take steps to avoid getting caught;
24 right?

25 A. Yes, sir.

1 Q. You had to be careful with what you did so that the
2 police didn't catch you?

3 A. Yes, sir.

4 Q. And you had to think it out and plan it before you
5 sold drugs; is that right?

6 A. Think it out and planning, ---

7 Q. Yeah?

8 A. -- I wouldn't just say that.

9 Q. Well, you had to make sure that you didn't get
10 caught; is that right?

11 A. I mean, yes, sir.

12 Q. You were careful, would you say that?

13 A. Yes, sir.

14 Q. You knew it was illegal?

15 A. Yes, sir.

16 Q. Now, you've gotten a plea deal in this case; is that
17 right?

18 A. Yes, sir.

19 Q. And you're looking at a substantially less sentence
20 in prison than what you would have gotten on a murder
21 charge; is that right?

22 A. Yes, sir.

23 Q. And to get that deal you have to testify; is that
24 right?

25 A. Yes, sir.

1 Q. And you've got to testify that Jermaine did it;

2 correct?

3 A. I've got to testify truthfully.

4 Q. Oh, okay. You've got to testify consistent with your

5 statement; correct?

6 A. Yes, sir.

7 Q. Okay. Now, when you went to the apartment that night

8 ---

9 A. Yes, sir.

10 Q. -- you say Jermaine was with you; is that right?

11 A. Yes, sir.

12 Q. And you were in the car as it pulled into the parking

13 lot; correct?

14 A. Yes, sir.

15 Q. And this was the parking lot at Ashworth; right?

16 A. Yes, sir.

17 Q. And you got out -- you were -- you got out of the car

18 before Mark Cureton; is that correct?

19 A. Yes, sir.

20 Q. You got out of the car before Frederick Irby; is that

21 right?

22 A. I got out of the car before -- did you say before?

23 Q. Yeah, before Frederick Irby?

24 A. No, sir.

25 Q. You got out of the car before Mark Cureton then?

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1 A. No, sir.

2 Q. So they got out first; is that right?

3 A. Yes, sir.

4 Q. So Mr. Cureton got out first; is that correct?

5 A. Yes, sir.

6 Q. So Mark Cureton went into the apartment before you;

7 is that right?

8 A. Yes, sir.

9 Q. Mr. Irby was in the apartment before you; is that

10 right?

11 A. Yes, sir.

12 Q. And that's your testimony?

13 A. Yes, sir.

14 Q. Now, when you went into the apartment you went into

15 that back bedroom; is that right?

16 A. Yes, sir.

17 Q. And were you back there by yourself?

18 A. Yes, sir.

19 Q. Did you start going through the drawers?

20 A. Yes, sir.

21 Q. Did you pull the drawers out of the chest?

22 A. No, sir.

23 Q. Were you looking for something to steal back there?

24 A. Yes, sir.

25 Q. What were you looking to steal?

- 1 A. I was just looking around to see what was in there.
- 2 Q. But you were in there and you were gonna steal
- 3 something; is that right?
- 4 A. Yes, sir.
- 5 Q. You ransacked that back bedroom?
- 6 A. Not totally.
- 7 Q. But you tore it up; isn't that right?
- 8 A. Yes, sir.
- 9 Q. So you were in that back bedroom how long?
- 10 A. Not that long.
- 11 Q. You were back there when the shots were fired; is
- 12 that correct?
- 13 A. No, sir.
- 14 Q. So you were not in the back bedroom when the shots
- 15 were fired; is that right?
- 16 A. No, sir.
- 17 Q. When you went into the apartment you had a Bud Light
- 18 beer can; right?
- 19 A. Yes, sir.
- 20 Q. You were drinking it while you were inside?
- 21 A. Yes, sir.
- 22 Q. You took it into the back bedroom with you?
- 23 A. No, sir.
- 24 Q. You left that beer can in the back bedroom; is that
- 25 right?

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- 1 A. In the back bedroom?
- 2 Q. Yeah?
- 3 A. I can't, I can't recall, sir.
- 4 Q. You left the beer can in the apartment; is that
- 5 right?
- 6 A. Yes, sir.
- 7 Q. And you went outside; correct?
- 8 A. Yes, sir.
- 9 Q. And you remembered that beer can was inside the
- 10 apartment; right?
- 11 A. Yes, sir.
- 12 Q. You went back in to get it; is that correct?
- 13 A. Yes, sir.
- 14 Q. And you did that because you knew your fingerprints
- 15 were on that beer can; is that right?
- 16 A. Yes, sir.
- 17 Q. And you didn't want them finding that beer can with
- 18 your fingerprints on it; is that right?
- 19 A. Yes, sir.
- 20 Q. And you knew they could trace it back to you; is that
- 21 right?
- 22 A. Yes, sir.
- 23 Q. So you went in -- back in to get that evidence;
- 24 correct?
- 25 A. Yes, sir.

1 Q. You got that beer so you wouldn't get caught; isn't
2 that right?

3 A. Yes, sir.

4 Q. Now, when you were in that apartment you took a cell
5 phone from that apartment; didn't you?

6 A. No, sir.

7 Q. After you say Paco was shot you didn't steal that
8 cell phone?

9 A. No, sir.

10 Q. You saw Mark Cureton with Paco's cell phone?

11 A. No, sir.

12 Q. You saw Mark Cureton with the other dude's cell
13 phone?

14 A. No, sir.

15 Q. You never saw Mark Cureton with a cell phone?

16 A. No, sir.

17 Q. You never gave him a cell phone?

18 A. No, sir.

19 Q. You never took the cell phone from him?

20 A. No, sir.

21 Q. Now, you say you had just witnessed a crime; is that
22 right?

23 A. Yes, sir.

24 Q. And there was a phone in that apartment; isn't that
25 right?

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- 1 A. I don't know.
- 2 Q. Did you see it when you went in the back bedroom?
- 3 A. No, sir.
- 4 Q. You never touched that phone?
- 5 A. No, sir.
- 6 Q. And you didn't think to call 911 to report the crime
- 7 that you had just witnessed?
- 8 A. I was, I was scared. I was terrified. I mean, the
- 9 main thing, I was just trying to just get away.
- 10 Q. Because you were guilty; is that right?
- 11 A. Guilty of what?
- 12 Q. Guilty of murder?
- 13 A. No, sir.
- 14 Q. So you just ran?
- 15 A. Yes, sir.
- 16 Q. You never called the police; is that right?
- 17 A. No, sir.
- 18 Q. You knew what you saw was wrong; isn't that right?
- 19 A. Yes, sir.
- 20 Q. You knew what you did was wrong; isn't that right?
- 21 A. What did I do?
- 22 Q. You tell me?
- 23 A. By going in, by going in the apartment, by going with
- 24 them when they said that they was going to do what they
- 25 was going to do, yes, sir, I was guilty.

1 Q. Now you're saying you tried to say what you told
2 investigators is that you had nothing to do with this;
3 isn't that right?

4 A. I had nothing to do with the murder. No, sir, I
5 didn't. And that's the truth.

6 Q. Well, you went into the police officers and you said
7 you wanted to tell what happened in this, you didn't have
8 anything to do with it?

9 A. Exactly.

10 Q. But you did; isn't that right?

11 A. I had something to do with what they was going to
12 rough him up, but not for the murder, sir.

13 Q. Well, you went home that night; is that right?

14 A. No, sir.

15 Q. You went to a friend's house that night?

16 A. Yes, sir.

17 Q. You had access to a phone there; is that right?

18 A. I can't remember if she had a phone. I had a cell
19 phone myself, sir.

20 Q. You knew how to dial 911; isn't that right?

21 A. Yes, sir.

22 Q. You knew where the Law Enforcement Center was?

23 A. Yes, sir.

24 Q. You knew where the police were?

25 A. Yes, sir.

- 1 Q. You never reported this to the authorities until they
- 2 came looking for you; isn't that right?
- 3 A. Yes, sir.
- 4 Q. And you ran off to Charlotte; is that correct?
- 5 A. No, sir.
- 6 Q. Or did you go to Georgia?
- 7 A. I went to Georgia.
- 8 Q. Okay. Do you remember telling law enforcement that
- 9 you went to Charlotte?
- 10 A. Yes, sir.
- 11 Q. And that wasn't true; was it?
- 12 A. No, sir.
- 13 Q. So you made that up to law enforcement; isn't that
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. You told the police a lie; isn't that right?
- 17 A. Yes, sir.
- 18 Q. And you chose to make that lie; correct?
- 19 A. Yes, sir.
- 20 Q. You knew you had to get away so that you could get
- 21 your thoughts together on this case; isn't that right?
- 22 A. No, sir.
- 23 Q. You knew you had to come up with a story; correct?
- 24 A. No, sir.
- 25 Q. You knew you had to figure out what you were going to

1 say; isn't that correct?

2 A. No, sir.

3 Q. You knew you were in trouble?

4 A. Yes, sir.

5 Q. You knew you had done something wrong?

6 A. Yes, sir.

7 Q. But you told the police that you had nothing to do
8 with it? Isn't that right?

9 A. Yes, sir.

10 Q. Now, that same night you saw some other people too, I
11 think it was over -- because according to you -- did you
12 get picked up by the -- you got picked up by Mr. Cureton
13 and Mr. Irby; is that right?

14 A. No, sir. Did I get -- at the beginning?

15 Q. Yeah?

16 A. Yes, sir.

17 Q. And then you got dropped off somewhere; right?

18 A. No, sir.

19 Q. Well, do you remember people asking you what had
20 happened?

21 A. When?

22 Q. Where did you go, what apartments did you go to after
23 this?

24 A. I went to Jesse Jackson Town Homes.

25 Q. Okay. And do you remember telling your friends -- do

- 1 you remember your friends asking you what was going on,
- 2 what happened?
- 3 A. No, sir.
- 4 Q. Do you remember telling your friends that there was
- 5 nothing but what you called baby mama drama or something
- 6 like that?
- 7 A. Yes, sir. Yes, sir.
- 8 Q. You did tell them that; isn't that right?
- 9 A. Yes, sir.
- 10 Q. And that wasn't true; correct?
- 11 A. No, sir.
- 12 Q. Now, when you were in the car and you saw Mark
- 13 Cureton with a gun; isn't that correct?
- 14 A. Yes, sir.
- 15 Q. And Mark Cureton is Lunatic; is that right?
- 16 A. Yes, sir.
- 17 Q. And he's always been known as Lunatic?
- 18 A. Far as I know, yes, sir.
- 19 Q. And he's known as Lunatic because he does crazy
- 20 things; is that correct?
- 21 A. I guess. I don't know.
- 22 Q. Well, you saw him with a gun that night; is that
- 23 right?
- 24 A. Yes, sir.
- 25 Q. He got out of the car with a gun; is that correct?

1 A. Yes, sir.

2 Q. He had it on his person; is that right?

3 A. Yes, sir.

4 Q. He owned the gun; didn't he?

5 A. Yes, sir.

6 Q. And he took that gun with him into that apartment; is
7 that right?

8 A. Yes, sir.

9 MR. CREECH: Your Honor, I have no further
10 questions for this witness.

11 THE COURT: Any redirect?

12 MR. WESTON: Nothing on redirect, Your Honor.

13 THE COURT: Thank you, sir. You may step down,
14 Mr. Garrett.

15 You may call your next witness.

16 MR. WESTON: Your Honor, the state rests.

17 THE COURT: Ladies and gentlemen, I'm going to
18 ask you to go back to your jury room briefly. We've got a
19 few matters we need to take care of. We need to take a
20 short break also. Don't discuss the case. We'll call you
21 back in just a few minutes.

22 (WHEREUPON, the jury exited the open court at
23 approximately 3:14 p.m.)

24 THE COURT: All right. Let's take about a
25 fifteen minute break.

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1 (WHEREUPON, court stood at recess for a short break.)

2 THE COURT: All right. Anything we need to take
3 care of before the jury comes back?

4 MR. CREECH: Your Honor, I just move for a
5 directed verdict on all the charges.

6 THE COURT: Well, obviously I need to review the
7 evidence in the light most favorable to the non-moving
8 party, as you're well aware. I think there is sufficient
9 evidence to let the jury make the decision. I'll
10 respectfully deny your motion.

11 MR. CREECH: And Your Honor, also I would like
12 to renew my motion for a mistrial based on the state
13 introducing evidence and talking about my client's drug
14 dealing activities. I think that's very prejudicial and
15 introduces his character, which I think is protected under
16 404(a) and just renew my motion for a mistrial.

17 THE COURT: And again, I respectfully deny those
18 motions.

19 All right. Let's see if we can't get the record --
20 if you could have your client come forward and let me talk
21 to him about his right to testify, if you would, Mr.
22 Creech.

23 MR. CREECH: Yes, sir.

24 THE COURT: Mr. Henry, if you would come
25 forward, please.

1 If you would, sir, raise your right hand. Do you
2 swear or affirm the testimony you're about to give this
3 court will be the truth, the whole truth and nothing but
4 the truth, so help you God?

5 DEFENDANT: Yes, sir.

6 THE COURT: Mr. Henry, I need to go over some
7 matters with you. I'm confident that you've had an
8 opportunity to review these with your attorney already,
9 but I need to be satisfied in my own mind you understand
10 the rights that you have. If at any time, as I'm going
11 through this explanation, you need to interrupt me, you
12 feel free to let your lawyer -- motion to him and I'll
13 explain it to you, because I want to make sure you
14 understand it.

15 We've reached the stage in the trial now where you
16 have a right to present a defense, to testify in your own
17 behalf if you choose to. The constitution of both the
18 State of South Carolina and that of the United States, the
19 Fifth Amendment of our U.S. Constitution says that no
20 person can be compelled in any criminal case to be a
21 witness against himself. This, of course, means that you
22 can't be required to testify in this case. You have a
23 right to testify in your own behalf, but nobody can make
24 you testify. It's a personal right that you enjoy and
25 nobody can waive this right except you. If you decide to

1 testify you'll be subject to the same rules that govern
2 other witnesses, the rules of evidence that we have. You
3 could be examined and cross-examined on any relevant issue
4 in the case.

5 In addition, if you have any convictions involving --
6 in the past involving dishonestly or false statements or
7 crimes punishable for imprisonment for more than one year
8 and the court determines that the probative value of
9 admitting this evidence would outweigh any prejudicial
10 effect, the solicitor would be able to introduce your
11 record to attack your credibility. Now, if you decide to
12 testify, this decision on your part must be freely and
13 voluntarily and intelligently made with the knowledge of
14 the protections that you enjoy under the Fifth Amendment
15 to our Constitution and with the understanding of the
16 consequences of your decision, if you choose to testify.

17 Mr. Henry, you may decide not to testify. And if so,
18 I'll instruct the jury that they cannot give the fact that
19 you didn't testify any consideration whatsoever. There
20 will be no prejudice whatsoever toward you because you
21 chose not to testify. This decision whether you wish to
22 testify or not testify is left entirely up to you. You
23 can certainly consult with your attorney as I'm sure you
24 have. You can talk with family and friends and anyone
25 else that you need to talk with about this. But the final

1 decision rests entirely up to you.

2 Do you understand what I've explained?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions at all
5 about what I've gone over with you?

6 DEFENDANT: No, sir.

7 THE COURT: You've had a chance to discuss this
8 with your attorney ---

9 DEFENDANT: Yes, sir.

10 THE COURT: -- as far as testifying or not
11 testifying? Do you wish to talk to your attorney anymore
12 about this issue?

13 DEFENDANT: No, sir.

14 THE COURT: Do you wish to testify?

15 DEFENDANT: No, sir.

16 THE COURT: All right, sir. Thank you. You may
17 return to your seat.

18 I understand from the bailiffs that one of the jurors
19 did have an appointment at five thirty and wanted to make
20 a call. I've delayed that. I think with the hour that
21 we're approaching it would probably be better not to try
22 to argue and charge this case this afternoon. So I'm
23 going to bring the jury back. Mr. Creech, I'll give you
24 an opportunity to rest on the record in front of the jury
25 and then I'll explain to them that we're ---

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1 MR. WESTON: Your Honor, just one matter. I
2 don't think this matters, but just to put it on the
3 record, with regard to the dialogue you just had with the
4 defendant, I would add that the state has reviewed his
5 criminal history and there are no matters that we thought
6 we would be able to impeach him with ---

7 THE COURT: Okay.

8 MR. WESTON: -- should he testify. I just
9 wanted to put that on the record so you would be aware of
10 that.

11 THE COURT: Thank you for doing that. I'm sure
12 y'all have talked about that before, but -- that he
13 understood there's no impeachable matters for the record.

14 But I'll have the jury come back in the morning at
15 nine o'clock and we'll do the argument and charge. I'll
16 dismiss them this afternoon so this juror can make an
17 appointment at five thirty. I think there's plenty of
18 time for that. We'll go over the charges and I've got the
19 verdict forms prepared for the attorneys to look at.

20 All right. Let's have our jury come in.

21 (WHEREUPON, the jury entered the open court at
22 approximately 3:46 p.m.)

23 THE COURT: Thank you very much for your
24 patience with us, ladies and gentlemen.

25 Mr. Creech, you may call your first witness.

1 MR. CREECH: Yes, Your Honor, the defense rests.

2 THE COURT: All right. Ladies and gentlemen,
3 you've heard all the testimony in this case now. We have
4 some matters we need to take care of as far as the law and
5 the charge that will be presented to you. Rather than
6 keeping you waiting longer today for us to do that and let
7 these attorneys address you in their closing statements,
8 I'm going to let you go ahead and leave a little early
9 today. We'll be ready for the final stages of the case
10 tomorrow at nine o'clock. We'll be ready to have the
11 closing statements of the attorneys. We'll then have an
12 opportunity to give you instructions on the law.

13 Let me remind you again to fulfil the commitment
14 you've made with these parties to refrain from any news
15 articles that may be in the media of any kind, refrain
16 from any discussion with anyone else. We're almost to the
17 conclusion, but we're not there yet, and it would be
18 improper for you to have any discussions with anyone,
19 jurors or family or anyone else.

20 Have a good evening. I'll see you back at nine
21 o'clock in the morning and we'll be ready for the closing
22 statements of the attorneys. You're dismissed at this
23 time.

24 (WHEREUPON, the jury exited the open court at
25 approximately 3:50 p.m.)

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1 THE COURT: All right. Are there particular
2 requests for charge? I'll certainly be glad to listen to
3 you on those from either one. I'll be charging generally
4 an indictment is evidence and multiple charges are all to
5 be considered individually, each relating to the other.
6 I'll give both charges for reasonable doubt, presumption
7 of innocence, credibility of witnesses. Certainly I'll
8 charge the offenses of armed robbery, assault and battery
9 with intent to kill, kidnaping and the murder charge. Any
10 other particular requests for charge? I'll address the
11 prior inconsistency of statements. I think there was some
12 testimony that some of the witness's statements may have
13 been inconsistent. I'll talk about prior bad acts can
14 only be considered under Lyle. Motive and common scheme
15 and those kind of things. I'll give a charge on
16 punishment. There's been testimony about what the
17 punishments are in a case like this and tell them that's
18 no concern to them. Prior records of the witnesses. I
19 think some of that has been before the judge -- before the
20 jury.

21 Any other special requests anybody has? I'll be glad
22 to -- I've got the verdict forms prepared. I'll let y'all
23 look those over to make sure they're in proper order,
24 spellings are right and so forth. Y'all take a quick look
25 at those.

1 MR. WESTON: Your Honor, state would only ask
2 and I'm assuming you probably would charge hand of one is
3 hand of all?

4 THE COURT: Yeah, I'll be charging that.

5 MR. WESTON: The only other matters, Your Honor,
6 we would put on the record now. During the trial Mr.
7 Creech has tried to elicit testimony regarding this Tarzan
8 guy. The state's position would be that there's
9 absolutely no evidence of any third party guilt and we
10 would ask that you prohibit him from arguing third party
11 guilt in his closing and that we address that issue before
12 he starts his closing so that he does not -- and I'm
13 saying he will. I just want to make sure he don't.
14 There's absolutely no evidence of any third party guilt
15 here and he should not be allowed to argue that in his
16 closing.

17 THE COURT: All right. What about that, Mr.
18 Creech?

19 MR. CREECH: Well, Your Honor, first off I think
20 that that needed to be objected to at the time that the
21 evidence was brought out, that wasn't.

22 THE COURT: He just said there wasn't any.

23 MR. CREECH: It's in the -- excuse me?

24 THE COURT: He just said there wasn't any
25 evidence.

1 MR. CREECH: Well, when he -- when that evidence
2 was elicited, when we talked about Tarzan, there was no
3 objection and that's in the record.

4 MR. WESTON: Your Honor, I'm still asking what
5 evidence he's talking about. There's nobody that's
6 testified but him. He said things, they all said, no, no,
7 no. He's put up no evidence -- there's been no evidence
8 enlisted about this Tarzan doing anything except being
9 present outside. So I don't know what evidence he's
10 talking about.

11 MR. CREECH: No, that's not true.

12 MR. WESTON: Well, please ask him to tell you
13 what evidence it is, Your Honor.

14 THE COURT: That's what he's about to do, Mr.
15 Weston.

16 MR. CREECH: Katrina testified that she knew
17 Tarzan had traded a gun with the victim and it was a black
18 gun. There's been evidence that a black gun was used to
19 shoot him. So this Tarzan guy had knowledge of Paco
20 having that gun. There's also been evidence that Tarzan
21 was seen at the scene that night. So I mean, none of that
22 was objected to. It's in the record. It's part of the
23 record. It's the evidence in the case, so I think I
24 should be able to argue it. And I would definitely ask to
25 be allowed to raise that inference and speak about Tarzan.

1 MR. WESTON: Your Honor, State versus Gregory
2 sets out specifically, you cannot cast a bare suspicion on
3 a third party. And that is, at best, what that is, what
4 he just said. He was in the parking lot with other people
5 after the incident. And at some point the defendant may
6 or may not have traded a gun with him.

7 MR. CREECH: Or did trade a gun.

8 THE COURT: Well, even if they traded a gun, how
9 does that relate to this particular offense based on what
10 we have.

11 MR. CREECH: Because Tarzan could have been the
12 shooter in this case, judge.

13 THE COURT: But what does trading a gun have to
14 do with that?

15 MR. CREECH: Because he knew that Paco had that
16 gun. And he was Paco's supplier and he was there that
17 night.

18 And the U.S. Supreme Court, I don't have the case ---

19 THE COURT: State v. Holmes?

20 MR. CREECH: Right. State v. Holmes. They have
21 limited South Carolina's restriction on third party guilt.
22 So I would definitely ask that we be allowed to present
23 that in closing.

24 THE COURT: Whether they limited it that much,
25 Mr. Creech -- I'll review the case and let you know before

1 you arguing tomorrow whether I'll allow that.

2 MR. WESTON: Thank you, Your Honor.

3 MR. CREECH: Your Honor, we would, as I guess a
4 part of your hand of one hand of all charge, I was just
5 going to ask that you charge mere presence is not guilt
6 and there has to be -- we would ask not to charge mere
7 presence. And then also when you charge common design,
8 under any acts outside of the common design, does not
9 implicate -- does not make the defendant guilty. And I
10 would just quote, Your Honor, from State v. Curry, Judge
11 Anderson's dissent in that case. But I believe it's the
12 law of the case and there has to be the common design and
13 any acts that are not do not flow out of the common design
14 of any, you know, fear or any design and the defendant is
15 not guilty.

16 THE COURT: I'm not quite sure -- maybe I need
17 to see the language that you're asking about. I'm not
18 sure where you're asking for this charge. Are you talking
19 about that as part of the common scheme of the plan or are
20 you talking about that as some other charge? On what
21 theory of law are you talking about?

22 MR. CREECH: Well, on the -- as part of your
23 hand of one hand of all charge.

24 THE COURT: Oh, okay.

25 MR. CREECH: Within that subset of your charge.

1 THE COURT: All right.

2 MR. CREECH: We would ask that you charge that
3 the -- that if it's not a natural or probable consequence
4 of the common design, he's not guilty.

5 THE COURT: I know what you're talking about
6 now. I'll probably cover that. I'll verify that with you
7 before you make your argument.

8 Any other charges ---

9 MR. WESTON: To be clear also, I'm assuming that
10 there's no lesser included in this case.

11 MR. CREECH: That's what you need to look over
12 now. I've got the verdict form. Share those with Mr.
13 Weston and see if there's ---

14 MR. CREECH: Well, and what I would like to ask
15 also, judge, not -- for a manslaughter charge, as well.

16 MR. WESTON: Looks fine to me, Your Honor. We
17 would take the position, however, there is no basis for
18 manslaughter in that, number one, this is definitely not
19 in the heat of passion. All the evidence indicates, if at
20 all, that this was a plain murder. That calls were made
21 to set it up. That they went there with the intent to rob
22 and do serious bodily harm to someone. And that it was
23 the result of an incident that took place at least two to
24 three weeks before, a robbery or attempted robbery against
25 the defendant had took place two or three weeks before.

1 That there's no basis for -- that this was in the heat of
2 passion.

3 Also, Your Honor, in terms of heat of passion, it has
4 to be -- the response has to be more than just, we're
5 gonna go beat up and hurt somebody and rob them and the
6 person ends up dying. There's no heat of passion there at
7 all.

8 THE COURT: Where's the voluntary manslaughter
9 evidence of that, Mr. Creech?

10 MR. CREECH: Yes, Your Honor, I would say that
11 the -- as to heat of passion, I mean, the witnesses have
12 testified that this happened suddenly. They suddenly
13 heard a shot, suddenly froze, and that there was a scuffle
14 between the victim and Mr. Henry or that there was a
15 scuffle that he was going down, laying down, not all the
16 way down. And I think there's clear inference of an
17 altercation. And again, the witnesses testified that it
18 happened suddenly.

19 THE COURT: Well, I'm not inclined to -- with
20 what I can remember now to find any evidence there. But I
21 will give you the benefit -- I'll review my notes, Mr.
22 Creech, and again I'll let you know that before you argue
23 tomorrow. But I don't, I don't recall any evidence, even
24 considering it broadly, that there would be a reasonable
25 charge for voluntary manslaughter. But I will -- I'll

1 review that also. I'll review my notes.

2 So voluntary manslaughter, third party guilt and the
3 natural consequences under the hand of one. I'll look at
4 those.

5 MR. CREECH: And the mere presence charge,
6 judge.

7 THE COURT: I mean, under the mere presence,
8 right. I'll charge mere presence.

9 Okay. The verdict form is in order subject to the
10 voluntary manslaughter and the lesser included.

11 All right. We'll be back at nine o'clock in the
12 morning.

13 MR. CREECH: And Your Honor, too, I guess the
14 defense has rested, of course, and this is the close of
15 all the evidence, we would renew our motion for a directed
16 verdict and the mistrial motions as well.

17 THE COURT: Again, it's denied.

18 MR. CREECH: Thank you, Your Honor.

19 (WHEREUPON, court stood at recess for the day at
20 approximately 4:02 p.m.)

21 **February 4, 2009**

22 THE COURT: All right. Is there anything either
23 of you have on what we talked about yesterday, charges,
24 any additional matters?

25 MR. CREECH: Your Honor, I do have some

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1 additional matters. I would request that the court charge
2 ABHAN and also assault and battery on the ABWIK indictment
3 as well as strong armed robbery on the armed robber
4 indictment. I think there was some evidence as to the
5 strong armed robbery. I think some of these co-defendants
6 or accomplices testified that they didn't have a gun when
7 they took the stuff off the guy. So it would have just
8 been by force but without any kind of weapon. I think
9 that would lend itself to a strong armed robbery charge.
10 There's also evidence that they just hit Mr. Brooks, which
11 would give rise, I think, to an ABHAN or even just a
12 simple assault and battery.

13 THE COURT: Mr. Weston, do you want to say
14 something?

15 MR. WESTON: Yes, sir, Your Honor, just briefly.
16 As to the ABWIK/ABHAN, I really can't think of a good
17 faith argument against that. I think he's probably
18 correct. In fact, I thought about that this morning. All
19 of us that dealt with the ABWIK, armed robbery and the
20 kidnaping have sort of been an aside in this case,
21 obviously the murder being the primary focus. But I do
22 think that the ABHAN is probably appropriate as a lesser
23 included. I would -- I don't think it would -- that the
24 evidence warrants assault and battery because there was
25 serious bodily injury requiring hospitalization that was

1 testified to by himself as well as Officer Flavell in
2 terms of what he saw.

3 As to the strong armed robbery, I would disagree with
4 that because in order to sustain -- if he gets that charge
5 as a lesser on Mr. Brooks, then what he's doing is
6 bifurcating the attacks. Therefore then he can see --
7 would then be able to make the argument that his client is
8 not guilty -- cannot be tried on the charges relating to
9 Mr. Brooks.

10 Our position is this was one attack by four
11 assailants against two victims at once. And to charge
12 strong armed, because the person who shot -- who clearly
13 shot someone with a gun didn't actually shoot at this
14 person because he was on the other side of the room, then
15 arguably he's not guilty -- or he can't be guilty of the
16 ABWIK, kidnaping and armed robbery because he was on the
17 other side of the room shooting somebody. That basically
18 it's one attack, Your Honor, on two different victims.
19 The strong armed robbery is negated by the fact that the
20 victim died as a result of gunshot wounds.

21 THE COURT: Well, I think it's clear that
22 assault and battery of a high and aggravated nature would
23 be the proper charge. In fact, I didn't know yesterday --
24 perhaps you didn't want to charge and see what the jury
25 would do with the other. But if you want me to charge

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1 ABHAN, I'll certainly charge ABHAN. I'm not charging
2 assault and battery. From the facts in this case, I don't
3 see where strong armed robbery would be applicable either,
4 considering it in the light you set forth, Mr. Creech. It
5 appears there were broken bottles and hammers, certainly
6 violence going on. I will charge the ABHAN. And from
7 yesterday, I'm not going to charge voluntary manslaughter.
8 I will allow you to argue all the evidence and lack of
9 evidence, and if that gets into some third party guilt
10 I'll allow you to argue that. You can have some freedom
11 there.

12 We'll redo the verdict form on the ABWIK and have a
13 lesser included of the ABHAN. I'll let you look at that
14 again before I give it to the jury. Based on what you saw
15 yesterday that one will change. It'll just have an or
16 ABWIK or you can find the lesser included of ABHAN.

17 Anything else we left dangling?

18 MR. CREECH: No, Your Honor, I just -- and I'm
19 sure this is in your general charge, but just to instruct
20 the jury that, of course, they're not to take into
21 consideration the defendant's failure to present evidence
22 or to testify. The burden is on the state.

23 THE COURT: I'll certainly charge that.

24 MR. WESTON: Also, Your Honor, excuse me. You
25 did indicate previously you were going to remind them

1 again about disregarding Gardner's testimony.

2 THE COURT: I did. I'll do that again. I don't
3 know if I'll do it specifically, but I'll tell them
4 anything that I told them to be struck -- I told them
5 pretty clearly when they came back in on both that and the
6 stipulation as to Booker's record or dismissal of charges.
7 But I'll address them on what they're to consider as
8 evidence and what they're not to consider.

9 MR. WESTON: Your Honor, if I could just get a
10 little bit of clarification on what you're allowing
11 counsel to argue. He's arguing last. So I'm just trying
12 to get some clarification as to what he's going to be
13 allowed to say with regard to third party guilt. You said
14 something about giving him some latitude.

15 THE COURT: Well, he can certainly argue about
16 the evidence. And if he wants to talk about Tarzan being
17 around and let them bring in any inferences, I -- do you
18 feel like you need to -- I know you don't like to object,
19 but if you feel like you ---

20 MR. WESTON: No, sir, I will not object in his
21 closing unless he calls me like some bad name or
22 something. Other than that, I'm not going to object
23 during his closing, Your Honor.

24 THE COURT: I'm going to give him some leeway.
25 Obviously he didn't present any evidence at all about

1 third party guilt, but I'll give him the right to argue
2 that inferences can be drawn from the evidence or the lack
3 thereof. He'll know not to go too far with that, I'm
4 sure, to bring up the ire of the solicitor to object.

5 MR. WESTON: And once again, Your Honor, I don't
6 anticipate I'm going to have any problem -- I'm sure I'm
7 going to have some problems with what Mr. Creech says, but
8 I don't anticipate any objection to what Mr. Creech says
9 either during his argument or after. I'll just sulk and
10 walk away on that. But I just want to make sure I
11 understand what the ground rules are. I do know that I
12 cannot, under any circumstances, say or insinuate that the
13 defendant had any responsibility to prove anything about
14 any third party or present any evidence about a third
15 party. But given that I'm arguing first, that I know what
16 he's going to do, and I have a general idea of what he's
17 going to say, I just don't know how pointed it's going to
18 be, I would like be able to address the jury concerning
19 the fact that there were questions about some guy named
20 Tarzan, but they heard no evidence that would indicate
21 that Tarzan was in anyway involved in this particular
22 crime. Not that they have to put up the evidence, but
23 that there is no evidence in the record to that effect. I
24 just want to make sure that there's no problem with me
25 doing that. So that in terms of fairness he doesn't get

1 less argument and he gets to bring this out and I don't
2 preemptively get to deal with it or address it. Like I
3 said, I'll be careful not to shift the burden.

4 THE COURT: Doesn't that sound fair, Mr. Creech?

5 MR. CREECH: Well, judge, I mean obviously I'm
6 going to have to make the decision at the time the
7 arguments are made, but if there's any, you know, burden
8 shifting implication argument, I'm going to make that
9 objection. So it's ---

10 THE COURT: Well, if you're going to argue third
11 party guilt, he's going to have to -- he doesn't know what
12 you're going to say. You're going to have to have some
13 more leeway than -- or either you tell us that you're not
14 going to talk about that.

15 MR. CREECH: Well, I'm not -- I mean, I haven't
16 one hundred percent decided, you know, what exactly I'm
17 going to say on that issue, judge. So that's kind of
18 where I am.

19 THE COURT: Well, you sort of put him in -- and
20 I know you don't have to tell him what you're going to say
21 and don't tell me, but since you brought the issue up that
22 you want third party guilt, I'm going to let him -- you
23 don't want to give him a reply argument; do you?

24 MR. CREECH: No, Your Honor. Of course, we have
25 the right to the last argument. But the, but the

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1 solicitor made the motion yesterday that -- to ask you to
2 prohibit me from mentioning anything. So from my
3 understanding that motion was denied. And you know, if I
4 decide to make these arguments then ...

5 THE COURT: Giving you a tough path, Mr. Weston,
6 but I'm sure you're up to the task.

7 MR. WESTON: Thank you, Your Honor. I think
8 that's all we have. Your Honor, also I would just -- this
9 is not -- this isn't for the record. This is just sort of
10 a housekeeping thing. As you can probably tell I'm a
11 little bit hoarse. I went to my daughter's basketball
12 game over in Chesnee last night and the gym was very small
13 and was very cold. And so I'm a little bit hoarse. So I
14 may stop to get some water or something. I'm sure I can
15 be fine and do a closing and sit through your
16 instructions. But I just wanted to just point out, that's
17 the reason I'm sounding the way I am this morning.

18 THE COURT: All right, sir. Let's have our jury
19 come in.

20 (WHEREUPON, the jury entered the open court at
21 approximately 9:19 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.
23 We're now ready to proceed with the closing statements of
24 the attorneys. I told you at the beginning that what the
25 attorneys say in their addresses to you is not evidence.

1 You've heard all the evidence. You've heard the witnesses
2 testify under oath. The exhibits have been offered into
3 evidence. But even though all the evidence is in now, I
4 urge you to listen carefully to these attorneys address
5 you. Perhaps they can give you some insights and help you
6 in your deliberations in a few minutes. So if you will,
7 listen carefully to their summations for you. After that
8 I'll instruct you on the law and you'll have an
9 opportunity to start your deliberations at that time.

10 Mr. Weston.

11 **CLOSING STATEMENT**

12 **BY MR. WESTON:**

13 Thank you, Your Honor, may it please the court.

14 Ladies and gentlemen, as his honor indicated, you
15 have now heard all the evidence in this case. After my
16 remarks and those from Mr. Creech, the judge will instruct
17 you on the law, at which time the case will be yours to
18 decide.

19 I'm going to take a few moments in my closing to tell
20 you about some of the things that his honor is going to
21 instruct you about. Obviously, you take the law as he
22 gives it to you. What I say and what Mr. Creech says are
23 just our interpretations or our view of what the law is.

24 Of course, he's going to tell you about the burden of
25 proof, that the state has the burden of proof and the

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1 defendant has the presumption of innocence and it stays
2 with him up to and until each and every one of you decides
3 that we have proven each and every element of the offenses
4 beyond a reasonable doubt to your satisfaction.

5 He's going to define reasonable doubt for you and
6 he'll give you a not too lengthy definition, but it's
7 somewhat -- gets somewhat coagulated and commingles and
8 sort of confusing. I like to think that reasonable doubt
9 is very simple. It's exactly what it says, a doubt that
10 you can assign a reason. Nothing in this world is
11 absolute. We're not required to prove to an absolute
12 certainty, beyond a shadow of a doubt. Just to a
13 reasonable doubt.

14 A reasonable doubt, I think the judge will tell you,
15 is a doubt that would cause a relatively stern and
16 confident reasonable person to hesitate to act. We
17 believe that the evidence in this case satisfies that
18 requirement. That we have proven beyond a reasonable
19 doubt that this defendant committed the offenses of
20 murder, assault and battery with intent to kill, armed
21 robbery and kidnaping. I'm going to tell you why.

22 Another thing the judge is going to tell you is that
23 the law in this state is that when two or more people ban
24 together to commit a felony, the acts -- the criminal acts
25 that reasonably result therefrom committed by one person

1 are attributable to all.

2 Example, me and my investigator are going to rob a
3 bank. My job is to drive the get-away car. I'm going to
4 drive to the bank and she's going to go in and rob it,
5 come back out, I'm going to drive us away, we're going to
6 split the money. I'm in it from start to finish. She's
7 armed. But we've talked about the fact that nobody is
8 going to get killed. She goes in and sees the security
9 guard looking at his watch, thinking he's going for his
10 gun, and shoots him and kills him. Under the hand of one
11 is the hand of all theory, I am guilty of murder. Because
12 we both agreed to do this felonious act. We both knew
13 that it could reasonable follow that someone could get
14 killed if she took her gun in the bank.

15 In this particular case here, this is very important,
16 because there's no evidence that this defendant ever laid
17 a hand on Andre Brooks. There's no evidence that this
18 defendant struck him, kidnaped him or robbed him. There
19 is ample evidence that his three compatriots did. They
20 went there to rob someone and beat them up. It is
21 reasonable that anybody else in that apartment was going
22 to be robbed, beat up and held captive, or at least
23 restrained, so that they could do what they needed to do.

24 Therefore, if you find that this defendant was the
25 fourth person -- and I'm going to get to that in a little

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1 while -- then he is also guilty of all the acts against
2 Andre Brooks under the hand of one is the hand of all
3 theory. We're not alleging that he did any of these acts
4 specifically. He was over there busy shooting somebody in
5 the same room.

6 If y'all will just bear with me. My voice is a
7 little cracked. I'm coming down with a cold.

8 His honor is also going to tell you about your
9 responsibility as jurors to determine the credibility of
10 witnesses. And that's sort of a two-fold process. The
11 first part of it is to determine whether a legitimately
12 truthful person who believes what they're saying is true
13 can actually -- could have seen, heard, felt or smelled
14 what they say they did. Example, I see that she has on a
15 red coat. I'm standing fifteen feet from her. And I
16 testify to that and I testify as to how far away I was,
17 what the lighting was, and you probably would say, yeah,
18 he could see that. But if I'm standing down the hallway
19 and run past that little window there for like a split
20 second and I believe she had on a red coat and I testify
21 to that, as jurors you might say, well, yeah, he seemed
22 like he was telling the truth, I believe him, but I'm not
23 sure he was able to judge that quickly going past that
24 little window that fast. My credibility is at issue, not
25 because I'm lying, but because I was not able to perceive

1 the event and you're not sure that I saw what I think I
2 saw.

3 The second part of the credibility test is a little
4 bit more substantive. It has to do with whether you're
5 telling the truth or not deliberately. A good example of
6 that in this case is Welton Booker. He is probably the
7 most pitiful person in this whole trial. He is, based on
8 everybody's testimony, a crack head. He will do whatever
9 it takes to get some crack. You saw him on this witness
10 stand hedging his best every way he possibly could to not
11 identify that man. I think it was him, it sounded like
12 him, it looked like him. I wouldn't bet my life on it,
13 though. He's known him for years. He was within from me
14 to this chair to him, according to at least two other
15 witnesses, who were there. One who was standing right
16 beside the defendant. And he got up here and said, I'm
17 not sure. I don't know whether it's a street code, drug
18 code, what kind of code or alliance or allegiance it is or
19 whether it's what he said. I was in -- I'm in fear for my
20 life. Who do you reckon he was talking about that he's
21 afraid of?

22 MR. CREECH: I object to that, Your Honor.
23 There's no evidence ---

24 MR. WESTON: Your Honor, he did testi ---

25 THE COURT: I overrule your objection.

1 MR. WESTON: Thank you, Your Honor.

2 CLOSING STATEMENT CONTINUED

3 BY MR. WESTON:

4 The same thing Andre Brooks said as to why he told
5 Detective Flavell that they had on masks before they were
6 arrested. He said -- Detective Flavell told you, the
7 first thing he said on the second interview was, can you
8 protect me? Who do you reckon he was afraid of? None of
9 these defendants had been arrested or even identified
10 fully at that point. They were still out on the street
11 where he was. And just like he knew who they were, he
12 knew who he was. It's a different world that these people
13 live in.

14 I agree, putting their hand on the Bible doesn't mean
15 as much to them, obviously, as it does to some of us. It
16 doesn't carry as much -- it didn't carry as much meaning
17 for Welton Booker for sure, because you could tell he was
18 trying to tell the truth, but he just didn't want -- he
19 just could not bring himself to tell the whole truth.
20 Because -- not necessarily because of his allegiance to
21 the defendant, I don't know. Not necessarily because he's
22 afraid of the defendant. I don't know. Might have been
23 one or both or all of those. It's just something about
24 people like that who just cannot do the right thing. Not
25 all the way.

1 Anyway, that's what I'm talking about, about
2 credibility. And his honor is going to tell you that you
3 are the judges of the credibility of witnesses. And in
4 doing so, you have to look at whether or not they're
5 biased, whether they're prejudiced against the person or
6 whether they've been rewarded, whether they've got a deal
7 with the government.

8 Now, applying those types of -- those principals as
9 well as the others that the judge will give you to what
10 we've got here, we are required to prove that that man
11 committed murder. And that is that he killed Mr. Perez,
12 took the life of Mr. Perez with malice aforethought.
13 Another big fifty cents word, two words, malice -- he'll
14 give you the definition of malice. Evil of heart, a
15 person bent on doing something wrong, ill will. I like to
16 think malice is just meanness. And how much meanness does
17 it take, how much meanness does it take, to take a gun, go
18 to someone's residence, bust in or be allowed in by some
19 crack head that you set the deal up with, go to them, take
20 their gun, beat them with a bottle, beat them with a
21 hammer, and shoot them four times in their own home?

22 But you don't have to worry about the definition of
23 malice and whether or not there's malice in this case.
24 Because if you listen carefully, one of the things his
25 honor is going to tell you is that you can infer malice

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1 simply because there was a deadly weapon used. And I
2 don't think there's any question in anybody's mind that
3 there was a deadly weapon used in this case. You heard
4 Dr. Ward. This man was shot four times. That in itself
5 under the law allows you to infer malice. That satisfies
6 that requirement.

7 The aforethought means that you just thought about it
8 before you did it. You didn't just do it without
9 thinking. In this case, they came -- whoever did this
10 came into the house and did it. That's aforethought. He
11 will tell you that the aforethought does not have to be
12 for some significant period of time. That element was
13 satisfied in this case. Whoever killed him is guilty of
14 murder. I'm getting ready to tell you in a little while
15 you should say beyond a reasonable doubt that he did it.

16 The next offense is ABWIK, assault and battery with
17 intent to kill. Now ABWIK or assault and battery with
18 intent to kill, in my opinion, is simply the little
19 brother of murder. And his honor will probably tell you
20 this, if the person who was the victim of the assault and
21 battery with intent to kill had died, it would have been
22 murder. It's simply an assault and battery with malice
23 aforethought, but they didn't die.

24 Armed robbery. There's no question that armed
25 robbery took place here. And we're going to come back to

1 why he did it or why his compatriots did it and in hand of
2 one hand of all theory he's responsible too. But Andre
3 Brooks told you, they beat him up and took his cell phone.
4 The cell phone was traced to Mark Cureton which led to the
5 arrest of these people. That's armed robbery. The person
6 that was in the room with Andre Brooks was shot and killed
7 with a gun. That's armed robbery. If I rob -- someone
8 robs me and my wife as we're walking down Main Street and
9 they take -- they shoot me with a gun, take my wallet --
10 my wife's purse, that's armed robbery against her, even
11 though they didn't shoot her with the gun. They pointed
12 the gun at both of us, which is what happened in this
13 case.

14 Kidnaping. Kidnaping, as we all know it, is what we
15 see on TV. You come home and your child or your wife or
16 some loved one has been taken from your home with a ransom
17 note and they're in a warehouse tied up and duct taped
18 somewhere. That's not the only kidnaping. And his honor
19 will instruct you that kidnaping is to confine, detain or
20 hold someone against their will. Is there any doubt in
21 your mind Andre Brooks wanted to get out of that house?
22 They went in the bedroom and he was trying to get out the
23 bedroom window. They went and grabbed him, held him, kept
24 him from doing that and then held him down and kept him
25 from going out the front door until they heard that

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1 gunshot. Freaked everybody out. Because nobody expected
2 a shooting except him. Even his compatriots didn't expect
3 somebody to get killed. When they heard that gunshot,
4 they freaked out and Andre Brooks took the opportunity to
5 leave. But before that, he was being held against his
6 will. That's kidnaping. Hand of one hand of all. If
7 they did it and he was the fourth person, which I think
8 you're going to find, he is guilty of that too.

9 Now, having said all that, let's talk about the
10 evidence for a moment. And I'm going to go through it
11 relatively quickly or at least most of it relatively
12 quickly. We have Katrina Haynes. Now, let me back up by
13 saying, every lay witness in this case has fleas. Nobody
14 in this whole situation is an angel or is without some
15 fault or some responsibility. Katrina Haynes clearly was
16 upset in testifying about finding her boyfriend's body.
17 And she seemed like a good person. She didn't say
18 anything about this defendant did it. She wasn't there.
19 But don't you think it was difficult for her to come in
20 here and tell you that she was the girlfriend of a drug
21 dealer and that she benefitted from his drug dealing.
22 That she knew he carried a gun underneath his pants.
23 Imagine your boyfriend doing that as y'all go out to the
24 mall. Or when you go anywhere. Go to Cleveland Park and
25 you know -- you're walking through there and you know he's

1 got a gun under his ... Imagine living that kind of life.
2 She described the scene to you and she described the
3 history of this defendant and the victim. In fact, she
4 told you, this defendant introduced her to the victim.
5 That's how she started dating Paco. Because he introduced
6 her. So there's no question he knew about her. I mean,
7 she knew about him. She told you that over the last brief
8 period of time before this incident they had stopped
9 communicating with each other. She didn't know the
10 details, but she knew he quit coming around. Paco quit
11 taking her around his place and they quit, as far as she
12 knows, talking to each other.

13 Then we've got Officer Robinson. He was the first
14 responder on the scene. He came in. He told you exactly
15 what he did. I came in, I made sure everybody stayed out
16 of the house. I went in, I walked through the house to
17 make sure that it was clear. He described the mess to
18 you. He described the scene. And said he waited until
19 the detectives got there and turned it over to Detective
20 Flavell. And that was his involvement.

21 Forensics Tech Deitz, she processed the scene, she
22 took pictures, she collected evidence and she did
23 measurements. And she put the evidence -- put potential
24 evidence, excuse me, that's an important word, potential
25 evidence into P and E. Because at that point they don't

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1 know -- law enforcement doesn't know what happened or who
2 did what to who. And that becomes important later on.
3 Because it's not her job to test evidence. She told you
4 that. All she does is just collect, measure and document.

5 You had Dr. Ward. I'm not going to go into much
6 about what he said except that the person -- this man died
7 from four gunshot wounds. No question about that. That
8 he had the abrasions that were consistent with the hammer
9 that was found near his body on his forehead as well as
10 other blunt force trauma that was consistent with the
11 broken bottle that was next to him.

12 Then Detective Flavell testified. And I don't know
13 about y'all, but I'm proud of him. I'm proud of people
14 like him. I can't imagine ---

15 MR. CREECH: Objection, judge. I object.
16 That's an improper argument. I just make my objection for
17 the record.

18 THE COURT: Overruled.

19 MR. WESTON: Thank you, Your Honor.

20 CLOSING STATEMENT CONTINUED

21 BY MR. WESTON:

22 I can't imagine having a job of walking into --
23 getting a call at ten or eleven o'clock at night, any
24 given night, and having to go to this kind of a scene and
25 see this, once, twice, three times a month. He told you

1 the steps he went through from the beginning of the
2 investigation to his interrogation of the three co-
3 defendants and his arrest warrants being issued against
4 the three of them and this defendant. He -- there was a
5 question asked to him about thirty-one pieces of evidence
6 and there was some question about why there were certain
7 things that weren't tested. Well, let me go back to
8 Forensics Technician Deitz. She told you, when we come in
9 there we don't know what has happened, so we collect
10 anything and everything that looks like it might be
11 connected to the crime scene that we can use and that may
12 be of evidentiary value. A lot of times it's not. A lot
13 of times it is, but it's not necessary.

14 For instance, the four bullets that counsel asked her
15 -- asked him about that were taken from the body that came
16 from the gun that was already evidence that the gun was
17 taken by the defendant when he left. So what do they
18 compare the four bullets to? They've got no gun. There
19 was no need to test all of these things. The three
20 defendants -- the three co-defendants were apprehended
21 within a matter of days. The evidence was there to be
22 sent to SLED if necessary if this was not -- if these were
23 not the perpetrators. But they were caught within a
24 matter of days. They all confessed. They named him. The
25 victim, in three or four days, named him. Welton Booker

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1 said there were four guys. That's three plus one is four.
2 Three confessions and a victim -- three confessions and an
3 ID of a third and a victim who IDs the other guy. There
4 was no need to test -- send this evidence down to SLED to
5 do anymore. The jewelry was found on one of the co-
6 defendants. They did it. But counsel would have you
7 believe that, well, they didn't test all this other
8 evidence, so this is -- something's wrong here. This is
9 not the O.J. Simpson case. This is not fruit and nut
10 land. This is not California. We don't spend five, six,
11 eight months on a trial. We don't spend unnecessary state
12 money to test things when we've got the defendants in
13 custody and they've confessed and they've named the person
14 who did the shooting.

15 If they had tested all this stuff, they would have
16 found this -- tested the blood they would have found this.
17 Because all the defendants -- all three co-defendants
18 said, no, I wasn't hurt. There was no bleeding. They
19 didn't beat us up. We beat them up. They would have
20 found that it was the blood of the victim, Mr. Perez, and
21 the victim, Mr. Brooks. That's what they would have
22 found. But don't be mislead by these kinds of red
23 herrings. Well, they didn't test all this evidence so
24 that's a reasonable doubt. There's no doubt there. None
25 absolutely. Because this case is not about forensics, no

1 matter what anybody may tell you. This is just basic good
2 police work.

3 Which brings us to the ultimate question. Did he do
4 it? And how can you be sure beyond a reasonable doubt?
5 And I told you; I'm going to tell you how. Based on the
6 layers of evidence, ladies and gentlemen. Not just the
7 layers of evidence, but the way the evidence meshes. And
8 then finally, the third thing, just common sense. You
9 don't leave your common sense home when you come to serve
10 on the jury.

11 And as I said, if he did it, he's guilty of all the
12 crimes under the hand of one is the hand of all. So
13 either he's guilty of nothing or he's guilty of
14 everything.

15 Let's talk about the layers of evidence. First
16 layer, Andre Brooks. The victim. He said he had known
17 this man since they were young guys. So this is not a
18 misidentification. This is not a he identified the wrong
19 person. No question, he's talking about him. He knew
20 about the relationship that he and Paco had had before
21 this. He told you that he was a drug dealer at the time.
22 That he was up in there smoking marijuana with Paco before
23 they came in. He admitted that he did not tell the truth
24 to begin with. But he told you why. Guys come in, rob
25 me, shoot my friend and leave. I get out before they can

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1 shoot me. I know exactly who they are. But they know me
2 too. So what does he say, he told them exactly what
3 happened. He just put masks on their faces. I didn't
4 know who they were. Because that way he could tell them,
5 look, I didn't rat you out. I didn't say it was you.
6 Because if he identifies them, he's thinking they're going
7 to kill him. What did he say? Can you protect me? He
8 was scared for his life. His friend had just been shot by
9 this man. So he put a mask on his face when he told the
10 police originally.

11 Detective Flavell investigated further and found out,
12 that's not quite right. Something's going on here. Bring
13 him back in. He even says, well, yeah, I know it was
14 Jermaine, but he had on a mask so I recognized his voice.
15 As I say, ladies and gentlemen, they've got a different --
16 it's a different world. They don't think in terms of just
17 honesty and dishonesty like a lot of people. This is
18 street world. So what he does is hedges his bet. Well,
19 he had on a mask, but I recognized his voice and it was
20 Jermaine. He's still hedging his bet because he's scared.
21 Because this is the street life. And I agree with him.
22 The police can't protect him. They can't assign somebody
23 to him every day twenty-four hours a day, especially not
24 the life he leads because he doesn't come out till
25 nighttime. He's a vampire. All these guys are vampires.

1 They only come out at night when the rest of us are asleep
2 to do what they do.

3 But he got up on this witness stand in his white suit
4 that looked like it was brand new. He still had the tags
5 on his sleeve. And you saw the -- ladies and gentlemen,
6 you saw the intensity with which he pointed to that man
7 and said, he did it. He was not afraid anymore. It was
8 his time to say, no, I ain't scared of you no more.
9 You're the one shot my friend. You're the one that had
10 them guys beat me up. And he pointed at him and named
11 him.

12 But keep in mind too -- let's put this to the side --
13 he told the basic story, four guys came in, two and then
14 two, as Welton Booker was leaving. Two were beating up
15 him. He ran to the back. They brought him back up front,
16 beating him up, taking his clothes off. This man shot
17 Francisco Perez, and he hauled butt out of there. That's
18 the basic story. Keep that basic story in mind.

19 Secondly, Welton Booker, I already kind of commented
20 on him. But he got up here and said that he was there
21 when Francisco Perez attempted -- and another man
22 attempted to rob this defendant. He was sitting with this
23 defendant. He was his boy, his friend. He was sitting
24 there when the robbery took place -- attempted robbery
25 took place. Francisco Perez saved his life. This is how

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1 -- I'm going to come back to how right this is in a
2 minute, that Francisco Perez said, according to him, don't
3 mess with him, that's Crum, let him go, he's all right.
4 So the other guy let him go. And as he gets out, he gets
5 out behind him and runs away. That's what Welton Booker
6 said, Francisco Perez saved his life. And that sorry --
7 that pitiful man got up here and refused to positively
8 identify the man who killed the person who saved his life.
9 He hedged his bet and said, well, it might have been him
10 or it looked like him and sounded like him. That's,
11 that's the street -- life of the street mind set. It's
12 different. This man saved his life. He testified, this
13 guy had a gun on me and Francisco, Paco said, no, no, let
14 him go cause that's Crum. The guy let him go, he gets out
15 and runs. Gets away. Because of what Paco did for him.
16 But he refused to come here and be totally candid with
17 you. But he was candid enough.

18 Even if you just discount the identification, which I
19 don't think you can. Y'all, we knew he was lying. We
20 knew he wanted to identify him, but he just came this
21 close, but he just couldn't do it. It just ain't in him
22 cause he's a street person. And they've got some kind of
23 code. But what he did do was give you the second layer,
24 the basic story. He told you he talked to Paco twice that
25 day on behalf of this man. That he called, William Henry

1 called him and said, call Paco, see if I can get some weed
2 from him. And I asked him, well, why couldn't he call him
3 himself? And he said, because him and Paco had fallen
4 out. So he agreed to be the go-between. He couldn't
5 reach Paco. Later that evening, he happened to be going
6 to buy some crack for some third party. When he came in,
7 the basic story, Andre Brooks was in there, same thing
8 Andre Brooks said, Andre and Paco, he came in, did his
9 business. As he was leaving two guys came in and then
10 there was two more outside. Four guys. And he said he
11 was this close, but he said, well, I'm not sure it was
12 him. But it was four guys. And he said he knew something
13 was getting ready to happen, so he just went on. I think
14 he said one of them said to him, I think you better take
15 your ass on or something like that. That's what he
16 testified to. Something was getting ready to happen. The
17 same basic story that Andre told later too.

18 Frederick Irby, first of the three co-defendants.
19 Frederick was in the car with this defendant on the day it
20 happened, driving his car. This defendant is sitting with
21 him. Is there any questions he can identify him? That
22 that's not his boy? They're boys, they're friends,
23 they're compadres. Frederick Irby said -- gave us the
24 other end of the phone calls where he says this man is
25 trying to get in touch with Crum to get him to buy the pot

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1 for him. Frederick Irby then says, we go -- and listen to
2 this, this is critical. We pick up Michael Cureton. We
3 pick up Michael Garrett -- excuse me, Mark Cureton and
4 Michael Garrett, in that order. We then go to the house.
5 Once again, Welton Booker is in the house. Crum is
6 leaving as we come in. I don't even remember what he said
7 as to which two went in first and which two came in
8 second. But he says there were four of us as Welton
9 Booker was leaving. We came in, and once again Andre
10 Brooks is in the house with Paco. He said, Andre Brooks,
11 we started fighting with him, he ran into the back, just
12 like Andre Brooks said. We dragged him back out, started
13 beating on him. All of a sudden we hear a shot. He
14 points, this man shot Paco. And we stopped and Andre
15 Brooks booked out of there. Same thing Andre Brooks said
16 happened.

17 Level three. Well, let me add a little twist to
18 that. He also says that once that happened everybody
19 split except Michael Garrett ran off. He didn't get back
20 in the car with them, he was so freaked out. That's what
21 he said. But it's the same basic story. And this is his
22 friend who got up here and pointed him out.

23 Mark Cureton was next. Mark Cureton starts with --
24 picks up with Fred -- same thing Freddie Irby says.
25 Freddie Irby and William Henry in the car. They came and

1 got him first. Same thing Freddie Irby said. They then
2 went and got Michael.

3 And Mr. Garrett, same thing Freddie Irby said, the
4 four of them went to the house. He said, Crum was coming
5 out. Same thing Freddie Irby and Andre Brooks said. Once
6 again, I don't even remember which one he said who went in
7 first, who had the gun or whatever. Two went in, two came
8 in behind them as Mr. -- as Crum was leaving. He says, we
9 started beating on Andre Brooks. William Henry is over
10 there with Paco. Andre Brooks goes to the back. We pull
11 him back out. There's a gunshot. I look over. This man
12 -- he points him out -- shot Paco. That was the gunshot
13 he heard. At that time Andre Brooks leaves because
14 everybody is startled. The same thing Andre Brooks said.
15 The same thing Freddie -- I mean -- Freddie Irby said.
16 Same thing now Mark Cureton said. Level four, because it
17 dovetails in with what Welton Booker said, what he saw as
18 he was coming out.

19 Michael Garrett. He may be the most sympathetic of
20 these, because he just seems like he had no clue of what
21 was going on. Doesn't make him any less responsible.
22 Hand of one is the hand of all. But he is the last one
23 picked up. He says, when they picked me up, Freddie Irby
24 is in the car, William Henry is in the car. They've now
25 picked up Mark Cureton already, just like the three of

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1 them said happened -- the two of them said happened. They
2 pick up Garrett last. We go to the house. He said there
3 was this crack head coming out. That's Crum. We go in.
4 Two of them beating up on Andre Brooks. All of a sudden
5 William Henry shoots Francisco Perez. Pow. We all freak.
6 Andre Brooks runs out. He says, I ran out. Oh, I forgot
7 my beer. I don't want to leave no evidence. Got that.
8 He didn't even get back in the car with these guys. He
9 ran off. And he said he never talked to them again.
10 Strange how he tells the same story to the police and to
11 y'all that they did. That he never talked -- wonder how
12 they got this story together? ESP? How can they get such
13 a complicated story together with Mr. Garrett if he never
14 talked to them again afterwards? How do you reckon they
15 confederated to blame this man? Level five.

16 Five levels, ladies and gentlemen, of the same story
17 -- basic story. Now, let's talk briefly, and I'm going to
18 sit down, about the discrepancies.

19 Last Thanksgiving I went to Sumter, South Carolina
20 with my wife and my two children to her mother's house for
21 Thanksgiving dinner. Her sister came down from
22 Washington, D.C. with her husband and their child. Her
23 brother came up from St. Petersburg, Florida with his wife
24 and their two children. And there were a couple of
25 cousins there as well. That was back in late November of

1 last year.

2 It occurs to me today that I could not tell you which
3 one of us arrived first. I can't tell you who made the
4 potato salad or that green bean casserole. If I asked my
5 wife to ask her sister, they probably would argue for
6 years about it. But I can tell you who carved the turkey.
7 I can tell you who hosted the event. Her mother.

8 William Henry carved the turkey. William Henry
9 hosted this event. This was his thing. He was the one
10 that was mad at this guy. He was the one that shot him.
11 Of course their stories are going to be a little bit
12 different. Number one, they're not smart guys. Number
13 two, this was three years ago. March of 2006. This is
14 now January of -- February of 2009. Of course, they're
15 not going to remember every detail. And of course, their
16 memory, like all of ours, are going to bend the past
17 against -- to make them feel best or better or look
18 better. And of course, they're going to minimize their
19 involvement. Yeah, I was with them, but I didn't do too
20 much. That's the nature of what criminals do. But the
21 same basic story is being told by all of them. So when
22 you hear, well, he says he had the gun, he says he had the
23 gun, he says he went over here, he says he went over
24 there, who knows? Look at this place. Six grown
25 strapping men in this room fighting. Imagine the

1 upheaval. And it probably took less than a minute or two.
2 They're talking five, ten minutes. Couldn't have taken
3 that long. Probably -- they were in there probably a
4 minute or two, if you think about it in terms of time.
5 Just -- when you go back in the jury room, just decide,
6 let's just sit quietly and see how long a minute or two
7 minutes is. And start with, I'm thinking they're coming
8 in now. It was probably just a minute or two. But you've
9 got six grown men fighting in this room with guns. Who
10 could remember exactly who was where three years later?
11 And of course, they want to say, well, I didn't do that
12 much. But they're all telling the same basic story about
13 what happened. Don't let that create reasonable doubt for
14 you, ladies and gentlemen, just because he says, well --
15 because you're thinking, well, this guy said he was
16 standing over here when in fact he was standing over
17 there.

18 All of them said he shot that man. All of them said
19 it was his idea. And that's it. Does it matter to you
20 whether Mr. Garrett was standing here or whether Mr.
21 Garrett was over here happening to be hitting Andre Brooks
22 at the time the shot went off? He shot him. And that's
23 what this is all about.

24 Michael Garrett -- let's talk about bias and
25 prejudice. Michael Garrett is the brother of the woman

1 who has his child. He's like a brother-in-law to him.
2 His sister has a baby by this guy. Imagine how hard it is
3 for him to come in here and say this guy shot somebody.
4 Imagine what it's going to be like at Thanksgiving for him
5 this year with his sister and that child there. That he
6 had to tell -- that he had to come in court and testify
7 that the child's father shot and killed somebody. Imagine
8 how hard that is. Why would anybody do that unless it's
9 the truth? What would possibly make Michael Garrett, Mark
10 Cureton and Mr. Irby and Andre Brooks all say this person
11 shot and killed somebody? What could possibly confederate
12 them and get them to agree to some grand conspiracy to
13 blame this man if he was innocent? And let's keep in
14 mind, how possibly could Andre Brooks get with the people
15 who beat the heck out of him to agree to do anything? Is
16 there anyway Andre Brooks would have agreed with Mike
17 Garrett, Freddie Irby and Mark Cureton to blame -- to talk
18 to them even? They were just whipping his butt. The only
19 reason he got out is because that gunshot went off and he
20 was scared he was going to get shot too. Would he ever
21 sit down with them again and talk about anything, let
22 alone framing him?

23 When you put them together, ladies and gentlemen, it
24 just makes sense. They told the same basic story, ladies
25 and gentlemen, five layers of evidence.

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1 In closing, ladies and gentlemen, let me say one more
2 thing. As I said early on, all these people are in a
3 different world. But they're people. They're not
4 necessarily bad people. They just do bad things. Michael
5 Garrett seemed like a decent guy. The victim in this
6 case, we've talked about the fact that he was a drug
7 dealer. And I am not here, by any means, to defend his
8 lifestyle or his chosen career. I am here to defend his
9 right to live. He has a right to live. Nobody has a
10 right to come into somebody house and shoot them dead.
11 Nobody. And as bad as you might feel about what Mr. Perez
12 did for a living and the fact that he carried a gun all
13 the time and that he -- the fact that he moved around in
14 areas that sometimes involved violence, he was not
15 bothering anybody that night. He was not threatening
16 anybody that night. No, he was not perfect. But are any
17 of us? And who has the right to decide you should die.
18 Certainly not him.

19 Thank you.

20 THE COURT: Mr. Creech, you may address the
21 jury.

22 CLOSING STATEMENT

23 BY MR. CREECH:

24 Thank you, Your Honor, may it please the court, Mr.
25 Weston. Thank you, ladies and gentlemen.

1 Ladies and gentlemen, you're the judges of the facts
2 in the case. This is, this is an emotional case and
3 you've got to see through these emotions and look at the
4 evidence, because you've got an important duty, you've got
5 an important job. Someone's life is at state, Mr.

6 Henry's, and you've got his life in your hands.

7 Ladies and gentlemen, the solicitor has said that
8 they somehow got together and concocted this whole thing,
9 that they had a plan to go in and shoot and kill. But I
10 asked this question just from the get-go. The evidence
11 was that apparently they -- that whoever goes into this
12 apartment unarmed. And then the state would have you
13 believe that they took the gun from Mr. Paco and used that
14 gun to shoot and kill. Why would anybody go into an
15 apartment unarmed, planning to kill someone, planning to
16 take a gun from an armed person, and shoot someone? If
17 they knew someone was armed, that would mean they would
18 not go into an apartment. They would have to prove that
19 -- the state would have to prove that the victim, whoever,
20 was armed before they went in. There's been no evidence
21 of that.

22 Ladies and gentlemen, I would ask that you remember
23 the fundamental rules in this case. The judge will tell
24 them to you. But the state must leave no questions
25 unanswered. They must answer all the questions. They

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1 must test all the evidence. They must gather the
2 evidence. They must bring it into the courtroom. And
3 they must show it to you. Those are the rules. That's
4 the way it is. It is what it is. And that's what it is
5 in this case. They must rule out all the suspects, run
6 down all leads, bring it all to court so that you, the
7 jury, can decide, because you are the judges. You've got
8 to make the decision based on the evidence. This is not a
9 question of whether we like somebody or not like somebody
10 or feel sympathy for someone. This is a case of having to
11 decide the facts. And you have to be judges of the facts.

12 Obviously, an accused person, an accused citizen in
13 this country has an absolute right to remain silent. That
14 cannot be used against him. It cannot be commented on in
15 the jury room by anyone. That's improper, and the judge
16 will tell you that. The law gives the police the power to
17 arrest anyone, anyone of us. But the law gives you, the
18 jury, the power to decide, the power to decide if the
19 police have made a case. The prosecutor has to answer all
20 the questions.

21 Ladies and gentlemen, they're supposed to answer the
22 question. They're supposed to follow the leads. They're
23 supposed to test the evidence like the blood, check it for
24 DNA, comparing the DNA, bring in the DNA evidence to
25 court. Ladies and gentlemen, this case is three years

1 old. Three years old. They would have had time to check
2 the evidence in this case. Was the case not that
3 important to them? Was this case not important enough to
4 check that evidence after three years? Three years. You
5 saw all these guys come in here and testify, all of them
6 had on jail uniforms. They've been down in the jail, all
7 of them, three years. You don't think they've been
8 talking about their case? You don't think they've been
9 talking about their case for three years? Because they've
10 all testified differently than what's in their statements
11 that they gave the day -- two days after this supposedly
12 happened.

13 Now, the forensics officer came in here and said --
14 and I thought she said there were twenty-one pieces of
15 evidence in this case. Twenty-one pieces of evidence,
16 physical evidence. We have one -- we have this not even
17 taken from the -- by the forensics officer. Then we have
18 some pictures and a diagram. Twenty-one pieces of
19 evidence. Not one single one was presented in this
20 courtroom. They are the ones that have to introduce this
21 evidence. Yet curiously, curiously, they didn't do that
22 in this case. They are police, they are prosecutors.
23 Their job is to get the best evidence and once they get it
24 test it and bring it into court. That's what they do.
25 They want to bring you the best case. They want to bring

1 the best evidence. Yet they didn't do it in this case.

2 And that does smell. There is something wrong with that.

3 They need to bring all the evidence in so the jury

4 can decide and see the full pictures. And if the jury

5 decides against something, they just do. That's the way

6 it is. It is what it is. But they don't just come in and

7 say, let's tell a story. Let's just rely on inconsistent

8 statements.

9 Ladies and gentlemen, a Pepsi bottle outside of that
10 apartment was found by forensics. They took DNA from that

11 Pepsi bottle. Took DNA from the Pepsi bottle. No tests

12 done to see whose DNA it was. There was blood on the

13 wall. Not tested to see whose it was. They say there was

14 a holster. Where is it? They say there was a hammer.

15 Why isn't it in this courtroom? The hammer, is that not a

16 source of possible fingerprints? They found marijuana

17 cigars, cigars filled with marijuana, possible source of

18 DNA. Never collected. A Puerto Rican flag, blood on it,

19 taken into evidence, never tested, never brought into this

20 courtroom. Why is this important, ladies and gentlemen?

21 Because they relied on people who have given versions of

22 this story. And if the DNA or the blood or fingerprints

23 contradict any of the story that those people have said,

24 then they've got a big problem. A big problem. And they

25 know it.

1 Ladies and gentlemen, we've all seen, heard, read,
2 about this happening in the news, someone gets convicted,
3 gets twenty-five years in jail, they find the DNA
4 evidence, test it and it turns out that the person was not
5 guilty after spending twenty-five, thirty years in jail.
6 That is injustice. They have the technology. They have
7 the means. And they can do it. This is about a serious
8 case.

9 Now, they can't just leave all that stuff out.
10 That's insanity. I mean, this is a criminal trial. We're
11 trying to do justice in this case. How can that be when
12 we don't know half of the evidence? Never even seen it.
13 I mean, it's like a, it's like a romper room or something
14 that -- this is like the Jerry Springer show that we've
15 seen up there on that witness stand, instead of
16 professional, competent evidence.

17 Why would forensics officers and the police officers
18 collect all that evidence? Why would they go out there
19 and get all that evidence if it wasn't important? Why
20 would they even gather it in the first place if it wasn't
21 important? They know that any evidence is important and
22 can tell them completely different things. Why would
23 Investigator Flavell -- if they say DNA is no big deal,
24 why did Investigator Flavell take, take Andre Brooks's
25 DNA. He took Andre Brooks's DNA. He did it. Never

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1 tested it. Never compared it. Never did anything to
2 corroborate, corroborate what these people are saying,
3 what these people are saying. Every piece of evidence is
4 important.

5 Ladies and gentlemen, they not only didn't bring in
6 the evidence. What about the five, six, seven other
7 police officers that were out there that night? The four
8 or five detectives that worked on this case, we haven't
9 heard from any of them. We heard from none of the other
10 witnesses that were out there that night. None. None.
11 It's their job to bring them in. It's not mine. They've
12 got to bring these people in to tell the whole story.
13 They have given you a quarter of this case. But they're
14 going to make it out to be like it's the whole case. They
15 haven't given you the whole case.

16 Really, all that we've got -- they didn't bring this
17 in. Why didn't they bring this in? It smells. What they
18 have left us with is, according to them, admitted by them,
19 contradictory stories from the witnesses. Witnesses who
20 have taken the stand and admitted to lying in the past.
21 Admitted to lying. But they want you to say, forget all
22 of that. Forget all of that. Now they're telling the
23 truth.

24 Let me ask you -- they're saying trust these
25 witnesses. And we're going to talk about that in just a

1 second, if you can trust these witnesses.

2 But let me just talk about the basics here, the
3 witness's inconsistencies. These are basics. And this
4 isn't Thanksgiving dinner and who cut the turkey. Okay.
5 This is a murder case. All right. This is a real trial
6 with someone's life at stake and the outcome of this case
7 is very important. It's not a little family get-together.
8 No.

9 Ladies and gentlemen, this John Michael Garrett
10 character has told a very -- he just hasn't been truthful.
11 And he did it right here in the courtroom. I don't know
12 if you remember, Mr. Weston walked back there to the door,
13 you know, when he was doing the -- trying to demonstrate
14 how far he came -- Mr. Garrett came in and he asked Mr.
15 Garrett to stop -- tell me when to stop. You saw the
16 shooting, Mr. Garrett? Yes. Mr. Garrett, you ran out?
17 Yes. But you ran in to get your beer can? Yes. All
18 that. Then I asked him on cross examination, hold on now,
19 you went back in that back room, you pulled the drawers
20 out of the shelves -- the shelves out of the drawers,
21 excuse me, you were looking for stuff to steal. That is a
22 completely contradictory version of the events from the
23 mouth of the witness, from his testimony. How can you
24 believe anything he says? He said that he went in and saw
25 somebody get shot and left. And if I hadn't asked him on

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1 cross examination that's all you would have had. Then he
2 admitted on cross examination, no, that's really not what
3 happened. I went back in the back room. I mean, this
4 whole case should be thrown out on that. That's --
5 there's no -- he's just been untruthful. He's making it
6 up as he's gone. He's trying to fool everybody.

7 Let me go through some of these inconsistencies.

8 Mark Cureton said he didn't have a gun when he went.
9 Others said he did. Mark Cureton said he went -- and this
10 is the guy Lunatic. He said he went in first. Others
11 say, no, he did not. Mark Cureton says Paco was being
12 shot when he walked in. How could that be if the others
13 went in first? Cureton said he went in second. Garrett
14 says he went in, stopped and saw Paco being shot, dropped
15 his can and ran. And we know that's not true. He left
16 this apartment, Mr. Garrett did, went back in to get that
17 beer can. Even he, even John Michael Garrett knew that he
18 could leave fingerprints behind. Even he knew that. He
19 knew that there could be fingerprint evidence, so he went
20 back in there to get the can. That is an obvious
21 indication of guilt of doing something. He knew he left
22 his fingerprints behind. But none of the fingerprint
23 evidence, the officers, the investigators, the police, the
24 prosecutors didn't bring any fingerprint evidence. No
25 physical evidence in this case.

1 Irby, Mr. Irby, never told the investigators the day
2 after it happened, two days after it happened, that he
3 ever saw Jermaine shoot Paco. But then in court he gives
4 a statement -- a different statement, three years later.
5 Cureton said Garrett was not even in the room. Cureton
6 said Garrett was not even in the room when this shooting
7 that was burned in everybody's brain even happened. None
8 of them could tell us where Paco had even been shot. Some
9 say three shots, others say four shots. And has there
10 been any evidence, any evidence, that the bullets were
11 fired from the same gun? They know that they can get
12 those bullets. They have those bullets. They can test
13 those bullets to see if they were fired from the same
14 weapon. Where is that evidence that's not in this record?
15 Can they say that those bullets -- can they say, beyond a
16 reasonable doubt, with competent reliable evidence, that
17 those bullets came from the same gun? The answer has to
18 be no. There is nothing in the record to indicate or
19 answer that question, and that's the questions they have
20 to answer.

21 They collected the bullets in the case. Where's the
22 bullet evidence? Why are they holding this back? Why are
23 they holding this back? All of these people, ladies and
24 gentlemen, could come in here, they could have been in
25 that room, they could have seen what happened, and all

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1 they have to say is, Jermaine did it. The state has to
2 prove Jermaine was not only there, that he was more than
3 just there, that he was aiding and abetting and that
4 Jermaine, Jermaine kidnaped Andre Brooks or he was helping
5 kidnap Andre Brooks or that he stole a cell phone or knew
6 that a cell phone was going to be stolen or that he was
7 helping steal a cell phone. There was none of that in the
8 record. That he pulled the trigger with malice
9 aforethought. That he had this plan. How could they have
10 proved that? The evidence shows none of that. The
11 state's theory is that the gun that was used was from
12 Paco, who had it on him. How could they have proved --
13 how could they have planned that? How could they have
14 planned that, planning on Mr. Paco to have that gun on
15 him?

16 They say, you know, where is that cell phone?
17 Cureton -- and I remember I asked him this yesterday on
18 the stand, Cureton said he never talked with Garrett,
19 never got with Garrett afterwards. He says Garrett stole
20 the cell phone and gave it to him. And I asked him how it
21 was? And he had to pause and you could see his -- you
22 could see it working, you could see his brain working and
23 he just absolutely, flat out, told a fabrication. Just
24 fabricated that. Oh, I got it in the apartment. Garrett
25 is not saying that. Garrett never said that.

1 Now, obviously Paco was involved with selling drugs,
2 using drugs and had recently ingested cocaine, we know.
3 We know that he had recently ingested cocaine and it was
4 still in his blood. He had almost eleven thousand dollars
5 in cash in that apartment. In that apartment complex,
6 those types of secrets don't last long. People are in and
7 out of there. There's testimony of people going in and
8 out, in and out. People in the apartment know he's a drug
9 dealer. Know he has cash in there. Know he has guns in
10 there. Andre Brooks was in there all the time buying and
11 selling drugs. Katrina Haynes knew people were coming and
12 in and out of there.

13 Andre Brooks came in here and admitted he lies. Said
14 he's a good liar. He lies to police. Is he to be
15 trusted? The state of South Carolina, the prosecutor
16 here, the prosecutor has asked you to trust Andre Brooks.
17 Trust you -- to trust Andre Brooks with this decision.
18 Find somebody guilty with serious consequences based on
19 Andre Brooks.

20 Let me ask you this, if Andre Brooks came to your
21 door, would you give him five hundred dollars of your
22 money and tell him to go take it and put it in the bank?
23 Would you trust Andre Brooks with five hundred dollars of
24 your money? You'd never see it again. Yet they want you
25 to trust him with Jermaine's life. That just can't be

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1 done. That is not justice.

2 He told police, told them, affirmatively told them,
3 affirmatively lied to the police about the bandanas and
4 the masks. Made that up. Made it up. He did that to the
5 police. He went and told his mom, went and told him mom
6 they were wearing bandanas. Was he afraid for his mom?
7 Was he afraid to tell his mother the truth? He made that
8 up to his mother. He admitted that. He admitted he lied
9 to his mom. That has -- why would he be afraid? They all
10 say they're afraid. These people come in here with these
11 records, with these acts that they're left with and the
12 next thing they're afraid. Come on.

13 I mean, you've heard that old statement, fool me
14 once, shame on you, fool me twice, shame on me. They're
15 trying to fool you guys two, three, four, five, six times
16 over. Are you going to be fooled by this evidence, by
17 these people, by these people?

18 Andre Brooks said in his statement, Jermaine was not
19 even the shooter. He said in his statement given to the
20 police, not even the shooter. He said in court, four men
21 rushed in. Yet Cureton, Irby, Garrett, they all say two
22 and two. With five minutes apart. Remember? Cureton
23 said that he got a phone call -- or somebody got a phone
24 call while they were sitting out in the car and they
25 talked for a while. And they sat out in that car before

1 they went in. How could that be four people going in?
2 Now, who are you to believe in this case? Who can
3 you believe? Who can you trust? They're all saying
4 different things. You can't believe any of these people.
5 Welton Booker took the stand and he's right, he wouldn't
6 bet his life on it. He wouldn't bet his life that it was
7 Jermaine. But they're asking you -- I mean, and let me
8 ask you this. What about Jermaine's life? Welton Booker
9 wouldn't bet his life on it. That says he's not certain.
10 Don't you think you would have to have a witness who is at
11 least certain about what happened before there could be a
12 conviction in this case? What about Jermaine's life?
13 Welton said he wouldn't bet his life on it. Well, what
14 about Jermaine's life in this case? He said he wouldn't
15 bet his life on it. He said, he said in his statement,
16 and I asked him this, he said in his statement, again, I
17 guess he's afraid. I guess these street guys are all
18 afraid. He was scared in his statement. Maybe he was
19 scared when he said, after the alleged incident, he did
20 not even see Jermaine that night. He said that in his
21 statement to the police.
22 Let's talk about Frederick Irby a little bit.
23 Frederick Irby, I think, was the very first one of these
24 three that testified yesterday. He saw a psychiatrist.
25 He admitted this. A psychiatrist has concluded that

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1 Frederick Irby has a delusional disorder, meaning he hears
2 and sees things that are not there. How can we rely upon
3 him to make this decision? Someone with a disorder by a
4 psychiatrist of delusional disorder.

5 Do you remember Cureton, Lunatic? He was trying to
6 ask me questions during the trial. He was trying to ask
7 me questions. Wouldn't even answer my questions. Ladies
8 and gentlemen, all of them have plea deals. All of them
9 have plea deals. All of them have --all of them were
10 facing murder, life in prison, plus more, forty or fifty
11 years on top of that. And now with the deal they've got,
12 they're looking at anywhere from two to thirty, but the
13 prosecutor is asking for fifteen. They've done three.
14 They could get anywhere from two to three to four on up to
15 thirty, but they've got a deal with the prosecutor who's
16 going to ask the judge to give them no more than fifteen.
17 And the prosecutor reduced the murder charge and moved it
18 down to manslaughter.

19 Ladies and gentlemen, if he asks you why would --
20 he's asked you why would these people make it up, why
21 would they make it up? Well, just think about it a
22 minute. Just think about it a minute. For them, their
23 personal freedom is a lot more valuable than telling the
24 truth in the courtroom. Their personal freedom is a lot
25 more valuable to them. They value that more. They will

1 do anything to keep that and to get it back, including
2 coming in here and saying whatever they have to in some
3 trial. Putting their hand on some Bible, saying some
4 funny oath. That means nothing to them. But their
5 personal freedom means everything. Everything. It's
6 their personal freedom that's at stake and they know
7 they've got to testify and say what they need to say to
8 keep it. To keep it. And that's why they are making up
9 what they have done. And that's why they have implicated
10 Jermaine Henry in this case. They know they did it. So
11 the first thing they try to do is blame it on somebody
12 else. Like a bunch of children.

13 The state could have provided a solid, competent,
14 reliable evidence to prove its case and instead it relied
15 upon the word of these witnesses. Detective Flavell said
16 he would never stop an investigation on just the word of
17 witnesses. Yet he did in this case. We have no objective
18 evidence to know that they are being completely truthful
19 with us. And they have to be. They have to be. If the
20 witnesses say they opened the door, check the door for
21 fingerprints. It's as simple as that. Simple as that.

22 Ladies and gentlemen, it is my pleasure to have been
23 working with you in this case. I do want you to know
24 that. In our system, the jury makes the final call. When
25 you go back in that jury room, I'm not going to go back

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1 there with you. I can't go back there. You have got all
2 the power. After the judge gives you this case, you are
3 going to be the most powerful people in this building and
4 certainly in Jermaine Henry's life. I can't -- I'll be
5 powerless at that point because I can't go back there with
6 you.

7 However, you are the guardian, you are the guardians
8 against the power of the police, the power of the
9 prosecutor. And if you can't check the power of the
10 police, the prosecutor, then the police, the prosecutor,
11 the government, can do anything it wants to. If you
12 convict someone on such flimsy evidence as this, what does
13 that do for everybody else's freedom? What happens in the
14 next case? What message do you send to the police and the
15 prosecutor? It's okay not to bring in solid, competent,
16 reliable evidence. What does that do for everyone else's
17 freedom in this community? It chips away at it slowly and
18 slowly and slowly.

19 This is just simply one of those cases where the
20 state has not met its burden of proof. It is what it is.
21 Our system works. It works when you make the right
22 decision. And that decision, ladies and gentlemen, is a
23 verdict of not guilty. Not proven on all the charges.
24 Our system works. You find him not guilty, you find him
25 not guilty, you're the system, the system is working, our

1 system works.

2 Thank you..

3 MR. WESTON: Excuse me, Your Honor.

4 THE COURT: Yes.

5 MR. WESTON: There's one matter I need to take
6 up before your charge, Your Honor. I apologize. It won't
7 take long.

8 THE COURT: We'll take a short break before the
9 charge. That'll give you a chance to stretch. Go back to
10 your jury room. Don't discuss the case. I'll instruct
11 you on the law in just a few minutes. We'll take a short
12 break.

13 (WHEREUPON, the jury exited the open court at
14 approximately 10:27 a.m.)

15 THE COURT: Yes, sir, Mr. Weston.

16 MR. WESTON: Your Honor, I did -- as I told you
17 at the beginning, I will not interrupt counsel during his
18 closing argument. And while I think that I'm comfortable
19 he made a number of deliberate mistakes on what the law
20 is, I understand that's just our opinion of the law. But
21 he specifically said, Your Honor, and I quote, Andre said
22 in his statement Jermaine was not the shooter. That is
23 very significant, very substantive, and it is a lie. And
24 he knows it's a lie, judge. And I think you've got to
25 tell the jury that that statement is not -- there is

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1 nothing in the record where Andre said in his statement
2 Jermaine was not the shooter. He's got the statements,
3 judge. He just made that up and sent it to the jury for
4 them -- the statements aren't in evidence, so they can't
5 go back and check. That is just -- Your Honor, that is
6 just uncalled for.

7 MR. CREECH: Your Honor, that's not the case.

8 Andre Brooks ---

9 MR. WESTON: We can read the transcript.

10 THE COURT: Wait just a minute. Yes, sir.

11 MR. CREECH: Andre Brooks said that he saw
12 Jermaine with a hammer. And the person that he recognized
13 as Jermaine is not the shooter. He said that in his
14 statement.

15 MR. WESTON: I've looked through his statement,
16 Your Honor. I don't see it. I'll give them to you.

17 MR. CREECH: I mean, I asked him that on the
18 stand and he said, that's right.

19 MR. WESTON: No, sir, Your Honor, he said --
20 Andre Brooks said in his statement, Jermaine was not the
21 shooter?

22 MR. CREECH: He said, they were wearing bandanas
23 around their mouths. One of them was holding two guns
24 while the other was hitting Paco with the hammer. I
25 recognized the voice of the one hitting Paco with the

1 hammer. It was Jermaine.

2 MR. WESTON: How is that Jermaine was not the
3 shooter? Your Honor, he specifically said that the
4 defendant specifically ruled his client out as the
5 shooter. That is an out and out lie about what this -- he
6 has had this for almost a year, judge.

7 MR. CREECH: That's not true.

8 MR. WESTON: He just ---

9 MR. CREECH: I was just appointed on the case in
10 August, judge.

11 MR. WESTON: All I'm asking, judge, is you
12 instruct the jury that his comment where he said, and you
13 can quote, Andre said in his statement Jermaine was not
14 the shooter, that there is nothing in the record to
15 support that. Because that is a lie, judge. And he's
16 been doing it the whole trial.

17 THE COURT: I'll address the jury about the
18 statements, as I have already. Let's take about a five
19 minute break. We'll be ready to ---

20 MR. CREECH: Your Honor, I would just ask that
21 you not, you know, make a comment on the facts of the case
22 to the jury about the ---

23 THE COURT: I'll address the jury under the law.
24 If I say anything that you feel you disagree with, you can
25 certainly make your objection at the right time.

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1 MR. WESTON: Yes, sir, Your Honor, except I have
2 no recourse as a prosecutor other than to make the
3 objection.

4 THE COURT: Yes, sir, I understand. And you've
5 made your objection. Let's take a short break.

6 (WHEREUPON, court stood at recess for a short break.)

7 THE COURT: All right. We ready to proceed?

8 MR. WESTON: Yes, sir, Your Honor.

9 MR. CREECH: Yes, Your Honor.

10 (WHEREUPON, the jury entered the open court at
11 approximately 10:41 a.m.)

12 CHARGE

13 BY THE COURT:

14 Madam Forelady and ladies and gentlemen, it is now my
15 responsibility to instruct you on the law. Let me remind
16 you of the fact that in this case the defendant has been
17 arrested and charged and indicted with four separate
18 offenses. That can't be considered as evidence by you of
19 any guilt in the case. It doesn't create any presumption
20 or inference of guilt. The indictments are merely, as
21 I've told you, the paper by which this case is -- these
22 cases are brought before this court. The indictments that
23 you've heard are a charge of murder, assault and battery
24 with intent to kill, armed robbery and kidnaping. Now,
25 each indictment charges a separate and distinct offense.

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1 You must decide each indictment separately on the evidence
2 and the law applicable to it, uninfluenced by your
3 decision as to any other indictment. The defendant can be
4 convicted or acquitting on any or all of the different
5 offenses that have been charged. I'll ask you to write a
6 separate verdict form for each of these as to either guilt
7 -- finding of guilty or finding of not guilty.

8 The defendant has entered a plea of not guilty to
9 each of these indictments and that places the burden on
10 the state to prove the defendant's guilt. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove themselves innocent.
13 I charge you that's an important rule of law that a
14 defendant in any criminal case, no matter how serious the
15 charges may be, will always be presumed to be innocent of
16 the crime for which the indictment was issued unless the
17 guilt has been proved by evidence satisfying you of that
18 guilt beyond a reasonable doubt. The presumption of
19 innocence doesn't end when you begin your deliberations.
20 It accompanies the Defendant throughout the trial until
21 you reach a verdict of guilt based upon evidence
22 satisfying you of that guilt beyond a reasonable doubt.

23 Presumption of innocence has been described as a robe
24 of righteousness that's placed about the shoulders of a
25 Defendant and remains with that defendant until it's been

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1 stripped from him by evidence that satisfies you of that
2 guilt beyond a reasonable doubt. Presumption of innocence
3 isn't just a mere legal theory. It's not a phrase that's
4 tossed around. It's a substantial right to which every
5 defendant is entitled unless you the jury are satisfied
6 that the evidence of that -- the defendant's guilt beyond
7 any reasonable doubt.

8 I've been using the phrase beyond a reasonable doubt.
9 You may ask, well, what is a reasonable doubt in the law?
10 A reasonable doubt is the kind of doubt that would cause a
11 reasonable person to hesitate to act. As I said, the
12 state has the burden of proving guilt in this case by that
13 standard of beyond a reasonable doubt. Some of you in the
14 past may have had an opportunity to serve as jurors in
15 civil cases and you were told it was only necessary to
16 prove a fact was more likely true than not true, such as
17 by what was called the greater weight or the preponderance
18 of the evidence. In a criminal case the state's proof is
19 more powerful than that. It must be proof beyond a
20 reasonable doubt.

21 Proof beyond a reasonable doubt is proof that would
22 leave you firmly convinced of the defendant's guilt. Now,
23 ladies and gentlemen, there are very few things in the
24 world that we know with absolute certainty. And in
25 criminal cases the law doesn't require proof that

1 overcomes every possible doubt. If, based upon your
2 consideration of the evidence, you're firmly convinced
3 that the defendant is guilty of the crime charged, then
4 you must find the defendant guilty. If on the other hand,
5 you think there's a real possibility that the defendant is
6 not guilty, then you must give the defendant the benefit
7 of the doubt and find him not guilty.

8 I remind you that during the course of the trial,
9 you and I have had certain duties to perform. As the
10 trial judge it's been my responsibility to preside over
11 the trial of the case. I have the duty to rule upon the
12 admissibility of the evidence that's been offered during
13 the trial. You're to consider only the competent evidence
14 before you. If there was testimony to which an objection
15 was made and sustained or the evidence that I've
16 instructed you should be stricken from the record during
17 the trial of the trial, then, of course, you should
18 disregard that testimony. You're to consider only the
19 testimony from which -- that's been presented from this
20 witness stand, the exhibits that have been made a part of
21 the record and the stipulation of legal counsel.

22 I have the additional duty to charge you the law
23 applicable to the case. As the presiding judge, I'm the
24 sole judge of the law in this case. And it's your duty as
25 jurors to accept the law and apply the law exactly as I

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1 state it to you. You may already have an idea about what
2 the law is in a case such as this or an idea about what
3 the law ought to be in a case like this. If you have such
4 idea and it doesn't agree with what I now tell you the law
5 is, then you must abandon such notions because you're
6 sworn to accept the law and apply the law exactly as I
7 state it to you.

8 Every case that's tried in this court before a jury,
9 the jury becomes the sole and exclusive judge of the facts
10 in the case. As I've stated to you before, you are the
11 sole fact finder. A judge can't intimate or state or
12 comment on or make any statements at all to a jury about
13 the facts of the case. What the attorneys say the facts
14 are, that's not the facts. The facts are what you
15 determine the facts to be and what you've heard during the
16 course of the trial. Since you are the sole judges of the
17 facts, please don't infer from anything I've said during
18 the course of the trial, any rulings I've made, anything I
19 say to you even now during the course of this instruction
20 to you that I have an opinion about the facts in the case.
21 I don't have an opinion about the facts. Our constitution
22 prevents me from having an opinion about the facts.
23 That's totally and exclusively yours and yours alone to
24 determination and you're to make that determination as to
25 the effect and the value and the weight and the truth of

1 the evidence presented during the course of the trial.

2 Normally in a trial there's two kinds of evidence.
3 There's direct evidence and there's circumstantial
4 evidence. Now, direct evidence is testimony of a person
5 who claims to have an actual knowledge of a fact such as
6 an eyewitness. It's evidence which would immediately
7 establish the main fact to be proved.

8 Circumstantial evidence is proof of a chain of facts
9 and circumstances that would indicate the existence of a
10 fact. It's evidence which immediately establishes
11 collateral facts from which the main fact may be inferred.
12 Circumstantial evidence is based on inference and not on
13 personal knowledge or observation. The law makes
14 absolutely no distinction between the weight or the value
15 to be given to either direct evidence or circumstantial
16 evidence, nor is a greater degree of certainty required
17 for circumstantial evidence than for direct evidence. You
18 should weigh all the evidence in the case and after
19 weighing all the evidence if you're not convinced of the
20 guilt of the defendant beyond a reasonable doubt, you must
21 find the defendant not guilty.

22 Necessarily, you must determine the credibility of
23 witnesses who testified in the case. Credibility simply
24 means believability. It's your duty as jurors to analyze
25 and evaluate the evidence and determine which evidence

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1 convinces you of its truth. In determining the
2 believability of witnesses who have testified you can
3 believe one witness over several witnesses. You can
4 believe several witnesses over one witness. In your
5 discretion, ladies and gentlemen, you may believe part of
6 the testimony of a witness and reject the remaining part
7 of the testimony of that very same witness. You may
8 believe the testimony of a witness in its entirety. You
9 can reject the testimony of a witness in its entirety.
10 You can consider whether any witness has exhibited to you
11 an interest or prejudice, a bias, other motive in the
12 case. You can consider the appearance and the manner of
13 the witness while on the witness stand. Was that witness
14 straightforward or hesitant in answering? Was the
15 testimony of that witness consistent or inconsistent? How
16 did that witness come to know the facts to which he or she
17 testified? What was the ability of that witness to know
18 these facts? Was the testimony of a particular witness,
19 was it strengthened or weakened by other testimony or
20 evidence? It's totally your prerogative to determine the
21 credibility of the witnesses who testified.

22 Now, a person who has a past criminal record is
23 competent to testify during a trial. A past record does
24 not affect the ability of that witness to testify. It may
25 only be considered by you, if at all, to determine the

1 witness's believability. Remember, you are the sole
2 judges of the facts in the case and of the believability
3 of any and all witnesses.

4 Now, there may have been evidence presented that
5 witnesses have made prior statements which were not
6 consistent with the witness's present testimony. You can
7 use this evidence to decide whether to believe the
8 witness. You may also use evidence of the earlier
9 contradictory statements to determine the truth of those
10 statements. It's up to you to decide whether to believe
11 the earlier statement or the testimony given at trial. If
12 a witness has shown they have knowingly testified
13 untruthfully concerning any material matter, you may
14 consider this in determining whether to trust the
15 witness's testimony on other matters. You may reject all
16 testimony of that witness or give all or part of the
17 testimony the weight that you think it deserves.

18 Now, madam forelady and ladies and gentlemen, if a
19 crime is committed by two or more people who are acting
20 together in committing a crime, the act of one is the act
21 of all. A person who joins with another to commit an
22 unlawful act is criminally responsible for everything done
23 by the other person which happened as a probable and a
24 natural consequence of the act done in carrying out the
25 common plan or purpose.

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1 For example, two people can be guilty of the crime of
2 arson when only one of the two had the match and actually
3 lit the fire. If two or more people are together, acting
4 together and assisting each other in committing the
5 offense, the act of one is the act of all. Or as is
6 sometimes said, the hand of one is the hand of all. Prior
7 knowledge that a crime is going to be committed without
8 more is not sufficient to make the person guilty of that
9 crime. Mere knowledge that another person is going to
10 commit a crime, even if the defendant is present when the
11 crime is committed, is not sufficient to convict the
12 defendant as a principal.

13 Guilt is a principal shown by actual or constructive
14 presence at the scene as a result of prior arrangement.
15 Therefore, a finding of a prior arranged plan or a common
16 scheme is necessary for a finding of guilt as a principal.
17 The state must prove beyond a reasonable doubt by
18 competent evidence the theory of the hand of one is the
19 hand of all.

20 The principal in a crime is one who either actually
21 commits the crime or is present and aiding, abetting or
22 assisting in committing the crime. When a person doesn't
23 act in the presence of or with the assistance of another,
24 the act is done by both. Where two or more are acting
25 with a common plan or intent or present at the commission

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1 of a crime, it does not matter who actually commits the
2 crime. All are guilty. As I've stated, the hand of one
3 is the hand of all.

4 Present at the commission of a crime means to be
5 sufficiently near to, to aid and abet or assist in the
6 commission of the crime. However, mere presence at the
7 scene of a crime is not sufficient to convict one as a
8 principal on the theory of aiding and abetting.

9 Intent is also a necessary element for there must
10 have been a common design or intent to commit the crime
11 and the crime must have been committed pursuant thereto
12 with the person aiding and abetting by some overt act.
13 Intent means intending the result which actually occurred,
14 the occasion not being accidentally or involuntarily.
15 Intent may be shown by acts and conduct of the defendant
16 and other circumstances from which you may naturally and
17 reasonably infer intent. The state must prove this
18 evidence, as I've stated, beyond a reasonable doubt.

19 Mere presence at the scene, as I stated, is not
20 sufficient to prove someone guilty of a crime. A
21 defendant's presence where a crime is being committed or
22 mere association with a person who commits a crime does
23 not make a defendant an accomplice or an aider or abetter
24 of the person committing the crime. The burden is on the
25 state to prove every element of the crime charged. If you

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1 find, after reviewing the evidence, that the state has
2 proved that the defendant was only present at the scene of
3 the crime and that they have not proved beyond a
4 reasonable doubt any other participation in the crime,
5 then you must find the defendant not guilty. The law is
6 that the presence of -- at the scene of a crime is not
7 sufficient to find someone guilty.

8 Now, ladies and gentlemen, in this case you've heard
9 evidence that the defendant committed a bad act other than
10 the one for which the defendant is now on trial. This
11 testimony, if you conclude it is true, may only be
12 considered by you on the question of intent or motive or
13 identify, a common scheme or plan or the absence of a
14 mistake if for no other reason and no other purpose. You
15 may give this evidence the weight and value, if any, that
16 you find it should have on that sole issue of intent or
17 motive, identity, a common scheme or plan or the absence
18 of the state. You must not consider evidence of the bad
19 act not subject to any conviction as proof of the
20 defendant's guilt of the charge that we're trying today,
21 any of those charges.

22 I instruct you and emphasize to you, ladies and
23 gentlemen, the fact that the defendant did not testify is
24 not a factor to be considered by you in any way in your
25 deliberations and in your consideration of the question of

1 the guilt or innocence of the defendant. It must not be
2 considered by you in any manner whatsoever. The defendant
3 has a constitutional right to remain silent. And the
4 assertion of this right must not be considered by you in
5 your deliberations. I repeat, under your oath, you are to
6 draw no conclusion whatsoever from the fact that the
7 defendant in this case did not testify. The fact that the
8 defendant did not testify should not even be discussed by
9 you in the jury room.

10 The burden of proof, as I've stated, is on the state.
11 The defendant is not required to prove his innocence. The
12 burden of proof remains on the state to prove guilt beyond
13 a reasonable doubt. You've also heard testimony
14 concerning the penalty that a person can serve for the
15 crimes alleged to in the indictment. In determining the
16 guilt or innocence of the defendant, you cannot consider
17 any possible penalty for any particular crime. The
18 punishment for the crimes is a matter for me to determine
19 and should never be considered by you in anyway whatsoever
20 in arriving at a fair and impartial verdict as to the
21 guilt or innocence of the defendant.

22 Now, ladies and gentlemen, one of the indictments in
23 this case charges the defendant with the crime of murder.
24 The state must prove beyond a reasonable doubt that the
25 defendant killed another person with malice aforethought.

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1 Malice is hatred or ill-will or hostility toward another
2 person. It's the intentional doing of a wrongful act
3 without just cause or excuse and with the intent to
4 inflict an injury or under circumstances that the law will
5 infer an evil intent.

6 Malice aforethought does not require that malice
7 exist for any particular time before the act is committed.
8 But malice must exist in the mind of the defendant just
9 before and at the time of the act being committed.

10 Therefore, there must be a combination of the previous
11 intent and the act. Malice aforethought may be expressed
12 or inferred. These terms expressed and inferred do not
13 mean different kinds of malice but merely the manner in
14 which the malice may be shown to exist. That is either by
15 direct evidence or by inference from the facts and
16 circumstances which are proved. Expressed malice is shown
17 where a person speaks words which express hatred or ill-
18 will for another or when the person prepared beforehand to
19 do the act which was later accomplished. For example,
20 lying in wait for a person or any other act or preparation
21 going to show that the deed was in the defendant's mind
22 would be expressed malice. Malice may be inferred from
23 conduct showing a total disregard for human life.
24 Inferred malice may also arise when the deed is done with
25 a deadly weapon.

1 A deadly weapon is any article, instrument or a
2 substance which is likely to cause death or great bodily
3 harm. Whether an instrument has been used as a deadly
4 weapon depends upon the facts and circumstances of each
5 case. Now, examples of instruments which may be deadly
6 weapons would be a pistol or shotgun or rifle, a knife, a
7 razor, gasoline, fire bombs. These are merely examples
8 which may be considered as deadly weapons.

9 The defendant in this case is also charged with the
10 offense of armed robbery. Now, in order to prove this
11 offense, the state must prove beyond a reasonable doubt,
12 first of all, that the defendant took personal property
13 from the person or the presence of another person.
14 Property is in the presence of a person if it is within
15 that person's reach within the inspection or the
16 observation or of control, so that the person could, if
17 not overcome with violence or prevented by fear, keep
18 possession of that property.

19 The state must also prove beyond a reasonable doubt
20 that the defendant carried the property away intending to
21 permanently deprive the owner of that property and to keep
22 the property for the defendant's own use. The slightest
23 removal of the property or the complete possession of the
24 property, even for an instant by the defendant, is
25 sufficient to show a taking and carrying away of the

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1 property. The taking and carrying away of the property
2 must have been done with violence or by putting the owner
3 of the property in fear of violence.

4 Finally, for this event the state must prove beyond a
5 reasonable doubt that the defendant was armed with a
6 deadly weapon during the robbery. I explained to you
7 earlier what a deadly weapon is, being an instrument which
8 is likely to cause death or great bodily harm.

9 In this case, the Defendant has been charged with
10 assault and battery with intent to kill. In order to
11 prove this offense, the State must prove beyond a
12 reasonable doubt that the Defendant committed an unlawful
13 act of a violent nature to the person of another with
14 malice aforethought.

15 An assault, ladies and gentlemen, occurs when a
16 person unlawfully attempts or offers to commit a violent
17 injury upon another person and has the present ability to
18 complete the attempted injury. An assault is the
19 intentional creation of a reasonable fear of immediate
20 bodily harm. It's not necessary that the attempted injury
21 or harm actually take place. For example, if I walk up to
22 you and when I am within an arm's reach I draw back to hit
23 you, that would be an assault.

24 A battery is the unlawful touching of another person
25 by a person who committed the assault. An unlawful

1 touching can be caused by a part of an accused body or any
2 object that the accused puts in motion. A battery is the
3 completion of the assault by using or applying force to
4 another person, however slight, in a rude or angry or
5 resentful manner, without legal justification for doing
6 so. Using my earlier example, if I carry through the
7 assault by hitting you, then, of course, that would be the
8 battery.

9 As I explained to you for the offense of assault and
10 battery with intent to kill, there must also be the
11 element of malice. And I explained to you earlier what
12 malice is. It's the hatred or ill-will or hostility
13 toward another person. I explained to you already about
14 what malice aforethought was. It can be expressed or
15 inferred.

16 Now, malice being a necessary element of this
17 offense, if facts are proved beyond a reasonable doubt
18 sufficient to raise some malice to your satisfaction, then
19 this inference would simply be an evidentiary fact to be
20 considered by you along with the other evidence in the
21 case and you can give it the weight that you decide it
22 should receive.

23 Now for the offense of assault and battery with
24 intent to kill, a specific intent to kill is not an
25 element of this particular crime, but there must be a

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1 general intent to commit serious bodily injury. Intent
2 means intending the result which actually occurs, not
3 being accidental or involuntary. Intent may be shown by
4 acts and conducts of the Defendant and other circumstances
5 from which you may naturally and reasonable infer intent.
6 Evidence of the character of the assault, the character of
7 the instrument used, the manner in which it was used, the
8 purpose to be accomplished, the resulting wounds or
9 injury, may be considered in determining the intent with
10 which the assault was committed. Intent may be inferred
11 when it's demonstrated that the Defendant voluntarily and
12 wilfully committed an act, the natural tendency of which
13 is to destroy another's life.

14 If you find the state has not proven that the
15 defendant is guilty of assault and battery with intent to
16 kill, you must then consider in this case whether the
17 state has proved that the defendant is guilty of assault
18 and battery of a high and aggravated nature. Assault and
19 battery of a high and aggravated nature include all the
20 elements of assault and battery with intent to kill except
21 malice aforethought.

22 In addition, the state must prove for this charge of
23 assault and battery of a high and aggravated nature, that
24 there was an aggravating circumstance. Circumstances of
25 aggravation would include the use of a deadly weapon, the

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1 intent to commit a felony, the infliction of serious
2 bodily injury, a great disparity between the ages or
3 physical condition of the parties, difference in gender,
4 the purposeful infliction of shame, the resistance of
5 lawful authority. Those are all the examples of what
6 could be circumstances of aggravation.

7 The defendant is also charged with kidnaping. The
8 state must prove beyond a reasonable doubt that the
9 defendant knowingly and unlawfully seized or confined or
10 inveigled, decoyed, kidnaped, abducted or carried away
11 another person without authority of law.

12 Now, to do a thing unlawfully is to do it wilfully
13 against the law. Knowingly means with knowledge and
14 consciously, not accidentally. Seized means to take hold
15 of, suddenly or forcibly. Confine means to limit,
16 restrict or close within bounds, imprison or shut up --
17 shut or keep enclosed. Inveigle means to lure or entice
18 or lead astray by false representations, promises or other
19 deceitful means. To decoy would mean to lure by or -- as
20 if by a decoy. A decoy is something to entice a person
21 into a trap. To kidnap is to remove a person against his
22 will by unlawful force or fraud. To abduct means to carry
23 off secretly or by force for an illegal purpose. To carry
24 away, of course, would mean to remove.

25 Now, the state does not have to prove the defendant

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1 did all of these things. Instead, if you find beyond a
2 reasonable doubt that the defendant did any of these
3 things, you may find the defendant guilty of kidnaping.
4 Something done without authority of law is something which
5 the law does not sanction, permit, allow, condone or
6 provide justification for.

7 A kidnaping does not have to be for any personal or
8 monetary gain for any illegal purpose, but may be for any
9 reason whatsoever.

10 Now, madam forelady and ladies and gentlemen, I've
11 prepared verdict forms for you on each of these charges.
12 There's a form that relates to the indictment for murder.
13 There's one for the armed robbery. Likewise for the
14 kidnaping and the assault and battery with intent to kill.
15 I believe each of the verdict forms is clear enough for
16 you and you'll be able to follow the proper filling out of
17 this. There's only two verdicts possible on these
18 charges, either guilty or not guilty. There's no
19 significance whatsoever which one is listed first. One
20 has to be listed before the other. As I explained to you
21 just a moment ago, as to the charge of assault and battery
22 with intent to kill, if you find that the state has not
23 met its burden of proving every element of that, then you
24 also have on this verdict form the option of finding
25 whether or not the state met its burden of proving guilt

1 of assault and battery of a high and aggravated nature.
2 So that verdict form, I believe, will again be self-
3 explanatory. It's an alternate finding. If you find that
4 the state didn't meet the intent to kill, then you have
5 the option of looking at the other one at that time.
6 Again, your verdicts can be, as I stated to you earlier,
7 each of these indictments is to be considered separate and
8 distinct from the others.

9 Your verdict cannot be based upon sympathy or passion
10 or prejudice or emotion or any other consideration but
11 only on the evidence that's been made a part of this
12 record. Your verdict must be a unanimous one. All twelve
13 of you must agree on the verdict.

14 After you have reached a verdict on each of the
15 charges, then I'll just ask, Madam Forelady, if you would,
16 sign the form on behalf of your fellow jurors as
17 foreperson, fill in the date, check the appropriate block
18 and let the bailiffs know that you have reached a
19 unanimous verdict. We will then receive the verdict back
20 here in the courtroom. Let me remind you that you're free
21 to ask me any questions relating to the law in the case,
22 but remember, it's impermissible for me to give any
23 answers to any questions you have regarding the facts of
24 the case. That's your duty and yours alone to be the sole
25 fact finders.

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1 I'm going to ask at this time, ladies and gentlemen,
2 if you would go back to your jury room. Again, I'm going
3 to ask you not to start your deliberations just yet.
4 There's one final matter of law I need to take care of
5 with the attorneys. In a few moments, we'll send the
6 exhibits back, hopefully, with the verdict forms with
7 instructions for you to begin your deliberations.

8 If you'll go back to your jury room now. Don't start
9 your deliberations just yet.

10 (WHEREUPON, the jury exited the open court at
11 approximately 11:12 a.m.)

12 THE COURT: Any objections to the charge?

13 MR. WESTON: Nothing from the state, Your Honor.

14 MR. CREECH: Your Honor, just -- I mean, of
15 course, I restate my objections and what I requested to be
16 charged in the case. And I do just have one small
17 objection, Your Honor. I think you said that a person
18 charged with a criminal conviction may be competent or
19 something credible like that to testify. And I would just
20 note, Your Honor, that I believe that's a charge on the
21 facts. I would just state that for the record.

22 THE COURT: All right. Your objections are
23 noted.

24 If you would make sure all of the exhibits are in
25 order. I'll give you a chance to look over the new

State of South Carolina -vs- William Henry (2008-GS-23-0698-0701)
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1 verdict form that we've put together to make sure that's
2 in proper order.

3 MR. WESTON: The evidence is fine, Your Honor.
4 I've got no problem with the verdict form.

5 THE COURT: All right. If you would take the
6 exhibits back with the verdict form and send the alternate
7 out for me, please.

8 (WHEREUPON, all exhibits and the verdict form were
9 delivered to the jury at approximately 11:14 a.m. for
10 their deliberations.)

11 (WHEREUPON, the alternate was dismissed.)

12 THE COURT: All right. We'll be at ease until
13 we hear from our jury. We'll take a short break and then
14 we'll be ready to start the next trial.

15 (WHEREUPON, court stood at recess awaiting the
16 verdict of the jury.)

17 THE COURT: All right. We've received a
18 question from the jury in this matter. The question is,
19 does the charge of assault and battery with intent to
20 kill/assault and battery of a high and aggravated nature
21 apply to Brooks and Perez or just Perez? Signed by the
22 foreperson.

23 I'm proposing to send back to the jury, rather than
24 calling them out here and explaining it to them, that the
25 indictments charge the defendant with murder of Francisco

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1 Perez and assault and battery with intent to kill,
2 kidnaping and armed robbery of Andre Brooks. Sign my name
3 and send that back.

4 MR. WESTON: No objection from the state, Your
5 Honor.

6 THE COURT: Any ---

7 MR. CREECH: Your Honor, if you would just put
8 the ABWIK/ABHAN.

9 THE COURT: Okay.

10 MR. WESTON: That's fine with the state.

11 THE COURT: I'll do that. All right. I'll send
12 this back to the jury and tell them to continue their
13 deliberations.

14 MR. CREECH: Thank you, Your Honor.

15 THE COURT: I'll make this -- I'll ask the
16 bailiff to bring them back and I'll make these as Court
17 Exhibit number 1.

18 MR. CREECH: Thank you, Your Honor.

19 MR. WESTON: Thank you, Your Honor.

20 THE COURT: Thank you very much. We'll be in
21 touch when we hear from the jury.

22 (WHEREUPON, Court Exhibit number 1 was marked for
23 identification.)

24 (WHEREUPON, court stood at recess awaiting the
25 verdict of the jury.)

1 THE COURT: I understand the jury has reached a
2 verdict in this case. I know this is an emotional case
3 for lots of people. I don't know what the verdict may be,
4 but whatever it is, it might bring elation to some and
5 might bring disappointment to others. But whatever the
6 verdict may be, I want to make sure that everyone here in
7 the audience and otherwise understands that we're going to
8 respect that verdict. We're not going to have any
9 outcries, albeit elation or be it sadness. If you believe
10 you're here and involved in this case in anyway that you
11 can't control your emotions and control yourself, then
12 I'll ask that you remove yourself from the courtroom at
13 this time. The verdict will be announced. You'll have an
14 opportunity to hear it within two or three minutes, I'm
15 sure. But we're going to respect the verdict whatever it
16 may be and whatever the jury determines. So this is the
17 opportunity for anyone to leave that feels like they just
18 can't control themselves. Otherwise, I'll expect proper
19 decorum from everyone in the audience when the jury
20 announces its verdict.

21 All right. Let's have our jury come in.

22 (WHEREUPON, the jury entered the open court at
23 approximately 2:32 p.m.)

24 THE COURT: Madam Forelady, I understand the
25 jury has reached a verdict on each of the charges. Is

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1 that correct?

2 MADAM FORELADY: That's correct.

3 THE COURT: Is it a unanimous verdict?

4 MADAM FORELADY: Unanimous.

5 THE COURT: If you would, please hand the
6 verdict forms to the bailiff.

7 (WHEREUPON, the verdict forms were handed up to the
8 court.)

9 THE COURT: All right. Madam clerk, you may
10 publish the verdicts.

11 MADAM CLERK: 2006-GS-23-9701, State versus
12 William Jermaine Henry, we the jury unanimously find the
13 defendant, William Jermaine Henry, as to the charge of
14 armed robbery, not guilty. 2006-GS-23-9699, we the jury
15 unanimously find the defendant, William Jermaine Henry, as
16 to the charge of assault and battery with intent to kill,
17 not guilty. As to the lesser included charge of assault
18 and battery of a high and aggravated nature, not guilty.
19 Case number 2006-GS-23-6998 or 9698, we the jury
20 unanimously find the defendant, William Jermaine Henry, as
21 to the charge of kidnaping, not guilty. Case 2006-GS-23-
22 9700, we the jury unanimously find the defendant, William
23 Jermaine Henry, as to the charge of murder, guilty.

24 THE COURT: Is this your verdict so say you all?
25 If so, would you please raise your right hand.

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1 (WHEREUPON, all jurors' right hands were raised.)

2 THE COURT: Thank you very much. Is there
3 anything we need to take care of with the jury before
4 they're discharged in this case? From the state?

5 MR. WESTON: Nothing from the state, Your Honor.

6 MR. CREECH: Your Honor, we just ask that they
7 be polled.

8 THE COURT: Poll the jury, please.

9 MADAM CLERK: Ladies and gentlemen, the verdict
10 that I have just published was a verdict that you reached
11 in the jury room. I ask you, was this your verdict then
12 and is it your verdict now? As I call your names, please
13 answer yes or no.

14 Laura Wright, yes or no.

15 JUROR: Yes.

16 MADAM CLERK: Laurel Wanner.

17 JUROR: Yes.

18 MADAM CLERK: Barbara McKinney.

19 JUROR: Yes.

20 MADAM CLERK: Jacques Murray.

21 JUROR: Yes.

22 MADAM CLERK: Natalie Tyson.

23 JUROR: Yes.

24 MADAM CLERK: Reginald Harris.

25 JUROR: Yes.

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1 MADAM CLERK: Shirley Moody.
2 JUROR: Yes.
3 MADAM CLERK: Lance Marbut.
4 JUROR: Yes.
5 MADAM CLERK: Elizabeth Gruss.
6 JUROR: Yes.
7 MADAM CLERK: Heidi Mauk.
8 JUROR: Yes.
9 MADAM CLERK: Donna Durham.
10 JUROR: Yes.
11 MADAM CLERK: Sheila Bryant.
12 JUROR: Yes.
13 MADAM CLERK: Thank you.
14 THE COURT: All right. Anything else?
15 MR. WESTON: Nothing from the state, Your Honor.
16 MR. CREECH: Nothing from the jury [sic], Your
17 Honor.
18 THE COURT: Madam Forelady, ladies and
19 gentlemen, thank you very much for serving as jurors in
20 this case. It's been a pleasure for me to get to serve
21 with you. I appreciate the conscientious effort you've
22 made in this case. We have other work to do this week.
23 We have a trial going on now. We may have another one to
24 start tomorrow. I wish I could tell you that you're free
25 for the week, but I'm going to ask you, if you would, to

1 call back tonight to find out if you need to come back

2 tomorrow for other work to be done this week.

3 Obviously, you can -- I've emphasized so much not to

4 talk about this case to anyone. Obviously, you can share

5 whatever you want to with whoever you want to now. But

6 you certainly don't have to talk to anyone about the case.

7 You can certainly share your experience with your family

8 and friends. I hope it's been a good experience. In case

9 I don't get to see you again in other cases over the week,

10 it's been a real treat for me to get to work with you.

11 You've been a good group to work with and I appreciate the

12 fact that you've seen fit to do this duty for your county

13 to be the judges in this case.

14 I will need the forelady to stay with us just a

15 moment in the hallway. I've got some other papers for you

16 to sign. After that you and rest of you are free to go.

17 If you would, call back tonight after six o'clock. There

18 will be an instruction for you then as to when you need to

19 either call back or come back later this week.

20 Thank you very much, ladies and gentlemen. You're

21 dismissed at this time.

22 (WHEREUPON, the jury exited the open court at

23 approximately 2:40 p.m.)

24 THE COURT: All right. Anything else from the

25 state?

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1 MR. WESTON: Your Honor, just I would advise the
2 court that the victim's mother is here. She's been here
3 throughout the trial. And she would like to be heard at
4 the appropriate time concerning sentencing.

5 THE COURT: All right.

6 MR. WESTON: Excuse me, Your Honor, I apologize.
7 I want to just make the court aware. I advised her before
8 the trial started that she could be heard on the issue of
9 how the death has affected her and her family, as well as
10 what she felt was the appropriate sentence.

11 THE COURT: I'll be glad to hear from her at the
12 appropriate time.

13 Mr. Creech, any motions you have?

14 MR. CREECH: Yes, Your Honor. I would just
15 renew my motions for a directed verdict and motions I made
16 for a mistrial. I would also move at this time for a new
17 trial as the verdicts are against the greater weight of
18 the evidence, as to the murder charge, Your Honor.

19 THE COURT: I believe there was sufficient
20 evidence and I deny your motion as far as a new trial and
21 the directed verdict. I believe the rulings were
22 appropriate as far as your motions for a mistrial as well,
23 so I'll deny those motions.

24 Anything else we need to take care of before the
25 sentence is imposed?

1 MR. WESTON: Nothing from the state, Your Honor.
2 I have his criminal record if the court would like to hear
3 that.

4 THE COURT: Wait just a moment until the clerk
5 gets back with the sentencing sheet.

6 Have your client come forward.

7 (WHEREUPON, the defendant, Mr. Creech and Mr. Weston
8 approached the bar.)

9 THE COURT: Mr. Creech, be glad to hear from
10 you. And I'll certainly be glad to hear from Mr. Henry.

11 MR. CREECH: Your Honor, thank you. We would
12 just ask Your Honor to consider all the circumstances in
13 the case, including Mr. Henry's age. Just set a sentence
14 that you see appropriate in this case. Thank you, Your
15 Honor.

16 THE COURT: Your age is twenty-eight; is that
17 right? Date of birth 10/20/79?

18 MR. CREECH: He's twenty-nine, Your Honor.

19 THE COURT: Twenty-nine. Mr. Henry, anything
20 you want to tell me, sir?

21 DEFENDANT: No, sir.

22 THE COURT: Be glad to hear anything from the
23 state that you have, Mr. Weston.

24 MR. WESTON: Your Honor, the only thing that we
25 would have is that he does have a conviction for accessory

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1 after the fact of an A, B or C felony in 1999. That's the
2 extent of his prior record.

3 THE COURT: Is that in South Carolina?

4 MR. WESTON: Yes, sir, Your Honor.

5 THE COURT: Be glad to hear from the victim's
6 mother. I think you said she wanted to speak.

7 If you would please -- excuse me, ma'am. State your
8 name for the record, please, ma'am, so we'll have a record
9 of it.

10 MS. PEREZ: My name is Lolita Perez.

11 THE COURT: Thank you, Ms. Perez. Be glad to
12 hear from you.

13 MS. PEREZ: I will take a moment to remember a
14 man who is no longer with us, a son, a family member, a
15 lover and a friend. Francisco Juan Perez. Frankie, as we
16 call him, is our first and only son. He was a well
17 traveled and school educated young man who graduated from
18 Mauldin High and attended one and a half years at
19 Greenville Tech. He loved classical music and played on
20 his guitar as he was trained to do so. He played the
21 position of catcher and first baseman. He competed in
22 several states until he was fifteen years ago.

23 The coroner's report, according to the medical
24 examiner's office of Greenville, stated that on March
25 21st, 2006, Francisco Juan Perez was brutally and

1 repeatedly shot and beaten with the claw part of a hammer.
2 And I've read this report over and over. I have felt
3 every and each one of these horrific assaults as only a
4 mother can feel the pain of her child. I am working on
5 erasing this memory and replacing it with much more
6 beautiful ones of my son Frankie.

7 Frankie was taken from us at the tender age of
8 twenty-two. Our lives, and many others, will never be the
9 same. He was six months shy of his twenty-third birthday.
10 Even though his sister, dad and I lived in Arkansas, I
11 spoke to Frankie every Tuesday, Friday and Sunday. I
12 stopped calling his number after his birthday September
13 9th, 2007 because I have had no answer since March 21st,
14 2006. My family will never have him over every
15 Thanksgiving, and I will not be able to visit with him
16 every summer. We will miss his boisterous sense of humor
17 and his slanted smile. When he was twelve years old, he
18 asked for a sibling because his dad and I would soon die,
19 even though we were only thirty-seven years of age. He
20 asked and we gave him a sister, Brianna Perez. She is
21 thirteen years old. He was very protective of her. And
22 his apartment on Pelham Road was decorated with pictures
23 of her. I am sure he is watching over her, even though
24 she will never see him again.

25 On July 3rd, 2007, Frankie's ashes were flown to

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1 Puerto Rico and released over the Caribbean Ocean. Eighty
2 loved ones were able to attend. Frankie will never again
3 join society. And I humbly and respectfully request that
4 the responsible person who took his freedom and right to
5 live also not walk amongst decent people and lose his
6 right to live freely for the remainder of his life.

7 THE COURT: Thank you, ma'am.

8 This is case 2006-GS-23-9700. The sentence of the
9 court is the defendant be committed to the State
10 Department of Corrections for a period of fifty years.

11 MR. WESTON: Thank you, Your Honor.

12 THE COURT: Wish you the best, Mr. Henry.
13 Certainly wish the family the best.

14

15 END OF REQUESTED TRANSCRIPT OF RECORD

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Greenville County, South
10 Carolina, on the day 2nd day of February, 2009.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

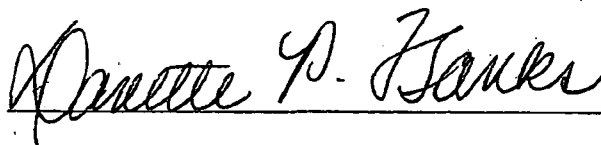
15 August 25, 2009

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Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)William Jermaine Henry #276767)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-23-04209

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTERINSTRUCTIONS - 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 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 Institution
2. Name and location of Court which imposed sentence Greenville County Grand Jury
3. Name(s) of co-defendant(s) (if any) Shon Garrett, Frederick Wray, Mark Cureton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006 GS 23 09 700
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) ~~February 4~~ February 4 2009
 - (b) ~~50 years~~ 50 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes both
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Greenville County Court of General Sessions
- ii. Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted June 1, 2011 Filed June 27, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. W / A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N / A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Perjury testimony by state witnesses
 (b) lack of evidence
 (c) Three state failed to ~~prove~~ meet its burden of,

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) My lawyer failed to object to Perjury testimony
 (b) The ~~state~~ state failed to produce competent
 (c) reliable evidence. the state must prove every element of the charge of Murder

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. N/A
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. N/A
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. N/A
 iii. _____

iv. _____
 (d) the date of each such disposition:

i. _____
 ii. _____
 iii. _____
 iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____
 ii. _____
 iii. _____
 iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____
 ii. _____
 iii. _____

(b) the proceedings in which each ground was raised:

i. _____
 ii. _____
 iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Law Offices of Thomas Creech Jr.
- ii. P.O. Box 10411
- iii. Greenville, SC 29603
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Reversed and Remanded or a time cut →

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , 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.

William Henry

SWORN to and subscribed before me this 12
day of June, 2012

JC Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , 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.

William H. Hargis

Applicant

SWORN or affirmed to and subscribed before me this

12 day of June, 2012

J. C. Franklin

Notary Public

My Commission Expires: 12-16-2019

(Proof Service)

I, William Termaine Henry, Declare
 under the penalty of U.S.C.A. § 1746 (Perjury)
 that, on below said date, I did deposit a
 true AND exact copy of my...

Appellant's Pro-se' l.c.h. Attachment
 McCormick C.I. mailroom clerk, To be forward
 through the U.S. Postal System with sufficient
 postage to;

SWORN AND subscribed
 to before me, this 12
 day of June 2012 2012

X William Henry
 William Termaine Henry
 #2767.67

Franklin

Notary Public for South Carolina

My Commission Expires: 12.16.2015

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State of South Carolina
County of Greenville

In the Court of Common Pleas

William Jermaine Henry
Applicant

Warrant no: 1817519.

Indictment no: 2006GS-23009700

vs.

"P.C.R. Attachment"

State of South Carolina
Respondent

This matter comes before the Court of Application for Post-conviction Relief Date June 29, 2011

The Applicant is presently confined in the McCormick Correctional Institution of South Carolina Department of Corrections to orders of commitment of the clerk of court for Greenville County. The Applicant was indicted at the November 14, 2006 term of the Court of general session for Greenville County for murder (Feb 2-4 2009). He was represented by Tom Cleece on February (24) 2009.

The Applicant was convicted. He was sentence to Fifty (50) years. The Applicant contends that his conviction was unlawful and he asserts such facts and mentioned in this (P.C.R.) Affixed....

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(statement of case)

Appellant was indicted by the Greenville County Grand Jury for the offenses of murder, armed robbery, kidnapping, assault and battery with intent to kill (ABIK), and assault and battery of a high and aggravated nature (ABHAN). R. His case was called to trial on February 2, 2009 before the Honorable C. Edward Welmaker and a jury. Tom Creech represented Appellant. Jeff Watson was the assistant solicitor. Tr. 1.

On February 4, 2009, the jury found the Appellant not guilty of armed robbery, not guilty of ABIK, not guilty of ABHAN, not guilty of kidnapping, but guilty of murder. Tr. 441, 11. 11-23. Judge Welmaker sentenced Appellant to fifty years imprisonment. Tr. 449, 11. 8-10.

(Introduction)

Appellant Argues that His trial Lawyer AND Direct Appeal was ineffective assistance of Counsel when He Failed to Argue on Record or make any motion in Appellant defense on the following issues, which are approximately (8) issues which most are constitutional due process violations which Applicant Ask the Court to address each and every issue.

Appellant Argue's Counsel's action and omissions have been prejudicial and inadequate. Appellant Argues the Counsel's ineffectiveness caused serious prejudice and significantly contributed to a constitutional violation, which undermined the truth finding process. Appellant Argues trial Counsel knew there where such evidence and failed to seek it and the prosecution failed in its duty to turn it over. The petitioner claim his Counsel was ineffective for failure to secure this information and that the failure resulted in a constitutional violation.

Appellant Argues based upon an evaluation of the evidence as a whole, the jury relied upon the testimony of the witness. Appellant Argues this was obviously

prejudicial and not a harmless error, therefore requiring the court to order a remedy for the petitioner.

Appellant Argues by Lawyer failing to present him with information, which he could use to impeach witness to attack his credibility. Appellant Argues his trial Lawyer failed to preserve legal errors at trial, when the error occurred or at any later time when the trial still had a chance to correct the error, in addition to his failing to make objections, however Lawyer may have preserved errors for review on appeal for a particular ruling on instructions which he failed to do.

Appellant Argues Lawyer failed to produce any of these statements which he argue on the Brady violation in (P.C.R.) Appellant Argues through counsel ineffective assistance of counsel for failing to protect these issues, Appellate Court cannot renew the error as a "question of law" but may renew the error in the interest of justice. Appellant Argues to preserve legal errors in the trial court for review on appeal his Lawyer was required to protest these errors at trial when the error occurred or at trial.

Appellant Argues his Custody violates the U.S. Constitution when prosecutor AND Judge Acted (or failed to act) during his trial AND sentencing. Appellant Argues prejudice from errors at his trial that worked to his actual AND substantial disadvantage infecting his entire trial with error of Constitutional dimension, which Appellant Argue any Error that is not "Harmless" Cause prejudice Appellant Argues AN Error occurred during trial that made his trial fundamentally unfair in violation of the 14th Amendment.

Appellant Argues Civil Right 13.5(5) where client alleged that state (or) public defenders conspired by securing his conviction, complaint included adequate allegation on conduct "under color of state law"

Issue no: (1) (Hands of one Hands of All)

Appellant Argues the Judge stated to Jury in Trial Transcript p. 424 Line (18-25) If A Crime is Committed by two or more people who are acting together in committing a crime, the act of one is the act of All. p. 425 Line (1-25) p. 426 Line (1-8)

Appellant Argues that the aiding and abetting murder instructions violated federal and state Constitutional guarantees of due process and trial by Jury. Appellant Argues with regards to murder He Argues that those instructions permitted guilty verdict on the basis of finding of aiding and abetting someone who committed murder without requiring malice of anyone but the perpetrator. Appellant Argues that instructions on aiding and abetting was the functional equivalent of instruction on (felony murder) ordinarily a person is held criminally responsible for his or her own actions, But when an accomplice chooses to become a part of the criminal activity of another He or She in essence "your acts are my acts and forfeits his or her person identity even though the natural and probable consequences doctrine has been subjected to substantial criticism it is an established

Rule of American Jurisprudence w/ that
 the depth of longstanding traditional disfavor
 that plagues the felony murder rule. See
 State v. Peterson, 287 S.C. 244, 335 S.E. 2d 800
 (1985). Appellant Argues there's nothing his
 indictment stating defendant conspired with
 anyone. See p. 30-31 Copy of indictment
 Appellant Argues To admit evi-
 dence under this theory, the existence of the
 common design and participation of the accused
 against whom the evidence is offered should
 first be shown, however the state did (not)
 charge the defendant with (conspiracy) so
 this approach was unavailable at trial at
 the time of the murder and shown a conspi-
 racy between the two defendants then it
 would (not) be necessary to show which
 defendant actually killed victim, Furthermore
 the state did (not) pursue accomplice liabi-
 lity theory. State v. Woomer, 276 S.C. 258,
 277 S.E. 2d 696 (1981)

Issue no. (2) (Subject matter Jurisdiction)

Appellant Argues Detective Collis Flavell conduct deprived Appellant of right privileges and immunities guaranteed by the Constitution and the Law of the United States, when he testified in the grand jury proceeding. See p. 20-31 Copy of indictment. Appellant Argues the detective untruthful statement that Appellant shot and killed decedent, he Argues should not be able to take a legitimate Argument concerning absence of evidence and twist it around. Appellant Argues detective false statement under oath or equivalent affirmation or swears or affirms the truth of such statement previously made when he does not believe the statement to be true.

Appellant Argues Detective testifying in grand jury proceeding influenced jury with evidence (not) in record. Appellant Argues knowledge and acquiescence, the detective knew of violations of his right and was in a position to correct them and failed to do so, in this type of situation "personal involvement" is shown by the officials knowledge of the problem or evidence that proves they should have known about. Appellant Argues Actual presence or participation in acts or failure to act that violated Constitutional rights.

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Appellant Argues the state failed to file indictment within (180) days after his arrest on March 25, 2006. See p. 30-32 Copy of warrant and indictment. Appellant Argues he was indicted on November 14, 2006 Eight (8) months after warrant was put on him on March 25, 2006. Appellant Argues in this case (180) days from the date of the defendant arrest and therefrom (no) written court order was forthwith, which is a fact... Appellant Argues this indeed Jurisdictional in the 5th Circuit Court of Appeals specifically and unequivocally with clarity and particularity stated verbatim Jurisdiction is conferred upon trial court by filing of an indictment not it's reading which invest the trial court with Jurisdiction, Because there is (no) written court order from the Circuit to continue the Appellant case beyond (180) days. The Circuit of Greenville lack subject matter Jurisdiction to entertain the Appellant case and sentence him. Hence, Pursuant to the S.C. Constitution section 23. Art. V § 4 mandate a written court order to continue a Criminal case beyond (180) days from the date of defendant arrest.

Appellant Argues Arrest warrant and indictment was never stamp and filed with the clerk of court and there is (no) date of time when it was filed with the clerk of court, See P. (32). Copy of warrant and indictment Appellant Argues the Court stated is *Haec verba* "the filing of a valid indictment is a prerequisite to the Court's Jurisdiction Rule 3(c) SCrim, Also the Court's Jurisdiction Rule 3(c) SCrim also mandates that the indictment be filed and they are not, thus the court lack Jurisdiction and the act of a court without Jurisdiction are "void"

Furthermore it is Clerk of Court to see that prerequisites such as Revenue stamps are affixed on paper before they are recorded. Appellant Argues indictment were never filed with S.C. office of court administration where a clerk of court after a decree rendered is given to him to be disposed of according to law marked it "filed" but neglects to enroll, enter or index it and put it in a drawer pursuant to paragraph (A)(B) due to procedural due process violation

Appellant Argues trial lawyer and
 direct appeal lawyer was ineffective assistance
 of counsel pursuant to Strickland v. Wash. St.
 when both of his counsel's failed to protect
 his 4th and 6th Amendment constitutional
 rights by failing to recognize and defend
 him against constitutional violations resulting
 from misconduct of the state prosecutor/
 solicitor whom failed to comply with the
 South Carolina Rule of Court and Criminal
 Procedure Rule (3) C was (3) by failing to
 take action on capital murder warrant within
 (90) days after receipt from the clerk of
 court (writ) getting the grand jury for
 an extension of time granting delay of action
 upon warrant which violated (separation of
 powers clause) of the South Carolina Code
 of Law as amended article I section (6)
 and arbitrarily deprived the plaintiff, do
 this case of an entitlement of due process
 requirements. The petitioner Avors that he was
 indicted by grand jury approximately (6)
 eight months after transferring of warrant
 from the clerk of court state solicitor failed
 to take action or when never petition the
 grand jury from any order of extension of
 the granting delay of action on murder
 warrant also violation of (S.C.R. 2.2.1.)

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As null AND void because Jurisdiction was unlawfully obtained by the Circuit Court, that the parties cannot by their own action or agreements confer Jurisdiction.

Argument no (3) (Abuse of discretion)
(Inadmissible Evidence)

Appellant Argues that Trial Lawyer was ineffective assistance of counsel, when he failed to Argue or put on Record or make any motion in appellant defense on Abuse of discretion dealing with inadmissible Evidence.

Trial Transcript P.(54) Line (12-15) Did you know what he did for a living? yes would you tell the jury? He was a drug dealer.

P.(56) Line (19-22) yes I talked to him again about eight thirty and he said he was on his way to --- Mr. Cheech object your Honor. Hearsey from the witness pack.

Trial Transcript P.(81) Line (10-20) How do you know him? How did you know him before March of last year? I knew him earlier when we -- back when we was young. we went to school, Greenville night school used to have alternative school, bad kids who had a behavior problem, so He -- we

also met, we met up there.

Mr. Cheech: object, your Honor.
 move -- again based on rule 404 (b), and
 move that be stricken from the record
 and also move for a mistrial and alterna-
 tive curative instruction.

Trial transcript P. (194) Line (66-24) and
 they're telling me -- they can tell me what
 tower that phone is hitting and they call
 me back with that information, they will call
 me and say, okay that phone was just used
 it hit this tower. we did that. But the two
 times it was hitting a tower --

Mr. Cheech: your Honor, I object
 to any information that came from the phone
 company. That's pure hearsay.
 P. (241) Line (7-10) and he -- Pezo told the
 duke to let me go because he knew I
 didn't have no drugs or nothing because
 I -- Mr. Cheech: your Honor, I object
 to that hearsay and asked the jury to
 disregard it.

Appellant Argues the solicitor
 knew the co-defendants statements may
 not have been properly vacted posing a
 confrontation clause problem. Appellant
 Argues the Court gave (no) tailored instru-
 ction at the end of the case. Appellant

Argues the court failed to give jury standard instructions and on admission of evidence for a limited purpose. Appellant argues evidence has been received of a statement by a defendant after his arrest at the time the evidence of this statement was received the court failed to instruct the jury that it could (not) be considered by you against the other defendants.

Appellant argues three (3) United States Supreme Court cases resolve the threshold question of whether admission of the declaration constitute Federal Confrontation Clause. In the (first) Bruton v. United States 1968) 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 476, the high court held that admission at joint trial of co-defendant's statements naming and incriminating the defendant violates the confrontation clause if the co-defendant does not testify. In the (second) Richardson v. Marsh (1987) 481 U.S. 200 S. Ct. 1702, 95 L. Ed. 2d 176, the Supreme Court held that a judge can preclude a Bruton violation by redacting a co-defendant's statement to eliminate or her name or any reference to his or her existence and by a proper limiting

(third) Gray v. Maryland (1998) 523

U.S. 185, 118 S.Ct. 1151, 140 L. Ed. 2d 294
 the high court held that Redaction substituting an obvious blank space or word such as "deleted" or a symbol or other similarly obvious indications of attention for the co-defendant's name constitute a Bruton violation even if the Judge give a proper limiting instruction.

Appellant Argues two (2) years before Gray, the California supreme court held that a Redact that removes references to a co-defendant's participation constitute a Bruton violation, if despite the editing reasonable jurors could not avoid drawing the inference that the defendant was the other participant. Appellant Argues Gray and Richardson both elucidate how those shortcomings the Redaction squarely within the prohibition of Bruton.

Appellant Argues where evidence is sufficient to support a finding in the defendant's violation evidence was against the defendant on the same point, How can a Reviewing court deem the Error harmless beyond a reasonable doubt his question intimates that evidentiary

Error on a key point on which the evidence is in conflict is a failsman of prejudice, but co-defendants are often hostile to one another and will try frequently to point the finger to shift the blame or to save himself at the expense of the other United States v. Deloit (8th Cir. 1996) 94 F.3d 1134, 1145

Argument no. (4) (Never informed Facing life)

Appellant argues He was never informed by the trial Attorney or Judge that He was Facing the death penalty or life without parole. Appellant contends He was never evaluate by any type of state doctor to see was He mentally or physically capable to stand trial. Appellant argues state evaluate his co-defendant trial transcript p. 287 Line (19-24) and you were evaluated by a psychiatrist; is that correct and A ~~psychiatrist~~ psychiatrist determined that you were incompetent; is that right? correct

Appellant argues making it unlawful to execute or salvage sinking warships where it believed human remains and certain purpose, later Ali 9

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Even the most liberal attempt to Reconcile these various subjects is unavailing. Appellant received ineffective assistance of counsel prior to and during trial and was prejudiced where counsel failed to inform him he was facing the death penalty or life without parole under the 85% clause. Appellant Argues the general Assembly violated the single subject clause of the South Carolina Constitution. Art. III Section 17, when it enacted Act 83, Bill 3096 "truth-in-sentencing" by including with the bill unrelated provisions and section 24-13-150 of that Act rendering Appellant's sentence invalid as it was an unconstitutional act, this act violated Appellant's due process rights and right to effective assistance of counsel, in violation of the South Carolina Constitution Art. I section (3) and the 6th and 4th Amendment of the United States Constitution.

Argument no (5) (Brady violation)

Appellant Argues the prosecutor withheld the information of witness stating Appellant shot Decedent. Appellant Argues this information was (not) in his discovery papers pertaining to witness Andre Brooks. Appellant Argues witness testified that he never mentioned anything about Appellant shooting victim in his first(1) written statement.

Appellant argues He never mention in his second written statement. Appellant Argues Aubre Brooks state in his third statement He told police the truth and when Lawyer question him about the statement and there's nothing in the statement about Appellant shooting victim He said (no).

Appellant argues He had (no) way of obtaining this information because there was nothing in the three(3) written statements about Appellant shooting victim and He had (no) way of knowing He would testify to him shooting victim because the only people privy to this information was the solicitor.

(Trial Transcript) P. 104 Line (10-25) you gave three(3) statements to Law enforcement; didn't you? yes I have and in the (first) statement you didn't say Jermaine shot the guy? ~~no~~ no, sir, I didn't. In the first statement you didn't say Jermaine you said Jermaine -- no one was there. You never mentioned anybody by the name of Jermaine being there; is that right? yes, sir. The (second) statement you never said Jermaine shot anybody? yes, sir I really didn't. I didn't want to act of fear. and in (third) statement you did say you saw Jermaine in the Apartment correct?

(Trial Transcript) p. 105 Line
 (4-10) I went ahead and told the truth
 in that statement, you were telling the truth
 is that that statement, is that your testimony?
 The only thing I left out was about the
 mask, I kept the mask in there because I
 was still in fear. Also it true in your
 that statement that you said I recognized
 the voice of the one hitting Peco with the
 hammer, it was Jermaine?

p. 105 Line (22-25) And there's (not) one line
 in that statement, not one sentence that says
 you saw Jermaine shoot anybody, is there?
 No, there's not, no, it's not.

(Annotation and Citation)

Appellant Argues Lawyer failed
 to Argue on Record or Motion to Suppress Evi-
 dence During his trial when Andre Brooks tes-
 tified he did (not) mentioned Appellant shot
 victim in his three (3) written statement, there
 was (not) reference in the discovery material to
 Appellant shooting victim, yet Mr. Cheech did
 (not) object at trial to the introduction of this
 testimony. Appellant Argues the damage caused
 by Mr. Cheech failure to attempt to suppress
 evidence, A Hearing would served as a pre-
 view of the witness testimony outside of the
 Jury's presence their pre-trial testimony.

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about the appellant shooting victim would probably have resulted in the witness being precluded from referring to the shooting, which was never mentioned in the incident report. Even if the shooting was found to be admissible over Mr. Cheech object the defendant would have been accorded time to show there was (no) record of witness stating where the attorney's efficiency was questioned because he objected to the introduction of non-disclosed evidence, but failed to go further and request an in camera hearing.

Appellant argues he cannot go safely to trial on this accusation without the production of said evidence, and the absence of the production of such evidence, defendant will be denied due process of law and equal protection of law. Appellant argues lawyer was ineffective when he failed to motion for court to relieve party from a judgment or order because of newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial.

G. bison v. state, 514 S.E. 2d 320, 334 S.C. 515 (1998)
Clerk v. state, 315 S.C. 385, 434 S.E. 2d 266 (1992)
State v. Caskey, 273 S.C. 256 S.E. 2d 737

Issue no: (b) Failure to Request
Contumacious Accomplice
Liability

Appellant Argues trial Lawyer was ineffective assistance of counsel when He failed to Request Contumacious Accomplice Liability.

Appellant Argues legislative intent behind accomplice testimony Rule is "to eliminate the danger a defendant being convicted solely upon the suspect & trustworthy and unreliable evidence coming from an accomplice who is likely to have self-serving motives that effect his or her credibility. The accomplice testimony Rule emphasizes the adequacy of corroboration" as should tend to connect the defendant with the commission of the offense. Appellant argues indeed the Requirement of corroboration is a Rule of historical and statutory importance and not a tenet of constitutional Law. Appellant Argues the accomplice testimony Rule is not Constitutional based rather it was created in the first instance.

Appellant Argues All Co-defendants testifying against him and All Co-defendants had made plea bargain Agreement with the state prior to his trial ~~that~~

AND Co-defendants had Criminal records
 Appellant Argues the only non-accomplice
 Andre Brooks testifying against Appellant
 AND state in (All three's) of his written
 statements He never mention Appellant shot
 victim. Appellant Argues (none) of the witness
 provided corroborated evidence.

(Trial transcript)

P. 262 Line (12-21) Each of the defendants
 C1. defendants who are getting ready to
 testify have prior convictions. It might be
 a good idea if we went through those
 now, because I do not think all of them
 are admissible, and I want to make sure
 that we don't -- that they aren't asked
 about offenses that are outside of ten years
 or not crimes of moral turpitude or what
 ever.

Appellant Argues the Court
 did not instruct the jury on the test
 for corroboration of accomplice testimony.
 Appellant Argues to corroborate the testi-
 mony of an accomplice there must be evi-
 dence of some act or fact related to
 the crime which is believed by itself
 and without any aid interpreted or
 direction from the testimony of the acc-
 omplice tends to connect the defendant
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with the Commission of the crime charged. However it is not necessary that the evidence of corroboration be sufficient in itself to establish element of the crime.

Appellant Argues you must first assume the testimony of the accomplice has been (Removed) from the case you must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the crime the testimony of the accomplice is (not) corroborated. Appellant Argues Court did (not) give additional instructions to assist the jury evaluating the credibility of corroborating witnesses. Appellant Argues the Court did (not) instruct the jury to consider the effect of a prior consistent or inconsistent statement in testing witness credibility. Appellant Argues the Court did (not) instruct the jury to consider the existence or non-existence of a bias interest or other motive in determining witness believability. Appellant Argues the Court did (not) instruct the jury to consider eyewitness believability in determining the accuracy of eyewitness identification. Appellant Argues independent evidence that tends

to connect the accused with the charged crime without (aid) or assistance from accomplice testimony is sufficient to corroborate that testimony.

(A) Easley v. Portman, 490 S.E. 2d 613, 327 (1997)

(B) State v. Williams, 468 S.E. 2d 656, 321 (1996)

Issue no: (7) (Malice Charge)

Appellant Argues trial lawyer and direct appeal was ineffective assistance of counsel. Appellant alleges that he is being held unlawfully because the trial judge gave a burden shifting malice instruction at his trial and counsel failed to object to improper malice instruction that shifted the burden of proof to applicant by creating a rebuttable presumption of malice from the use of a deadly weapon. Appellant Argues the only evidence of malice was inferred, malice maybe inferred from the use of a deadly weapon, whether appellant had the required malice Aforethought for murder was a question for the jury. Therefore, the evidence of appellant guilt was not overwhelming and the solicitors improper Objections Rule Argument deprived appellant of a fair trial.

Appellant Argues also order to convict of murder the state must (not) only prove the killing of the deceased by the defendant but the killing was done with malice aforethought and such proof must be proved beyond a reasonable doubt.

The United States Supreme Court has recognized that the prosecution must prove each and every element of the crime beyond reasonable doubt. The burden of proof on any element (cannot) be shifted to the defense because doing so decreases the states burden of proving the crime beyond a reasonable doubt, not only did the instruction that malice is implied or inferred from the instruction that malice is implied or inferred from the willful deliberate and intentional doing of an unlawful act, act as mandatory direction for the jury to find malice found that the applicant committed the unlawful act during the incident.

State v. Ballington, 554 S.E. 2d 280, 346 S.C. 262 (2001)

Issue no: (P) (Abuse of discretion)

(Judge breached his authority)

Appellant Argues (All) of his Co-defendant went in front of this same Judge prior to his trial AND made plea bargain Agreement with the same Judge who choose to sentence him to (50) fifty years in prison because He went to trial opposed to his co-defendant who pleaded out.

Co-defendant no: (1) Walton Booker

P. (247) Line (22-25) now, those charges have been dismissed, is that right? well, I can't really plan on that-- respond on that right now because I haven't signed a plea agreement.

Co-defendant no: (2) (Fredlie Erby)

Trial Transcript P. 282 Line (11-17)

now, you have since entered a plea to a less offense of voluntary manslaughter, is that correct? Correct

Co-defendant no: (3) (Mark Cureton)

Trial Transcript P. 304 Line (9-16) And, you have entered into a plea agreement with my office, is that correct? Yes, Sir. Under the terms of the plea agreement, is it true that you've agreed to plead guilty, or you pled guilty to ~~vol~~ voluntary manslaughter

which is a lesser included offense of murder; is that correct? Yes, sir.

Co-defendant no: (4) (John Garrett)

Trial Transcript P. 333 Line (22-25) now you have pled guilty to voluntary manslaughter is that correct? Yes, sir and that is a reduction from the murder charge.

P. 334 Line (10-12) and the other charges against you in this matter have been dismissed Yes, sir.

Appellant Argues He received (50) years in Prison because He went to trial, which Judge gave him a Harsher Sentence because He went to trial and his Co-defendant's received a way lesser sentence because of there plea bargains with the Judge and solicitor.

(Annotation AND Citation)

Applicant Argues the Judge breached his Authority by Sentencing defendant to a sentence that is in violation of state and Federal Law... state and Federal Statutory Law prohibits the use of suspended or probationary sentence. State v. Hazel, 317 S.C. 368, 453 S.E. 2d 879 (1995) This Court held that a trial Judge Abuse his discretion in sentencing when He considers the Facts

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that the defendant exercise his right to a trial by jury. Boone v. Paclerick, 541 F.2d 447, 451 (4th Cir. 1976) a promise to recommend leniency without assurance of it may be interpreted by the promise as contingent upon the quality of the evidence produced, the more uncertain the greater the motive to make the testimony pleasing to the promisor. Criminal Law (Key) 973 (C.A. 4) (S.C. 2001) A defendant has the burden of proving by a preponderance of the evidence that he is entitled to mitigating role adjustment. 18. U.S.C.A. U.S. v. Pratt, 239 F.3d 640 moreover defendant and co-defendant was charged with same identical charges while Appellant received a (50) year sentence, while his co-defendants received the lesser based on the illegal sentence Criminal Law (Key) (S.C. App. 2000) A reviewing court should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishment for crimes State v. Brennon 533 S.E.2d 345, 341 S.C. 271

(Summary AND Conclusion)

The appellant contends that he was convicted for capital murder solely upon circumstantial evidence that may rise to a level of suspicion, but it also refuted and consistent with his innocence too many speculations and far reaching possibilities were put forth by the state as conclusive facts. The state failed to meet its burden of proof on the allegations alleged in the indictment.

Appellant argues the Sixth Amendment right to counsel recognized as an important element of a criminal defendant's fundamental right to a fair trial. Access to a reasonably competent attorney is necessary in order for an accused who has no knowledge of the law and the rules of evidence to have ample opportunity to defend himself.

DOCKET NO. 2006-GS-23-
WJW 009700
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE

VS.

WILLIAM JERMAINE HENRY

WITNESSES

C. Flavell / *Baugh*

Greenville Police Department

3/25/2006

ARREST WARRANT NUMBER

1817519

ACTION OF GRAND JURY

TRUE BILL

Buddy J. Kipper
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0116

MURDER

VIOLATION § 16-03-0010

Foreperson of Petit Jury

Date:

269

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on November 14, 2006 the Grand Jurors of Greenville County present upon their oath:

That WILLIAM JERMAINE HENRY did in Greenville County, on or about the 21st day of March 2006, unlawfully and with malice aforethought kill FRANCISCO PEREZ by means of gunshots, and that FRANCISCO PEREZ died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

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[Signature]
SOLICITOR

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of Greenville

who

CH Flavell

Personally appeared before me the affiant William Jermaine Henry being duly sworn deposes and says that defendant CH Flavell did within this county and state on 03/21/2006 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☒ Municipality of Greenville)

In the following particulars:

MURDER

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 03-21-06, AT APPROXIMATELY 20:30 HRS., THE VICTIM FRANCISCO PEREZ WAS FOUND IN HIS APT WITH MULTIPLE GUNSHOT WOUNDS ABOUT THE HEAD AND BODY. THE VICTIM DIED AS A RESULT OF THE INJURIES SUSTAINED FROM THE GUNSHOTS. THE ACCUSED WILLIAM JERMAINE HENRY AND THREE CO-DEFENDANT ENTERED THE VICTIMS APARTMENT WITH THE INTENT OF ROBBING THE VICTIM. AFFIANT HAS WRITTEN STATEMENTS FROM THE CO-DEFENDANTS IDENTIFYING THE ACCUSED AS THE SHOOTER. THIS INCIDENT OCCURRED AT ELHAM RD, APT 1-11, WITHIN THE CITY LIMITS OF GREENVILLE, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of Greenville

Affiant's Address

4 MCGEE STREET
GREENVILLE, SC 29601-

Affiant's Telephone (864)271-5333 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/21/2006

defendant

William Jermaine Henry

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ ☒ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Subscribed to and subscribed before me

on 03/25/2006

(L.S.)

Signature of Issuing Judge

Brenda S. Binns

Judge Code: 6500

Judge's Address

426 North Main St

Greenville, SC 29602-0488

Judge's Telephone

(864)467-5217 x 6650

Issuing Court

☐ Magistrate

☒ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

1-817519

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of Greenville

Greenville

06-2-977

THE STATE

against

William Jermaine Henry

Address: Oakland Ave

Greenville, SC 29601

Phone: SSN: BAEEL

Sex: M Race: B Height: 5 Weight: 140

DL State: DL #: BAEEL

DOB: 10/1/1979 Agency ORI #: SC0230200

Prosecuting Agency: Greenville Police Department

Prosecuting Officer: CH Flavell

Offense: MURDER

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

3/25/2006

M. J. Dwyer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville

426 North Main Street

P O Box 488

Greenville, SC 29601

ORIGINAL

ORIGINAL

000 Henry #272767 F4-B 150
Redemption Way
Wick, SC 29899

Greenville County Clerk of Court
305 East North St.
Greenville, S.C. 29601

2012-CP-23-04209



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-4209
COUNTY OF GREENVILLE	)	
	)	
William Jermaine Henry,	)	
S.C.D.C. No. 276767,	)	
	)	
Applicant,	)	
	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 29, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2006 term of the Greenville County Grand Jury for kidnapping (2006-GS-23-9698), assault and battery with intent to kill (2006-GS-23-9699), murder (2006-GS-23-9700), and armed robbery (2006-GS-23-9701). Thomas M. Creech, Jr., Esquire represented the Applicant.

After the State took the case to trial, the Applicant was found guilty of murder and not guilty of all other charges. On February 4, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to fifty (50) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and

sentence. State v. Henry, Op. No. 2011-UP-333 (S.C. Ct. App. filed June 27, 2011).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "My lawyer failed to object to perjury testimony."
2. "The State failed to produce competent reliable evidence."
3. "The State must prove every element of the charge of Murder."
4. Subject matter jurisdiction.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Court should summarily dismiss Applicant’s second and third grounds for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following

grounds:

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;
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 [was] 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 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

The Respondent submits the Applicant's assertion that the court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they

are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests that a hearing be held on the issue of ineffective assistance of counsel and that counsel be appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

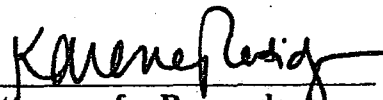
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
C Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Nov. 30

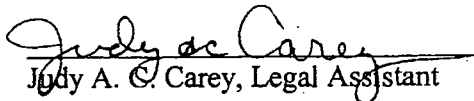
, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2012-CP-23-4209
	)	
WILLIAM JERMAINE HENRY, 276767	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**William Jermaine Henry, 276767
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899**

DATED this 30th day of November, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
3
4 William Jermaine Henry,)
5 Applicant,) TRANSCRIPT OF RECORD
6 The State,) 2012-CP-23-4209
7 Respondent.) October 22, 2013
8) Greenville, South Carolina
9
10

11 B E F O R E:

12 HONORABLE EDWARD W. MILLER, JUDGE
13
14

15 A P P E A R A N C E S:

16 CAROLINE M. HORLBECK, ESQUIRE
17 Attorney for the Applicant

18 KAREN C. RATIGAN, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

ORIGINAL