

Vol II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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DEC 8 2014

S.C. Supreme Court

JALEEL PAGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001189

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VOL II

TESTIMONY OF SARA ROBBINS

1 your attention if you would please, let me tell you
2 something that's very important at this time. When we
3 have a trial in which two people are tried at the same
4 time we have a very important law that basically says
5 this, that you don't let the statement of one person get
6 used against the other defendant. That if a defendant
7 made a statement that when it's admitted you admit it
8 normally just against that defendant and let the jury of
9 course make what findings they think are appropriate and
10 determine how credible they think it is, but you don't
11 admit it against the other defendant as evidence against
12 the other defendant. And of course, the idea simply is
13 that the State must prove their case against that other
14 defendant without using the co-defendant's statement.
15 Sometimes we have to deviate from that for valid reasons
16 but normally that is what we do. In this case we will
17 have to deviate just little bit from it. What we normally
18 do when we do that is we do what is called redacting of
19 the statements. In other words, we change the statement
20 and we put some different language in so that it doesn't
21 harm anyone. So that you -- you heard the statement of
22 Mr. McKnight that was read and you will have a written
23 statement called a redacted statement, and that means that
24 the statement was changed and there was some terms changed
25 in it to reduce the harm to either side. I want to be

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1 sure you understand that we do that necessarily. However,
2 after certain legal requirements are met sometimes the
3 redaction may not be necessary any longer and at this time
4 I have made a ruling that will remove these redactions or
5 these changes in the statement. You won't get the actual
6 original statement but you will hear some testimony
7 regarding the redactions and, of course, I won't tell you
8 what you will hear, you will hear it from the witness and
9 it will be up to you to make whatever determination of
10 believability you think are appropriate. Now, these are
11 being done -- this is being done as it relates only and I
12 emphasize only to the credibility of the witness, to the
13 credibility of investigation that was involved. As you
14 know, one of the things the State must prove is that --
15 and must be proven beyond a reasonable doubt is that they
16 had a good and solid investigation. And the defense has a
17 right to try to reduce the credibility of that
18 investigation, so this is being allowed only on that
19 issue. Now, that does not mean that you find the
20 investigation more or less credible, it's up to you still
21 to decide what weight and credibility you will give to it.
22 So then the fact that we now remove these redactions and
23 that we will let you hear what some of the statement and
24 language was, you should not read anything in to that. Do
25 not hold it against any of the parties, neither the State

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1 or any of the defendants in any way, you don't consider it
2 in any way that the statement was redacted before. And
3 the reason you don't hold it against the parties is
4 because I was the one who ordered the statement redacted
5 and it was obviously for a legal reason, it had nothing to
6 do with the parties. But again, when you hear that the
7 redactions of what was actually in the statement you do
8 not -- again, you consider it only, only in terms of the
9 credibility of this witness. It is still not to be
10 considered as direct evidence against Mr. Page. It is to
11 be considered only in terms of the credibility of this
12 witness. All right. Any further exception to that charge
13 from the State?

14 MR. POPE: No, sir, Your Honor.

15 THE COURT: From the defense?

16 MR. CHIARENZA: No, Your Honor.

17 THE COURT: Mr. Boyd?

18 MR. BOYD: None, Your Honor.

19 MR. POPE: Please the Court, Your Honor?

20 REDIRECT EXAMINATION

21 BY MR. POPE:.

22 Q. Detective Robbins, Mr. Chiarenza had asked you
23 basically had you followed up, had you talked to other
24 people once you got the information from A. J. Williams.
25 You in fact had done other things to try to work this

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1 case; is that correct?

2 A. Yes.

3 Q. And in particular I want to call your attention to
4 follow-up what the Judge said in both of the statements
5 given to the State Law Enforcement Division which was some
6 year prior and the statement that was given to you and
7 Detective Naylis by Mr. McKnight in December roughly a
8 year later, correct?

9 A. Yes, sir.

10 Q. In both of those statements when it says another
11 guy -- in other words, I saw Lamont and another guy or
12 various times it says another guy, in actuality did
13 Mr. McKnight tell you who that other guy was?

14 A. Yes, he did.

15 Q. Okay. And from your knowledge of the investigation
16 in the SLED statement again was who the other guy was
17 actually designated in the statement?

18 A. Yes.

19 Q. Who was the other guy as identified by Mr. McKnight?

20 A. Jaleel Page.

21 Q. Okay. And so when Mr. Chiarenza was asking you about
22 what you considered in your investigation and what you did
23 and I think he ultimately asked you your opinion --

24 A. Yes.

25 Q. -- of what had taken place, were you also armed with

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1 that knowledge in arriving at your opinion in completing
2 your investigation?

3 A. Yes, I was.

4 Q. I want to call your attention back to the beginning
5 of Mr. Chiarenza's questioning. And he was asking you
6 first about the looking at different people. You looked
7 at Rashad and eliminated him, you said you looked at Joyce
8 and eliminated her. In fact, at the time of the crime
9 where was Joyce physically at?

10 A. She was here at the Moss Justice Center at the
11 detention center where she was employed.

12 Q. Were you able to rule out that she wasn't the one
13 shooting the .25 on that day?

14 A. Yes.

15 Q. Okay. You were questioned by Mr. Chiarenza something
16 about Mr. Cunningham would have known or must have known
17 the people at the door. Did you ever get an opportunity
18 to ask Willie Cunningham who did this to him, who was on
19 the porch that day?

20 A. No, sir.

21 Q. Why was that?

22 A. Because he died.

23 Q. Mr. Chiarenza asked you about your personal belief as
24 to where about who shot the .25 or who actually shot

25 ~~Mr. Cunningham.~~

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1 A. Yes, sir.

2 Q. You indicated that you believe Mr. McCollum was on
3 the porch and that he shot the .25.

4 A. Yes.

5 Q. Based on your investigation, where do you believe
6 Mr. Page was when Mr. McCollum shot the .25?

7 A. On the porch with him.

8 Q. Based on your investigation and your opinion who else
9 was on the porch at that time?

10 A. No one else.

11 Q. Based on your investigation, who do you believe was
12 present other than those two and Mr. Cunningham at that
13 time?

14 A. Terrance McKnight and A. J. Williams.

15 Q. Now, you have mentioned I think the phrase it was
16 kind of like a puzzle before A. J. Williams and you were
17 putting different pieces together; is that correct?

18 A. That's exactly right.

19 Q. And Mr. Chiarenza was asking you about a statement of
20 Ms. Mary Burress. Do you have that statement with you?

21 A. Yes, I do.

22 Q. I will call your attention, he was asking about the
23 first paragraph on the day of the shooting. Could you
24 read that first paragraph to me, please, ma'am?

25 A. ~~"On the day of the shooting I was at home with Lofton~~

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1 in the bed. At one point Lamont knocked on the door and
2 Lofton went out on the porch with Lamont whom I know as
3 Monster, and Jaleel whom I know as Ja. He was out there
4 about five minutes. About an hour and a half later we
5 heard I think four shots. Five or six minutes later my
6 Aunt Gaither Lee called our names. We lifted the window
7 up, she said, 'Mary, y'all go out there because I think
8 somebody just got shot in the trailer park.' We walked up
9 there but everything was taped off. We stood out there
10 where the crowd was for a few minutes and we went back
11 home."

12 Q. Okay. Now, Mary Burress is the niece of Ms. Gaither
13 Williams; is that right?

14 A. Yes.

15 Q. Is Gaither Lee and Gaither Williams, is that the same
16 person?

17 A. Yes.

18 Q. From that statement she indicated that Lamont and
19 Jaleel were together at their house that Sunday morning;
20 is that correct?

21 A. That's correct.

22 Q. Okay. And where is it that they lived?

23 A. Who?

24 Q. The apartment area that they're talking about, Mary

25 Burress?

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1 A. At the Hall Street Apartments next to the last
2 apartment on the left right down from the trailer park.

3 Q. And I am going to ask you if you could look -- with
4 the Court's permission would you step down just a second?
5 State's Exhibit -- I don't have the number in front of
6 me -- containing one of the shots of the air photograph
7 again. Would you indicate just roughly where the victim's
8 trailer was at in this picture?

9 A. The victim's trailer was right here.

10 Q. Okay. And now, where -- this Hall Street Apartments
11 that we talk about, where is that located?

12 A. Here is Hall Street and it's right across the street
13 right here.

14 Q. Is that the same area that they talk about the big
15 tree?

16 A. Yes.

17 Q. Is that the same area where Gaither Williams lives?

18 A. Yes.

19 Q. Is that the same area that Ms. Burress is talking
20 about that she lives where Lamont and Jaleel were that
21 morning?

22 A. Yes.

23 Q. That would be Exhibit 30. You can have a seat. In
24 addition you took out of statement -- I think Mr.

25 Chiarenza asked you about Mr. Gaither Williams. She's the

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1 lady that testified earlier this week right, in fact,
2 yesterday?

3 A. Yes.

4 Q. One day this week?

5 A. Yes.

6 Q. I want to call your attention to her statement. Mr.
7 Chiarenza was asking about the only seeing one guy and one
8 big guy or whatever. Could you read the first paragraph
9 of her statement, please?

10 A. "That Sunday morning that the man was shot and killed
11 at the trailer park I was at home in the upstairs bedroom,
12 it was about 9:00. There was a lot of guys outside the
13 window doing a lot of loud talking and I heard one tell
14 another, 'You need to unload it or put the safety on.' So
15 I got up and went to the window and told them to move away
16 from there because they were making too much noise. At
17 that time they moved away from my window across the
18 parking lot up under the big tree. It was about seven or
19 eight of them, they were drinking. I don't know where
20 they got the beer from on a Sunday morning. I seen the
21 big guy, Lamont. He's bigger than the rest of them and I
22 know they call him Mont. He was kind of leading the pack
23 like the head of them. He had on a white T-shirt with
24 baggy pants."

25 Q. When you testified direct and you were telling me the

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1 sizes of Mr. Page and Mr. McCollum, I believe I recall you
2 said both were six-four; is that correct?

3 A. That's correct.

4 Q. But Mr. McCollum was 280; is that correct?

5 A. About 280, yes.

6 Q. And Mr. Page was 225?

7 A. Yes, sir.

8 Q. In your opinion, is 280 bigger than 225?

9 A. Yes.

10 Q. Did she say anything about it was a big guy and a
11 bunch of little guys out there?

12 A. No.

13 Q. Okay. Mr. Chiarenza was asking you about the
14 fellows -- in other words, you had indicated you -- Lamont
15 McCollum, you put a name with a picture sometime in the
16 end of July; is that correct?

17 A. That's correct.

18 Q. Okay. In July did you have Mr. Page's social
19 security number?

20 A. No, sir.

21 Q. Did you have his date of birth?

22 A. No, sir.

23 Q. Did you have the kind of information -- Mr. Chiarenza
24 was talking about at the department of motor vehicles.

25 Did you have driver's license numbers or all of those type

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1 of numbers that you have to have to get a picture?

2 A. No, I didn't.

3 Q. When were you able to obtain that type of

4 information?

5 A. We didn't get that until the time that the warrants

6 were issued.

7 Q. Okay. And when the warrants were issued you have

8 received a picture from the department of motor vehicles

9 from Mr. McKnight; is that correct? I'm sorry, of

10 Mr. Page; is that correct?

11 A. Yes.

12 Q. Okay. And did you take that photo and use it for the

13 purpose of law enforcement identification, in other words,

14 in an attempt to try to locate them?

15 A. Yes. We used that picture for the press release when

16 that was put out.

17 Q. I want the jury to understand when you did the press

18 release, what was the purpose of the press release? Was

19 there a reason that you were telling them that you had

20 these warrants for these individuals?

21 A. Yes. They were -- we were attempting to locate them.

22 Q. And in conjunction with that did you actually provide

23 with the public -- for the media a request of information

24 to locate Mr. McCollum and Mr. Page?

25 A. Yes, we did.

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1 Q. I show you what's been marked as State's Exhibit 55
2 and ask if you can take a look at that and tell me if you
3 can identify that?

4 A. Yes. This is the photo we used on Jaleel Page.

5 Q. Where did you obtain that photo?

6 A. From the DMV.

7 Q. That's the driver's license place, right?

8 A. Yes.

9 Q. And then State's Exhibit 56, what is this item?

10 A. This was on the overhead that was used when we gave
11 the press release at the York Fire Department.

12 Q. And again, the purpose of this was what, State's
13 Exhibit 56?

14 A. To attempt to locate those two individuals.

15 Q. Did you put this information out within the public?

16 A. Out to be public, yes, sir.

17 MR. POPE: Your Honor, I move State's Exhibits 55 and
18 56 into evidence.

19 THE COURT: Any objection?

20 MR. CHIARENZA: Just object as to relevance as to a
21 photograph of my client, I don't know what it proves.

22 MR. BOYD: No objection.

23 THE COURT: Over objection I will allow it to be
24 admitted. I think it's on the issue of credibility of the
25 investigation.

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1 (The photographs were received as State's 55 and 56.)

2 Q. Okay. And this DMV photo, you obtained that after
3 you got more information. What type of information do you
4 need to get a DMV photo?

5 A. Name, date of birth.

6 Q. Okay. Did you get that information -- you were able
7 to obtain it some how through the investigation at the
8 time of the warrants?

9 A. Yes.

10 Q. And subsequently you put out this item 56; is that
11 correct?

12 A. Yes, sir.

13 Q. And again, the purpose of that was to locate them at
14 that time?

15 A. Yes, sir.

16 Q. You were explaining to the defense about preparing a
17 photo lineup and not preparing one for Jaleel Page
18 initially. By the time you had this information on Jaleel
19 page, did you have him identified? Did you know who he
20 was?

21 A. Yes.

22 Q. When you have somebody who knows an individual, in
23 other words, you know Mr. Thompson, do you sometimes show
24 them differently other than a photo lineup?

25 MR. CHIARENZA: Your Honor, objection, it's leading.

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1 THE COURT: Just rephrase it.

2 Q. If you have somebody that I say, "Well, it was
3 Willie, I know Willie," if you have that information what
4 from a law enforcement standpoint to help you identify
5 that you have the right person do you do?

6 A. Show them the photograph to be sure we're talking
7 about the same person.

8 Q. Okay. At the point that you showed the photograph --
9 and did you show the photograph to a number of individuals
10 in this case?

11 A. The photograph of --

12 Q. Of Mr. Page.

13 A. We showed the picture of that to A. J. and to
14 Terrance.

15 Q. Once you showed the photograph -- prior to showing
16 them they had already told you who they're talking about.

17 A. Yes.

18 Q. I want to call your attention now to Mr. A. J.
19 Williams for the jury's clarification. Before York .P.D
20 knew anything or had any direct contact with A. J.
21 Williams he was talking to somebody in the Moss Justice
22 Center; is that correct?

23 A. That's correct.

24 Q. Talking to another inmate, not a law enforcement
25 officer, right?

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1 A. That's correct.

2 Q. One that was brought to your attention that same
3 individual they went in wired or kind of undercover and
4 talked to Mr. Williams again.

5 A. Yes.

6 Q. And at the time that he was talking to that
7 individual, did he know that his information was being
8 transferred to law enforcement at that time?

9 MR. CHIARENZA: Objection. She can't testify as to
10 what Mr. Williams knew, it's impossible.

11 THE COURT: I will sustain the objection to the form
12 of that question. If there's a way that you can testify
13 that she would have obtained it if she can, but just
14 asking if she knew, you can't.

15 Q. You get contacted by an individual that may have some
16 information from talking to Mr. Williams; is that correct?

17 A. That's correct.

18 Q. And you wired that individual. What does that mean?

19 A. We equipped him with an audio recording device.

20 Q. And did he in fact make a recording of Mr. Williams?

21 A. Yes, he did.

22 Q. And were you able to listen, you and other detectives
23 to go through and listen to that recording?

24 A. Yes.

25 Q. The information that he was giving, the statements he

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1 was making on there, did it appear that he knew he was
2 talking -- that it was for law enforcement?

3 A. No.

4 Q. In the tapes -- in the things he talked, did he say
5 at various times in that tape that he mentioned the name
6 Jaleel, or as you call it Jameel or Jaleel? I can't
7 pronounce it the way -- what was he saying?

8 A. He did mention Jaleel and Terrance.

9 MR. BOYD: Your Honor, I would object to that as
10 hearsay.

11 THE COURT: This is Mr. Williams?

12 MR. POPE: Yes, sir.

13 THE COURT: Well, Mr. Williams has testified
14 previously and I think he was subject to cross
15 examination. I will allow it. Let's don't go too far
16 with it.

17 Q. So in other words before law enforcement ever talked
18 to him he was giving these individuals' names; is that
19 right?

20 A. Yes, he was.

21 Q. Now, you had indicated that -- let me call your
22 attention to your summary that Mr. Chiarenza talked to you
23 about.

24 A. Yes.

25 Q. And in that summary he had said that -- calling your

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1 attention to the top of the page -- talking about A. J.'s
2 statement, said that he had not seen them since and didn't
3 know Jaleel's name; is that correct?

4 A. Yes. What page was that on?

5 Q. Mr. Chiarenza was calling it page four. But let me
6 call your attention back to the bottom of page three. If
7 you could relate to the jury from your investigation --
8 you know when you were asked about your opinion of why you
9 believe this to be true that where it says in December, if
10 you could read that paragraph to the end of the paragraph,
11 please.

12 A. "In December A. J. Williams was arrested for grand
13 larceny and also for resisting arrest. Officers learned
14 on December 30th that A. J. Williams had been talking to
15 other inmates in the jail about the murder of Willie
16 Cunningham, how he had been there and had been the lookout
17 and how he, Lamont and someone named Jaleel had planned to
18 rob Rashad. Investigators obtained a statement from an
19 inmate, then went to visit A. J. Williams. He was advised
20 of his rights, he then gave officers a statement that he
21 had indeed been a lookout while Lamont and Jaleel had gone
22 to the house. They had seen Rashad earlier and had
23 planned to rob him there on the street but didn't. He
24 stated Rashad always flashed a lot of money. When Willie
25 came to the door the gun was pointed at him, he had

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1 grabbed for the gun and Lamont had pulled away and shot
2 him. A. J. said he then ran towards his house and they
3 ran the other way and a girl in a gray colored Stanza had
4 picked them up. He said he had not seen them since and
5 didn't know Jaleel's name nor the name of the girl. He
6 said he had not told because he was worried about being
7 charged as an accessory."

8 Q. When he said he didn't know Jaleel's name, Mr.
9 Chiarenza was asking you about that. What do you mean
10 when he said -- because you wrote this. This is your
11 summary, what do you mean he said he didn't know his name?
12 A. That's what he said, he said he didn't know Jaleel's
13 name and he was -- he didn't know how to spell it. He was
14 saying it like Jaleel or Jameel and he didn't know what
15 his name was.

16 Q. Okay. And maybe I'm --

17 A. He knew him as Jaleel.

18 Q. When you're saying his name and you are writing this
19 do you mean like me being Thomas Elbert Pope as opposed to
20 you might know me as Tommy? What do you mean?

21 A. Right, that's correct.

22 Q. Ms. Burress had indicated the nickname of Ja. Did
23 you hear that from A. J. also?

24 A. Yes, I did.

25 Q. Did you put those words in his mouth?

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1 A. No.

2 Q. When you talked to these different individuals, will
3 you tell them what the other individuals had said to help
4 or form their testimony?

5 A. No. We tell them sometimes that we talked to someone
6 else but we don't tell them what they said.

7 Q. Now, ultimately in addition to the jail tape, A. J.
8 Williams gave two statements shortly thereafter and then a
9 subsequent statement right after he pled; is that correct?

10 A. That's correct.

11 Q. Okay. At anytime on the statements when he talked to
12 you -- in other words, after the jig was up, after he was
13 found out at the jail did he ask you for any help or the
14 pending charges or these charges, did he ask you for any
15 kind of help?

16 A. No.

17 Q. Did you promise him or threaten him in any way?

18 A. No.

19 Q. Did you offer him any hope of reward?

20 A. No.

21 Q. Did it appear the statements he gave to you were
22 freely and voluntarily?

23 A. Yes.

24 Q. Okay. Based on your view of the statements, did you
25 see consistency -- and I don't want to talk about yet the

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1 statement that came after he pled, back before this, did
2 you see consistencies in the facts as you were piecing
3 that puzzle together between his statements and the facts
4 that he had?

5 A. Yes.

6 MR. BOYD: Your Honor, I would object to that. I
7 think that's a conclusion. I don't think I have opened
8 any doors to this.

9 MR. POPE: If I might be heard, Your Honor? I think
10 my concern is that she has been directed questions with
11 what she did, the quality of her investigation, how she --
12 and she has been directly asked her opinion of the facts.
13 I'm just now trying to explain it from her credibility
14 standpoint and the credibility of the investigation what
15 facts she had and how she pieced them together.

16 MR. BOYD: I didn't ask any opinions. I didn't open
17 any of those doors so I certainly on behalf of Mr.
18 McKnight would object to any of those.

19 THE COURT: Counsel, I realize we are talking about
20 opinions and of course we haven't really distinguished 701
21 opinion from a 702 opinion, it's not necessarily an expert
22 opinion but is sort of what we refer to as a lay opinion
23 in where someone in essence gives their opinions to
24 natural inferences they may have received in a particular
25 event. I think it would be appropriate for her having

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1 laid the ground work, it would be appropriate for her to
2 give an opinion under rule 701, so I will overrule the
3 objection and allow that.

4 MR. POPE: Please the Court, Your Honor? I think
5 when Mr. Chiarenza, when he was questioning her -- I will
6 be glad to -- and have her qualified as an expert in
7 criminal investigation if that would more fully address
8 that manner.

9 THE COURT: You can if you want to. I have already
10 ruled that she can give an opinion under rule 701.

11 MR. CHIARENZA: He's asking for an expert opinion on
12 whether the statements have some similarities, I don't
13 think she's an expert on that. It was never my intent to
14 qualify her as an expert on that.

15 THE COURT: I'm just going to let her give her
16 opinion under Rule 701.

17 Q. From a lay standpoint, from a standpoint of you
18 having the knowledge of the documents and the
19 investigation in this case, did you see consistencies
20 between the various information you had and the statements
21 that Mr. Williams had given?

22 A. Yes, I did.

23 Q. Regarding what if any individuals were on the porch,
24 what information did you see that matched up with your
25 investigation?

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1 A. The individuals on the porch were -- as far as our
2 investigation was concerned was Lamont and Jaleel.

3 Q. Was that consistent with Mr. Williams' information?

4 A. Yes.

5 Q. And as far as specifics on Lamont and Jaleel having
6 pistols, what information did you have?

7 A. That they both had small caliber handguns, that
8 Lamont had a pistol, that Jaleel had a revolver.

9 Q. When you say pistol what do you mean? How are you
10 distinguishing that from a revolver?

11 A. The revolver has a cylinder, the pistol is a
12 semiautomatic pistol with a magazine.

13 Q. Did you also have specific information concerning the
14 description, the colors and things of that nature?

15 A. Yes.

16 Q. Was that consistent?

17 A. That was consistent.

18 Q. Was there specific information about what the plan
19 was, what was set out to be accomplished?

20 A. Yes.

21 Q. What was that information?

22 A. To rob the stash that they felt was in there that
23 Rashad had.

24 Q. Was there any initial discussion about robbing Rashad
25 himself?

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1 A. Yes.

2 Q. Was that consistent with what you had?

3 A. Yes, it was.

4 Q. Was there information contained in what was to happen
5 if someone was home?

6 A. Yes.

7 Q. What was that?

8 A. That they were to knock on the door -- to rob whoever
9 opened the door.

10 MR. BOYD: Your Honor, I am going to object to that.
11 I think that's going into an area that was beyond the
12 scope of any cross examination.

13 THE COURT: I am going to sustain the objection on
14 it, Counsel. I think that does go a little bit further.

15 MR. POPE: As far as what was to be done in the home?

16 THE COURT: Yes, sir.

17 Q. Did you have specific information as to the vehicle,
18 the description of the vehicle, was that consistent in his
19 statement and what you ultimately determined from the
20 investigation?

21 A. Yes.

22 Q. What was that information?

23 A. That it was a silver colored small vehicle.

24 Q. There looking at the totality of your investigation,
25 the different witnesses, was there information about the

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1 clothing that Lamont and Jaleel had?

2 A. Yes.

3 Q. What information was that?

4 A. The hoodies that they were wearing, hoodies with
5 pockets in the front.

6 Q. Did you have specific colors for each one?

7 A. Yes.

8 Q. What was that?

9 A. Gray -- I would have to refer back to the statement.
10 Gray hoodie was mentioned in I believe each statement.

11 Q. Was there any indication as to what Mr. Page was
12 wearing?

13 A. Dark colored -- possible dark coat and long pants.

14 Q. That would be Mr. Page?

15 A. Yes.

16 Q. Based on the totality of your investigation you
17 indicated that you believed that Mr. McCollum was the
18 shooter; is that correct?

19 A. Yes.

20 Q. Based on the totality of your investigation who do
21 you believe was present aiding and abetting Mr. McCollum?

22 MR. BOYD: Your Honor, I would object to that. That
23 goes I think beyond the scope of cross examination.

24 THE COURT: I'm going to sustain the objection. I
25 think that does go more into the area that the jury does

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1 determine.

2 MR. POPE: Answer any questions that the defense may
3 have.

4 THE COURT: All right. Any recross, Mr. Chiarenza?

5 MR. CHIARENZA: No, Your Honor.

6 THE COURT: Mr. Boyd?

7 RECROSS EXAMINATION

8 BY MR. BOYD::

9 Q. Let me ask you about the statements of Terrance
10 McKnight. When you were reading -- when the statements
11 were presented earlier saying the other guy, that was --
12 actually he was referring to Mr. Page; is that correct?

13 A. Yes, he was.

14 Q. And that's what he had told you in those statements;
15 is that correct?

16 A. Yes, he did.

17 Q. That had been redacted or changed because of court
18 rules; is that correct?

19 A. For the court rules, yes.

20 Q. So he was up front with you from the beginning about
21 who was there and what he saw concerning who the people
22 were; is that correct?

23 A. Yes.

24 Q. Okay. And he was cooperative with you regarding
25 that; is that correct?

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1 A. That's correct.

2 Q. Okay. Now, in another of his statements did Terrance
3 tell you -- or was able to tell you who fired the shot; is
4 that correct?

5 A. That's correct.

6 Q. He informed you I think in his second statement that
7 he heard the shots but he did not see who actually fired
8 the shots; is that correct?

9 A. Yes.

10 Q. Okay. And let me ask you about -- when you're
11 referring to your summary concerning what A. J. Williams
12 had told you, I think it's on page three of your summary.
13 Are you referring to what he had told you in his original
14 statement and then the statement he made a few days later?
15 Let me be more specific about that. Are you referring to
16 the statement of December 31, 2003?

17 A. Yes.

18 Q. And are you referring to the statement that was made
19 two days after that?

20 A. Yes.

21 Q. Okay. So you are not referring that summary to the
22 later statement after his guilty plea?

23 A. No. This summary was written before the other one,
24 before the final statement.

25 Q. Okay. Thank you.

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1 MR. BOYD: That's all of the questions I have.

2 THE COURT: Thank you, ma'am. You can step down.

3 The witness, JAMES MAYNARD, M.D. was first duly sworn

4 and testified as follows, on:

5 DIRECT EXAMINATION

6 BY MR. POPE::

7 Q. State your name and spell your last name for the
8 court reporter.

9 A. James Lewis Maynard, M-a-y-n-a-r-d.

10 Q. Would you tell the jury where you are employed?

11 A. With the York Pathology Associates here in Rock Hill.

12 Q. What do you actually do there?

13 A. I'm a physician, more specifically a pathologist with
14 the group.

15 Q. Would you tell the jury what a pathologist is, what
16 it is you actually do?

17 A. A pathologist is a physician, a M.D. who has done the
18 four years of medical school and then gone on for
19 additional studies in the field of pathology. Pathology
20 is a broad area which covers the study of disease, injury,
21 infections at the tissue, blood and fluid level. A
22 pathologist usually has four to five to six additional
23 years of training after the four years of medical school.
24 There are many areas of pathology, from what we consider
25 surgical pathology where we are looking at tissue

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1 biopsies, specimens taken out during surgery, a
2 Scientology where we are looking at papsmeres or cells
3 floating in fluids. And then the chemical pathology where
4 we are looking at results or analysis of blood and body
5 fluids, and then of course there's the autopsies that we
6 are known for.

7 Q. And forensic pathology specifically, how would you
8 describe that?

9 A. Forensic pathology is another branch of pathology
10 dealing with death in unusual or unnatural manners or
11 death not in attendance by physicians.

12 Q. What type of background in education and training do
13 you have that allows you to perform these autopsies and do
14 the forensic pathology?

15 A. Yes, sir. The pathologist first must be a
16 pathologist in they've gone through four years of medical
17 school, and then taking training in pathology where we are
18 studying tissue both normal and abnormal at the tissues,
19 blood body fluid level and then autopsies. But then
20 forensic pathology goes even further with the autopsies
21 and the tissue examinations where you are looking at cause
22 and manner of death, usually violent, unnatural, unusual
23 deaths, homicides, infectious problems that may be a risk
24 to the public health, that sort of thing. But it's
25 further training in addition to being a regular

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1 pathologist.

2 Q. Doctor, how long have you been in pathology here in
3 York County?

4 A. 29 years now.

5 Q. Can you give an exact estimate of how many autopsies
6 you performed?

7 A. It's a lot, around 2,000 or so since being here.

8 Q. Have you had the opportunity from a forensics
9 standpoint to come and testify based on your findings in
10 autopsies here in court in York County?

11 A. Yes, sir, many times.

12 MR. POPE: Your Honor, at this time I would tender
13 Dr. Maynard as an expert in forensic pathology.

14 MR. CHIARENZA: No objection.

15 MR. BOYD: No objection.

16 THE COURT: Without objection he will be qualified as
17 an expert in forensic pathology. Remember again, ladies
18 and gentlemen, that an expert witness is qualified as such
19 because of their experience, training, background,
20 education and knowledge in a particular field, in this
21 case the field of forensic pathology. He is allowed to
22 give an opinion in that field. You are not bound by the
23 opinion, you decide how much weight and credibility to
24 give to it. Any exception to the charge from the State?

25 MR. POPE: Nothing from the State, Your Honor.

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1 THE COURT: Mr. Chiarenza?

2 MR. CHIARENZA: No, Your Honor.

3 THE COURT: Mr. Boyd?

4 MR. BOYD: None, Your Honor.

5 THE COURT: All right. Go ahead.

6 Q. Dr. Maynard, I call your attention to Monday,
7 March 17 of 2003. Did you have an opportunity to do an
8 autopsy on the victim in this case, Mr. Willie Cunningham?

9 A. Yes, sir, I did.

10 Q. Could you tell the jury how he presented as far as
11 his age and size and things of that nature?

12 A. Mr. Cunningham was presented to us as a 47 year old
13 male, approximately 70-inches in length and weighing
14 approximately 230 pounds.

15 Q. From an external standpoint when you began the
16 autopsy, what was the first thing you did externally
17 before you do any internal observation?

18 A. An autopsy is an external examination of the body and
19 then internal examination and then any other exams needed.
20 Externally we are first looking, is he clothed -- is the
21 person clothed or not clothed, is the clothing with the
22 body. And then we go over the externally and we start
23 basically at one end and go to the other looking at the
24 hair, we are looking for any injuries, cuts, tears,
25 gunshot wounds. We are looking at the hands, the nails,

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1 are they broken, is there foreign material underneath the
2 nails. We look at the legs, the perineum or the crotch
3 area in case there's a sexual assault, and any evidence,
4 any trace evidence, unusual hairs or hairs different than
5 the decedent or any other fragments or foreign material
6 there.

7 Q. Now, once you received at the autopsy -- previously
8 in evidence are his shirt and pants that were cutoff by
9 EMS. You also recovered I believe his underwear and
10 turned that over to law enforcement also; is that correct?

11 A. Yes, sir, I did.

12 Q. And I believe the shirt and pants were actually
13 present for you to observe as part of your duties as law
14 enforcement had brought for us to entrance points and so
15 forth?

16 A. Yes, sir, they did.

17 Q. As far as the victim himself, what did you notice as
18 far as any injuries or where he was he injured based on
19 your external examination?

20 A. There were two significant injuries, two gunshot
21 wounds, one in the penis and one in the right chest.

22 Q. Okay. When you were talking about checking the hands
23 and nails, what are the defensive wounds?

24 A. Defensive wounds are wounds sustained by an
25 individual that is trying to block blows or trying to

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1 block injuries to themselves. They are typically on the
2 outside of the hands, the forearm, the back of the arms
3 and the elbow. They can be fingernails, they can be
4 knuckles, if there's a fist or a blow. Frequently there
5 is scratching involved or an attempt to grab or push an
6 assailant away.

7 Q. Did you note any defensive wounds on this particular
8 victim?

9 A. No, sir, I did not.

10 Q. Next did you notice any other injuries particularly
11 other than the areas of the gunshot?

12 A. No, sir, I did not.

13 Q. When you looked at the various gunshot wounds and you
14 number them; is that correct? You had indicated there
15 were two wounds; is that correct?

16 A. Yes, sir, that's correct.

17 Q. You numbered them. Is there any inference to be made
18 for the jury from which one is number one and which one is
19 number two?

20 A. No, sir, there's not. We just start with number one
21 and go to number whatever we need to.

22 Q. With that being said I'm going refer you to number
23 two first. Okay? Let me call your attention to what you
24 have labeled as gunshot wound number two. And let me ask
25 you, you actually recovered physical evidence from the

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1 victim in this case, or did recover physical evidence from
2 the victim in this case; is that correct?

3 A. Yes, sir, I did.

4 Q. You've previously had the opportunity to look at
5 what's now been marked as State's Exhibit 51, which is the
6 bullet that was removed from the victim's right back; is
7 that correct?

8 A. Yes, sir, that's correct.

9 Q. Did you take that once you recovered it and turn it
10 over to law enforcement also?

11 A. Yes, sir, I did.

12 Q. And also I call your attention to what you provided
13 in State's Exhibit 33 and ask if you can tell me what this
14 depicts?

15 A. Yes, sir. This is a diagram that we use that I
16 filled in noting the gunshot wounds and the area of
17 bruising where we found the bullet in the right back.

18 Q. Will this assist you in your explanation to the jury?

19 A. Yes, sir, it would.

20 MR. POPE: Your Honor, at this time I would publish
21 State's Exhibit 33 ask that Dr. Maynard be afforded the
22 opportunity to step down, please.

23 THE COURT: Okay.

24 Q. Dr. Maynard, I will call your attention first to what
25 you designated as gunshot wound number two and tell us

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1 what you indicated with that, please, sir.

2 A. Gunshot wound number two is in the right chest. And
3 when we measured the wounds we measure from the top of the
4 head and then the midline of the body. In this case the
5 top of the head to the wound is 12 and three-quarter
6 inches, 12 and three-quarter inches from the top of
7 Mr. Cunningham's head to the wound. The wound is
8 three inches to the right of midline, this is the middle
9 of the body and three inches over. And then we looked at
10 the wound. Is there any evidence of burning, stippling
11 around this and any foreign material and then we measure
12 the size of the wound, the actual size of the hole.

13 Q. What is the significance of burning or stippling?

14 A. Yes, sir. The burning is the actual -- when a gun is
15 fired there's actually a flame that comes out of the
16 barrel of the gun, this is a hot flame, it would cause
17 burning or charring or actual stippling. Stippling are
18 small marks or actual puncture wounds in the skin around
19 the wound. This is due to any fragments of lead, fragments
20 of the primer, any extra powder that has not been burned.
21 And this is blown out with the projectile or bullet.
22 These things are a very high velocity when they're real
23 close to the body. As you get back a short distance these
24 areas of stippling will disappear, so it gives us an
25 indication of how close the barrel of the gun was to the

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1 body. In this case there was no burning or stippling.

2 Q. And so based on your expert opinion what would that
3 mean to you as far as proximity to the gun?

4 A. Without the burning -- burning is usually a contact
5 or within a inch or two. Stippling in a pistol typically
6 disappears at around six inches. So we consider anything
7 more than six inches where there's no stippling a distant
8 gunshot wound.

9 Q. So when you say distant, distant could be six inches
10 or more but you are just meaning?

11 A. Or stippling.

12 Q. But there's just not contact?

13 A. That's correct, sir.

14 Q. What else were you able to observe about this
15 particular wound?

16 A. The wound entered the chest, it didn't bounce off and
17 we could see some bruising on the back and assume that's
18 where the bullet was going to be found. The bullet
19 entered the chest being the right chest here --

20 Q. Let me ask you this: On the entry when you observed
21 the shirt that was recovered, it's in evidence as State's
22 Exhibit 50 and we don't have to remove that at this
23 time -- but State's Exhibit 50, do you recall was that
24 consistent -- the location of the blood and the hole in
25 that shirt, was that consistent with the location that you

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1 see on this particular item?

2 A. Yes, sir, it was. On the shirt when I examined it
3 there was a small amount of wipe-off material or some
4 darker material and there were areas that appeared to be
5 blood or foreign material such as possibly gun powder.

6 And then, of course, the shirt was given back to law

7 enforcement after we looked at it.

8 Q. Okay. The recovery that you made, you were actually
9 able -- that area on the right back, is that an exit
10 wound?

11 A. No, sir, it's not. There was an area of bruising on
12 his right back and when palpating it you could feel a
13 foreign projectile in there. There was no evidence of
14 exit but the bullet was actually in his back.

15 Q. You actually at autopsy recovered that item and gave
16 it to law enforcement?

17 A. Yes, sir, I did.

18 Q. I will show you what's been marked as State's
19 Exhibit 51. And is that the item that you recovered?

20 A. Yes, sir. It's a full metal jacket .25 caliber
21 bullet.

22 Q. Did the entrance wound that you saw, did that appear
23 to be consistent size-wise with the .25 caliber?

24 A. Yes, sir. This was approximately one quarter inch in
25 size.

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1 Q. And .25, is that .25, that's one quarter of an inch?

2 A. Yes, sir.

3 Q. As far as the actual injuries that you observed or
4 noted, what did you note internally that was caused by
5 this wound?

6 A. The bullet entered the soft tissue, went between two
7 ribs and then entered the lung. The heart is more in the
8 center of the body and on the left side. Both chest
9 cavities each have a lung, the right lung three lobes, an
10 upper lobe, a middle lobe and a lower. The left lung has
11 an upper and a lower lobe. The bullet entered the upper
12 lobe, went into the middle lobe and then went into the
13 lower lobe. This caused laceration, cutting and tearing
14 of the lung tissue itself that are in the lung. It did
15 not hit the heart going through there. Then the bullet
16 exited the lung cavity and then came to rest in the soft
17 tissue.

18 Q. What was the path of traveling through? What was the
19 path of bullet angle wise or direction wise?

20 A. The bullet traveled from front to back, from the
21 decedent's front to his back, from up where we found the
22 bullet, the bullet entered 12 and three quarter inches
23 below the top of the head and we found the bullet
24 19 inches below the top of the head, so it was a little
25 over six inches downward angle. So the bullet was going

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1 front to back going downward and the area of the bullet
2 was approximately three inches to the right of the
3 midline. So again approximately the same level, it didn't
4 particularly vary slightly left or right, but not much on
5 it. So front to back and downward.

6 Q. Okay. And so you say it was roughly front to back
7 slightly downward?

8 A. Yes, sir. Six inches on a downward angle, an angle
9 approximately like this.

10 Q. When you are saying left to right as I am standing
11 say left to slightly --

12 A. Slightly to the right based on where we found the
13 bullet in the area of bruising.

14 Q. Thank you, sir. I call your attention to what you
15 indicated was a gunshot wound one and ask if you can tell
16 us what you observed there?

17 A. Yes, sir. There was a gunshot wound or entrance
18 wound in the base of the penis, this is just below your
19 pelvic bone. The bullet entered the penis, exited the
20 penis and went into the right scrotum. The wound was
21 again measured from the top of the head down to here,
22 which is 35 inches. The bullet entered the scrotum and
23 then exited the scrotum and then re-entered the right calf
24 that just went into -- I'm sorry, the right thigh, entered
25 the right thigh just behind the scrotum. The bullet went

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1 through this inner part of the thigh and then exited the
2 back of thigh there. The bullet was 35 inches below the
3 top of the head and exited 38 inches below the top of the
4 head.

5 Q. Were you able to determine -- did you recover a
6 bullet from the body of Mr. Cunningham to match that one?

7 A. No, sir, I did not.

8 Q. Did you appear to have both an entrance and an exit
9 in that particular case?

10 A. There is an entrance and an exit on the body.

11 Q. Okay. From a caliber standpoint in measuring the
12 wound, what size caliber did it appear to be consistent
13 with based on your experience?

14 A. Again, a small caliber, it appeared to be the same
15 size as the entrance wound number two of the one in the
16 right chest.

17 Q. So based on what you observed it would be
18 consistent -- likewise both could be consistent with a
19 .25?

20 A. Yes, sir.

21 Q. Okay. Doctor, if you would, and as lay a terms as
22 you can, describe for the jury what took Mr. Cunningham's
23 life, exactly what transpired that made one shot -- were
24 one or both shots fatal or --

25 A. No, sir. The one to the penis was not fatal. There

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1 were no significant organs hit as far as major blood
2 vessels and such. The shot in the right chest went
3 through all three lobes in the lung on the right side.
4 The lung of course receives the blood from the heart, the
5 blood comes in from the body to the heart, it's pumped out
6 from the heart to the lungs, it's oxygenated and brought
7 back through the heart and of course pushed throughout the
8 body. So all of your blood is going through those lungs
9 and with a significant tear there are major vessels
10 because it has to take all of this blood out of there. So
11 the major vessels or the big vessels in the lung are cut
12 by the bullet and there's also damage from the shock wave
13 of the bullet that you get additional tearing, more than
14 just a simple path of the bullet but you also have the
15 power or the energy that's expended by the bullet so you
16 have additional tearing of the lung away from the bullet
17 itself. So there's a large area of injury and this starts
18 bleeding and the blood continues to come out. As the
19 blood comes out there's less available for circulation,
20 there's less ability of the body to function. At some
21 point his chest will fill up with blood and then they'll
22 start compressing the heart and taking the heart and
23 pushing it to the other side. This prevents the heart
24 from filling up further with blood that may still be in
25 the circulation and then eventually you bleed to death,

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1 which is what Mr. Cunningham did.

2 Q. You can bleed to death internally. He actually had
3 very little come out; is that right?

4 A. Yes, sir, that's correct.

5 Q. And as far as ultimately based on the overall --

6 because you're looking at various organs and you look at

7 all of the body parts; is that correct?

8 A. Yes, sir.

9 Q. Based on the totality of that, did you come to the
10 determination or an opinion as to the cause of death in
11 this particular case?

12 A. The cause of death was a gunshot wound to the right
13 chest, the result being bleeding to death.

14 Q. What is the manner of death?

15 A. The manner of death was homicide.

16 MR. POPE: Thank you, sir. Have a seat and answer
17 any questions the defense may have.

18 CROSS EXAMINATION

19 BY MR. CHIARENZA: :

20 Q. Doctor, you don't have any information as to who shot
21 Mr. Cunningham, correct?

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

23 MR. CHIARENZA: Judge, that's all I have, other than
24 maybe having a difference of opinion as to whether or not
25 what a significant organ might be.

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1 THE COURT: All right. Mr. Boyd?

2 MR. BOYD: I have no questions.

3 THE COURT: All right. Is there anything else,
4 Mr. Pope?

5 MR. POPE: No, sir, Your Honor.

6 THE COURT: All right. You can step down, Doctor.
7 Thank you, sir.

8 MR. POPE: Your Honor, at this time the State would
9 rest.

10 THE COURT: Ladies and gentlemen, the State now rests
11 their case. The law requires that I am supposed to take
12 up certain matters with the attorneys at this point so I
13 am going to ask you to step to the jury room. Remember,
14 we don't talk about the case. I know you are tired of
15 hearing about that but don't talk about the case in any
16 way. If you need to get refreshments you can. If you
17 need to smoke, go ahead and smoke.

18 (The jury left the courtroom.)

19 THE COURT: All right. Any motions by Mr. Chiarenza?

20 MR. CHIARENZA: Your Honor, at this time I would just
21 renew all previous motions and objections for the record,
22 and I won't state them in their entirety but just renew
23 them, and note that particularly on the issue of the
24 severance and the un-redacting and redacted statement.
25 Also, Your Honor, I would just -- I know the Court has

DIRECTED VERDICT MOTIONS

1 heard the evidence that has been presented in this case
2 and I would for the record submit that I don't believe
3 that there's sufficient evidence for these charges to go
4 to the jury and move that the Court direct a verdict on
5 the murder charge. I believe that the State has failed to
6 prove malice. On the attempted robbery I believe the
7 State has failed to prove that there was an attempted
8 robbery on that day, but certainly there was some
9 discussion but none was ever attempted. Possession of a
10 firearm, those two charges I don't believe the State has
11 proven that my client actually possessed a firearm that
12 day and during the commission of an alleged violent crime
13 and I don't believe there's sufficient evidence of the
14 conspiracy in this case. Your Honor, for that matter we
15 would ask that the Court direct a verdict of not guilty on
16 those charges.

17 THE COURT: Counsel, I will deny the verdict of not
18 guilty. The State has introduced evidence on all of the
19 required elements on all of the charges. Obviously the
20 issue of proof is not for me to determine, that's up for
21 the jury so it would be appropriate for the jury -- at
22 this point for the jury to hear the case. And, of course,
23 you made all previous motions and you've renewed those and
24 I will deny those also. Mr. Boyd?

25 MR. BOYD: Your Honor, I would have a motion for

DIRECTED VERDICT MOTIONS

1 directed verdict on two grounds. The first ground goes
2 just to the murder indictment. The indictment in this
3 case charges Terrance McKnight with killing Willie
4 Cunningham by means of shooting the victim with a firearm.
5 I would submit that this indictment alleges that Terrance
6 McKnight actually did the shooting. The testimony and all
7 of the evidence from the State is that he did not. The
8 State is proceeding against Mr. McKnight on the theory on
9 the hand of one is the hand of all and the indictment
10 doesn't state that. It states basically that he is the
11 actual shooter, he is the one that committed the offense
12 and pulled the trigger. So I would move for a directed
13 verdict on that because the State has not proven what they
14 allege is in the indictment.

15 THE COURT: All right. I am going to deny the
16 motions on that. I think that indictment has met the
17 required standards, and of course, the indictment will not
18 go to the jury so that won't be a problem.

19 MR. CHIARENZA: Just for the record I would join
20 Mr. Boyd in that motion as regards my client. I believe
21 the indictments are similar in that regard.

22 THE COURT: I will note that motion and it is denied
23 also.

24 MR. BOYD: Your Honor, again on the -- I will move
25 for a directed verdict on all charges. Based on the

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1 State's case, Your Honor, the only evidence presented
2 against my client of his involvement is the testimony of
3 A. J. Williams. Your Honor, his testimony -- I am
4 assuming for the purposes of this that his testimony is
5 totally believable and is credible, which I think the
6 Court has to do in deciding on a motion for a directed
7 verdict, the Court has to assume that. Your Honor, his
8 testimony when he was cross examined concerning what if
9 anything Terrance said and he was asked about them talking
10 about a robbery being committed and he said -- I asked him
11 if he remembered Terrance saying anything and he said he
12 didn't remember what or if anything Terrance ever said.
13 What the State has presented is that Terrance McKnight was
14 with people that committed this offense beforehand, they
15 may have evidence that he knew that there was going to be
16 a robbery committed but they have failed in proving any --
17 presenting any evidence that he anticipated in any way or
18 believed to be a lookout. There's no testimony that he
19 actually agreed that he was going to do anything. All the
20 State has shown is his presence. Even if he knew it was
21 going to happen, even if he acquiesced in what was going
22 to happen the State has failed to prove that he aided in
23 any way, he agreed to do anything. In fact, A. J.
24 Williams' testimony is exactly -- it's absence of it. He
25 said, "I don't remember what if anything Terrance said."

DIRECTED VERDICT MOTIONS

1 So you would have to jump to a conclusion that somehow he
2 was aiding based on the evidence that's been presented.
3 So I would make a motion for a directed verdict on all
4 charges based on that.

5 THE COURT: Counsel, I note the motion and again I
6 would have to deny the motion. Admittedly on a lot of
7 points the evidence is somewhat slim as to Mr. McKnight,
8 as you know that's not my determination, that's the
9 jury's. My determination only is whether or not there's
10 evidence in the record and there is some but it is there
11 so I would have to deny the motions. Any other motions?

12 MR. BOYD: No, sir.

13 THE COURT: All right. Let me ask the defendant's
14 some questions if I might. Let me ask first Mr. Page.
15 Would you stand up, please? Would you put him under oath
16 for me?

17 (The defendant was placed under oath.)

18 THE COURT: Mr. Page, you understand that in this
19 case the State has charged you with criminal offenses and
20 our constitution requires that because they have done that
21 that they have the burden of proof, in other words they
22 must prove you guilty beyond a reasonable doubt to this
23 jury, that means that they must prove every element beyond
24 a reasonable doubt. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So what that means then is this, they are
2 required to call witnesses and have those witnesses
3 testify as they have done today. Now, you understand you
4 have no burden of proof and we will tell the jury that,
5 that you don't have to prove anything at all, do you
6 understand?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: What that means then is that you don't
9 have to call witnesses, you can if you want to but you
10 don't have to. Do you understand that?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: And also you don't have to testify.
13 Again you can testify if you wish but you don't have to,
14 do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, let me ask you a couple of
17 questions. And you understand that it is your decision as
18 to whether you will do this?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. First of all do you feel that
21 with the advice of your attorney after hearing the advice
22 of your attorney that you are able to make that decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you know is the -- have you had any
25 kind of -- and I know this sounds like a stupid question

1 but we have to ask it -- have you had any kind of
2 medication, drugs or alcohol or anything at all, any
3 physical condition, any mental or emotional conditions
4 that would affect your being able to make this decision?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Do you feel like you understand what's
7 going on around you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you feel like you would be able to
10 decide this by yourself?

11 THE DEFENDANT: Yes.

12 THE COURT: You understand that you can do so after
13 talking with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you been satisfied with your lawyer?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Have you had his advice in this matter?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And you have had a chance to talk
20 with him about this?

21 THE DEFENDANT: No, I haven't.

22 THE COURT: Do you want a chance -- we will take a
23 break in a few minutes and you can talk to him.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Let me go over a couple of things with

1 you, though. First of all, you understand that as to
2 calling a case, if you do not call a case -- and I don't
3 think either defendant has put any evidence in at this
4 point, have you?

5 MR. CHIARENZA: No, sir.

6 THE COURT: If neither you or Mr. McKnight testify or
7 call a case or put up any evidence you would have the
8 right to have the -- your lawyer could have the final
9 closing arguments. Now, that's important to some people,
10 not so important to others, it depends on a particular
11 individual. But you understand that you have that if you
12 wanted him to do that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And you understand that as far as
15 testifying that again you have the right to testify if you
16 want to but don't have to. Let me tell you the
17 repercussions. If you were to testify once you take the
18 oath and you have been given an oath to testify at that
19 point you will have given up your 5th Amendment rights, do
20 you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: That means in addition to answering your
23 attorney's questions you would also be required to answer
24 any questions from the solicitor or from Mr. Boyd, do you
25 understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: In essence if you got up there and
3 started testifying and felt like you were in trouble you
4 couldn't say, "Wait a minute, I've changed my mind." Once
5 you are there you are there, do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, also if you testify the State will
8 have the right to ask you about certain prior convictions
9 if you have any, and what we are going to do is we are
10 going to find out now if they would ask you about that.
11 Solicitor, if he would testify would you ask him about any
12 prior convictions?

13 MR. POPE: No, sir, Your Honor.

14 THE COURT: So you understand they would not do that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Also, if you do not testify I will
17 tell the jury if you want me to that they can't consider
18 that in any way, that in fact there's no presumption, they
19 can't even talk about it in the jury room, do you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you feel like you understand pretty
23 well your rights on this?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And again you want -- when we take a

1 break you want a few minutes to talk to your lawyer?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. What I will do is when we get back
4 after break I will come back to this again and revisit it
5 with you. Okay?

6 THE DEFENDANT: Okay.

7 THE COURT: All right. Mr. McKnight, let me ask you
8 to stand, please, sir. And would you put him under oath,
9 please?

10 (The defendant was sworn.)

11 THE COURT: Mr. McCollum, first of all you've heard
12 what I told Mr. Page just now; is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Again, you understand that because the
15 State has brought these charges against you they have the
16 burden of proof, they must prove you guilty beyond a
17 reasonable doubt, do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And as I said you don't have to prove
20 anything, do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So while the State has been required to
23 call witnesses you are not required to call witnesses, do
24 you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And in fact you are also not required to
2 testify yourself, do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But you understand that you can call
5 witnesses if you want to and you can testify if you want
6 to, do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you understand as I told you before
9 that if neither you nor Mr. Page were to put up any
10 evidence at all your attorneys would have the last
11 argument, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Also do you understand that if you were
14 to testify that once you are testifying and once you've
15 taken the oath you would have given up your 5th Amendment
16 rights, do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: Which would mean you've got to answer any
19 questions from Mr. Chiarenza and from the solicitor, do
20 you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And also if you testify the State could
23 ask you about certain prior convictions if you have any
24 and we're going to find that out now. Solicitor, would
25 you ask him?

1 MR. POPE: No, sir, Your Honor.

2 THE COURT: Okay. You understand they would not ask
3 you about any prior convictions.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Also if you do not testify I
6 would tell the jury if you wanted me to that they could
7 not consider that against you in any way, it has no
8 presumption against you and in fact that they couldn't
9 even talk about it in the jury room, - do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you had a chance to talk about this
12 with your lawyer?

13 THE DEFENDANT: No, sir.

14 THE COURT: I assume you want a little while to talk
15 with him?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you been satisfied with your
18 lawyer's services?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you had his advice in this matter?

21 THE DEFENDANT: Not going over what I just --

22 THE COURT: But you have had his advice on the other
23 things; is that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Well, I am going to give you a

1 chance to talk with him then, you and Mr. Page can talk
2 with your lawyers. Let's just do this, Counsel, we will
3 take -- we will go ahead and take a short break at this
4 point and let you talk with your clients and let me know
5 whether or not -- get back in just a little while if you
6 have had enough time to talk to them. If you need more
7 time just let me know. Obviously if we have to go over
8 into the morning to give you time to get with them we will
9 do that, too. Okay. Anything before we take a break?

10 MR. POPE: Nothing from the State, Your Honor.

11 MR. CHIARENZA: Nothing else, Your Honor.

12 MR. BOYD: Nothing, Your Honor.

13 THE COURT: We will stand in recess. And counsel,
14 just get back and let me know. Okay?

15 (A recess was taken.)

16 THE COURT: All right. Mr. McKnight, have you had a
17 chance to talk with everybody you needed to?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what have you decided you will do at
20 this point?

21 THE DEFENDANT: I'm not going to testify.

22 THE COURT: And have you decided you will call any
23 other witnesses?

24 THE DEFENDANT: No. We don't have any other
25 witnesses.

1 THE COURT: Okay. All right. And again, did you
2 want to comment on that, Mr. Boyd?

3 MR. BOYD: Yes, sir, your Honor. He has had an
4 opportunity to talk with his mother, and he has confirmed
5 the decision he had made earlier. I would also like to
6 state we had discussed the matter of whether he would
7 testify or not earlier today, first thing this morning
8 before court started and that we had gone over potential
9 questions, potential cross examination and the pros and
10 cons of testifying or not testifying at that time. Also
11 we went over it again awhile ago, the pros and cons, and
12 he has had an opportunity a few minutes ago to speak with
13 his mother and has reaffirmed that decision.

14 THE COURT: All right. Is that correct,
15 Mr. McKnight? I understand you had a chance to talk with
16 your lawyer this morning about all of that, too.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Thank you, sir. All right.
19 Mr. Page, have you decided -- have you had a chance to
20 talk with everyone you needed to?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And have you decided what you will do?

23 THE DEFENDANT: I will not testify.

24 THE COURT: Will you call any witnesses?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Okay. Mr. Chiarenza, have you had a
2 chance to talk with him all you need to?

3 MR. CHIARENZA: Yes, Your Honor. We not only today
4 but we have discussed this aspect of our case over the
5 last few weeks and weighed the pros and cons. We are both
6 in agreement with his decision today not to testify, not
7 to put up a defense. It was a close call and could have
8 easily gone the other way but we have come to a consensus,
9 Your Honor.

10 THE COURT: Okay. And Mr. Page, have you had as much
11 time to talk with your lawyer as you wanted?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. And you have decided you will not
14 call any witnesses also; is that right?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Counsel, have you talked with your
17 clients about whether they wish to have you make the last
18 argument?

19 MR. CHIARENZA: Yes, Your Honor. We would like to
20 exercise the last argument. As between Mr. Boyd and
21 myself he has been gracious enough to let me follow him.

22 THE COURT: Okay. Is that right, Mr. Boyd?

23 MR. BOYD: That's correct, Your Honor.

24 THE COURT: Okay. All right. Anything from the
25 State?

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1 MR. POPE: No, sir, Your Honor.

2 THE COURT: All right. Counsel, I told the jury to
3 be here in the morning at 10:00, I will ask you to be here
4 at 9:30 so we can run through the charge. All right.
5 With that in mind I will see you in the morning at 9:30.
6 Have a good evening.

7 (Court adjourned for the evening and resumed at 9:30
8 a.m. on May 27, 2005.)

9 THE COURT: All parties and attorneys are in the
10 courtroom at this time. Counsel, you've had a copy of the
11 charge to look at. Let's go over the proposed charges
12 that you submitted yesterday and I will go over that with
13 you. I have had the chance to look at the charges on
14 conspiracy and intent. Do you still want to include that?

15 MR. THOMPSON: Yes, Your Honor, we do. We think
16 especially in light of Terrance McKnight's statement that
17 he told A. J. Williams he was going then he left and
18 that's when he heard shots that the jury would need to
19 understand -- that I think we explained it to them.

20 THE COURT: All right. Mr. Chiarenza, what is your
21 position on that?

22 MR. CHIARENZA: I don't have a position on that
23 charge.

24 THE COURT: Mr. Boyd?

25 MR. BOYD: Your Honor, I believe that's an

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1 appropriate charge.

2 THE COURT: Okay. All right. Then we will add that
3 one to it. Number two is basically the hand of one charge
4 I think. Do you still want to add this language
5 particularly?

6 MR. THOMPSON: Yes, sir. Because then the reason
7 being is because it also includes a little bit of the
8 felony murder as it's read.

9 THE COURT: Well now, you've handed another one to me
10 this morning.

11 MR. THOMPSON: I did, specifically the one deals with
12 malice so that that would go with the malice charge. But
13 this I think kind of ties it in with the hand of one, hand
14 of all in helping the jury understand you had the two
15 coincide together.

16 THE COURT: Okay. All right. Mr. Chiarenza, what is
17 your position on it?

18 MR. CHIARENZA: Thank you, Your Honor. Your Honor, I
19 handed up some proposed charges to the Court.

20 THE COURT: I am going to get to those.

21 MR. CHIARENZA: One addresses this.

22 THE COURT: Oh, okay.

23 MR. CHIARENZA: And I am just looking for it right
24 now. Well, to the extent that the charges I handed up
25 address mere presence, mere association with other

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1 individuals, I think that those -- I would incorporate
2 those into my argument. My argument is I don't want this
3 charge, Your Honor. I don't want any hand of one charge
4 and I'm basing that on the fact that my client is charged
5 with conspiracy, he's subject to a penalty for conspiracy.

6 THE COURT: By the way, you've looked at the charge
7 that I did, right?

8 MR. CHIARENZA: Yes, Your Honor.

9 THE COURT: You notice it has hand of one but it also
10 has mere presence.

11 MR. CHIARENZA: I don't have it all laid out in front
12 of me, Your Honor. But I would just submit that to the
13 extent that the Court has included mere presence and that
14 it is satisfied with mere presence then I am okay with
15 mere presence. I need to find my exact --

16 THE COURT: While you are doing that I will ask
17 Mr. Boyd. Mr. Boyd, what is your position on it?

18 MR. BOYD: Your Honor, as far as State's requested
19 charge number two it's my position that that's already
20 encompassed in the charge you have got in your charge.
21 It's unnecessary to charge this so I will take exception
22 to the argument.

23 THE COURT: Mr. Chiarenza, anything else on it?

24 MR. CHIARENZA: Yes, Your Honor. I believe it's
25 unnecessary to charge the State's request and I would

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1 further ask that the Court if the Court is going to charge
2 a hand of one charge that the Court also charge my 15 and
3 16, which addressed the liability of the co-conspirator in
4 the hand of one theory, and those are straight out of
5 Judge Irvin's charge, Your Honor. They discuss the extent
6 of vicarious liability and co-conspirator and whether or
7 not having it is a natural and conceivable consequence of
8 the acts of the co-conspirator and I think they relate to
9 the hand of one. But encompassing all of that, Your
10 Honor, I would just seek to keep out any hand in one
11 charge. I believe the hand of one is bad law. I have got
12 a case to hand up from the New York State Court of
13 Appeals. Your Honor, it's my position that it's a due
14 process violation to charge and double jeopardy violation
15 to charge the defendant with conspiracy and subject him to
16 a penalty for conspiring to do something while recognizing
17 that he may not be the prime mover. But then to hold him
18 responsible for the activities of the prime mover under
19 the hand of one theory, my position is it's barbaric, it's
20 archaic thinking, it shouldn't be the law in this
21 enlightened society and I object to the charge of the hand
22 of one is the hand of all, particularly if the Court is
23 unwilling to include language of natural and foreseeable
24 consequences.

25 THE COURT: You understand the Supreme Court says the

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1 hand of one is good law?

2 MR. CHIARENZA: I understand that, Your Honor. And
3 I'm hoping maybe some day they will change their mind.

4 THE COURT: Maybe they will. I'm not sure they are
5 going to listen to the New York Court of Appeals, but I am
6 still going to include that in there. Mr. Thompson,
7 anything else? I think we are still on your request
8 number two.

9 MR. BOYD: If you don't mind I would like to join in
10 the argument.

11 THE COURT: You don't like the hand of one here
12 either? Okay. Go ahead, Mr. Thompson.

13 MR. THOMPSON: I do also feel this charge is
14 necessary to talk about the natural consequences of the
15 common scene if something happens. Because I think in
16 this particular fact pattern the jury is looking at an
17 instance where basically the testimony is they didn't go
18 there intending to kill someone, they went there intending
19 to rob someone. However the jury would then have to
20 determine that the natural and foreseeable act, the murder
21 is something that could happen when you go to rob someone
22 when you are armed with weapons.

23 THE COURT: All right. Counsel, I am not going to
24 use number two, your request number two. I think that all
25 of that to some degree is in the charge somewhere.

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1 Certainly you can use it if you want to in your closing,
2 that doesn't preclude that. But I think I am content with
3 the language that I have in my charge as far that one
4 goes. The number three is basically the felony murder.
5 What about that, Mr. Chiarenza?

6 MR. CHIARENZA: Your Honor, I believe that that is
7 the law and I didn't -- apparently I didn't catch that
8 the -- I would have let it slide but I didn't catch that
9 the Court didn't include that. But I don't think I have
10 an argument to the State's request to include that.

11 THE COURT: And Mr. Boyd?

12 MR. BOYD: Your Honor, I would agree with that.

13 MR. THOMPSON: And I would ask Your Honor just for it
14 would go nicely if it was just placed in where when you
15 are speaking of malice.

16 THE COURT: I will probably include it after the
17 language which says that use of a deadly weapon is
18 evidence of malice. All right. Number four I think
19 basically again is indirectly used in the charge. But
20 what is different about this one, Mr. Thompson?

21 MR. THOMPSON: Your Honor, what's different about
22 this is I believe the charge didn't necessarily cover the
23 ability of having a tacit unspoken understanding and
24 conspiracy. That's what I am hoping to show by this all
25 as well at the end of the charge says the offense of

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1 conspiracy may be exhibited -- by such as nevertheless may
2 be shown. I think in the charge that you had you
3 mentioned that the conspiracy itself was a crime, but then
4 you go on to say there has to be an act in the furtherance
5 of conspiracy which I don't believe is actually correct.
6 I don't know that there has to be an act in furtherance of
7 conspiracy, it simply has to be that we can show an act to
8 prove conspiracy.

9 THE COURT: You don't think the one on the charge is
10 correct?

11 MR. THOMPSON: Just on that one sentence, Your Honor.
12 I think every bit of it is correct, just the one part it
13 has to be an act of furtherance.

14 THE COURT: You understand this charge came from
15 Justice Ness and Justice Cannibur, I assume they think
16 it's correct. They thought it was correct.

17 MR. THOMPSON: But that's -- I think that this would
18 be helpful to the jury one for what it would show that
19 there could be a tacit understanding, it doesn't have to
20 be spoken -- every person has to say I'm in type thing.
21 As well I think this will also help because I think it
22 helps clarify things for the jury, too.

23 THE COURT: What about on page nine on the charge
24 with where it says an unlawful act was committed by
25 someone in furtherance of the conspiracy? That doesn't

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1 say the same thing about overt acts?

2 MR. THOMPSON: Well, Your Honor, I think the way I am
3 saying it is one of the things it doesn't have to be
4 necessarily an unlawful act when they're going for an
5 unlawful purpose. So I -- that's one of the things I
6 think may confuse the jury by saying it has to be an
7 unlawful act. I think at the beginning of the conspiracy
8 charge it mentions in the second sentence that it is an
9 unlawful act in an unlawful way. I think the law says as
10 well that it can be a lawful act by unlawful means that
11 amount to criminal conspiracy. So I think it's somewhat
12 confusing to say that it has to be an unlawful act in all
13 other actions. I think it's helpful to have it explained
14 so they can understand both of those exist. It can be an
15 unlawful act or a lawful act basically to go for unlawful
16 means.

17 THE COURT: Mr. Chiarenza, what is your position on
18 this one?

19 MR. CHIARENZA: Your Honor, I don't think the
20 solicitor's -- one I don't know if I agree with his
21 statement of law. Two, I don't think even if I did that
22 the facts in this case would warrant that charge that
23 there's some lawful act undertaken.

24 THE COURT: Mr. Boyd, what is your position on it?

25 THE DEFENDANT: Your Honor, my position is that you

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1 adequately have the conspiracy in your charge and
2 requested charge number four is unnecessary and I submit
3 that those are the facts in this case, also.

4 THE COURT: And I think you may have hit on
5 something, by the way, Mr. Thompson, in the conspiracy
6 language. I think the first sentence under the conspiracy
7 is actually -- somehow some of the language got left out
8 of that. It should say between two or more persons do an
9 unlawful act or do unlawful act in an unlawful way. I
10 think that's probably what you are getting at and I'm not
11 sure how that got messed up.

12 MR. THOMPSON: The only other thing, Your Honor, is
13 it wouldn't have to necessarily be the complete
14 instruction I have for number four but we would ask that
15 basically the jury would be able to be charged it can be a
16 tacit understanding just as we have alleged in the
17 indictments rather than having to be a spoken conspiracy I
18 think is the main thrust of what we are requesting in this
19 charge.

20 THE COURT: I understand, but it also does that.
21 Even in the last sentence of it says if two or more people
22 pursue the same unlawful goal, one doing one act and
23 another doing another act. I realize it may not say it
24 the way you want to say it, but it still says it whether
25 indirectly or not. And certainly, again, you can put in

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1 this language if you want to in closing, there's no
2 problem with that. You understand, a lot of times -- all
3 of you understand the attorneys will often submit case law
4 that is obviously good but it doesn't have to necessarily
5 be included in the charge. Of course, if we did we would
6 be here Monday still charging the jury. So we try to keep
7 it as to the point as we can. What about number five, the
8 testimony of an accomplice need not corroborated, what
9 about that?

10 MR. THOMPSON: Your Honor, I would be asking that it
11 go in with the jury consider basically the witnesses
12 themselves, the credibility and when they take into the
13 fact those things. Because I certainly anticipate the
14 defense to argue that it's all A. J. Williams and I think
15 the jury needs to know if it is all A. J. Williams as long
16 as they believe him that there needs to be no other
17 corroboration. And the case -- I have the case here and
18 if you turn it over here my copy is -- I may have handed
19 up the wrong case.

20 THE COURT: Just quote the language you want to use.

21 MR. THOMPSON: The language -- basically one of the
22 problems they had in the case, they said that the first
23 question raised is that the conviction cannot stand upon
24 corroborated testimony of an accomplice. Such is not the
25 law in the South Carolina. The weight that is to be given

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1 to the testimony of the accomplice is for the fact finding
2 body, if the uncorroborated evidence satisfies the jury of
3 the defendant's guilt beyond a reasonable doubt the
4 conviction is warranted. That's what that one line is
5 based on. I wanted to make it fairly inconspicuous so I
6 made it very short and thought it would fit in very nicely
7 to the credibility of the witnesses.

8 THE COURT: Counsel, I am not going to use it for
9 this reason. One is it is somewhat close to being a
10 comment on the facts, it's not quite but it's close. The
11 other one is that on page four on the role of the jury I
12 do have language -- you have all heard all of this before
13 of how they can take the testimony of the witnesses, one
14 is whether it was corroborated and made stronger by other
15 evidence or made weaker. I think it's still in there,
16 again it's just in a different way but it's enough. I
17 say -- I didn't talk to defense counsel. Do either of you
18 really have any burning desire to have that charge
19 included?

20 MR. CHIARENZA: No, Your Honor.

21 THE COURT: Mr. Boyd?

22 MR. BOYD: No, Your Honor.

23 THE COURT: Let's move on now to Mr. Boyd's charges
24 Mr. Boyd the first is charge number one about prior
25 knowledge. I believe it's actually already in the charge,

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1 it doesn't say prior knowledge but I think that the mere
2 presence charge is fairly close and takes care of it. Do
3 you want to add anything to it?

4 MR. BOYD: Well, Your Honor, I just wanted -- I
5 believe that charge made that clear to the jury and that's
6 why I wanted that charge, it's close to being in there.

7 THE COURT: And again sometimes as I said, my charge
8 is not going to say exactly the way you all might say
9 things, but certainly in your closing you have a right to
10 say that, there's nothing wrong with doing that. Okay.
11 And on these that I will go ahead and rule I won't call on
12 the other attorneys unless some of you just feel the
13 compulsion to be heard on the particular issue. Number
14 two is mere association acts really, I think is really
15 hybrid of mere presence and conspiracy that I think is
16 already included. What about that, Mr. Boyd?

17 MR. BOYD: I don't know if it is encompassed in the
18 charge. What I would like the jury to know is mere
19 association of a person isn't -- is insufficient to
20 establish they participated in the conspiracy and I would
21 submit that charge is good law and would really meet the
22 facts of this case very much. I think that would be a
23 good charge and very helpful to the jury in having that
24 charge.

25 THE COURT: Okay. Mr. Chiarenza, what is your

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1 position on it?

2 MR. CHIARENZA: I haven't seen it.

3 THE COURT: All right. Mr. Thompson?

4 MR. THOMPSON: Your Honor, I agree with the Court,
5 even noted it in my notes and thought it was covered in
6 the conspiracy charge.

7 THE COURT: Counsel, I'm not going to add that
8 language particularly. Again, I think it's already in
9 here. Same thing with number three, it says mere
10 knowledge, I think it's still sufficiently covered.
11 Anything to add, Mr. Boyd?

12 MR. BOYD: Your Honor, what I don't believe the
13 charge covers on that is that there's nothing about
14 knowledge that even if someone has knowledge that an
15 offense is going to be committed in his presence if they
16 are not participating in some way they cannot be guilty.
17 I don't think that is encompassed in your charge and
18 that's why I would ask that that be charged.

19 THE COURT: Okay. Mr. Chiarenza, what is your
20 position on it?

21 MR. CHIARENZA: Your Honor, I would absolutely join
22 with Mr. Boyd.

23 THE COURT: All right. Mr. Thompson?

24 MR. THOMPSON: Your Honor, the State would object to
25 this one for two reasons. One, I think it's covered, but

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1 also for the fact pattern that we have here it becomes
2 very confusing to the jury. Because the way when you add
3 in the knowledge -- the way this is worded we have a
4 situation where the State alleges these defendants are
5 over here down the street, they have had conspiracy, then
6 they come together down to the place where it's going to
7 occur. Part of our proof or part of our position is that
8 obviously when they come together down the street that's
9 part of furthering the conspiracy. So if you say that
10 merely being present at that time at the scene is not
11 enough I don't think that's necessarily true in this case.
12 So I think that while mere presence is an appropriate
13 charge and while that has been covered well I think it's
14 not as confusing the way the Court already has it as to
15 what this one line may do to a jury if they're thinking
16 about these things in this particular form with this
17 particular case.

18 THE COURT: Yes, sir. That is kind of my concern
19 with it, Mr. Boyd, too, basically in -- particularly when
20 this -- and obviously I understand that this is the kind
21 of language that a lookout would want to have and give to
22 a jury. In essence it's almost like telling the jury that
23 you can't convict somebody for being a lookout. And when
24 it says mere knowledge that the principals are going to
25 ~~commit an offense even when coupled with presence at the~~

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1 commission of a crime is insufficient to convict one as a
2 principal. Well, it is enough to convict someone. If
3 someone had knowledge and they're present if they're a
4 lookout that's enough.

5 MR. BOYD: If they're a lookout. But that's what --
6 it's not saying if they're a lookout they wouldn't be
7 responsible. But I mean, an example, I give if I decide I
8 am mad at Mr. Pope and I'm going to get a baseball bat and
9 go hit him in the head and you say, "Well, I want to see
10 this," and I go along and do nothing but watch, don't act
11 as a lookout or anything else that wouldn't make you
12 guilty of the crime itself. You may be guilty of
13 misprision but certainly not that. And that's my example.
14 If someone is acting as a lookout they wouldn't be covered
15 by that because they would be committing another act that
16 is encompassed within the crime. But this would cover
17 someone who knows that an offense is going to be committed
18 and is present but doesn't participate in any way even as
19 a lookout.

20 THE COURT: Okay. Again, I am going to decline to
21 use that particular charge. Number four, incidental and
22 independent acts. I think independent acts is referred to
23 in the charge; is that correct? If people involved on --
24 page nine, last paragraph -- if people involved are not
25 ~~acting together but are acting separately and individually~~

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1 then you may rightfully include they are not involved in
2 the conspiracy.

3 MR. BOYD: Your Honor, the reason I impress that,
4 there was some evidence from the statements that there
5 was -- that I believe Mr. McCollum had said something
6 about not liking Rashad and that -- I guess that there's
7 some evidence -- and I admit it's slight, but there may
8 have been -- that he may have acted not in pursuance of
9 robbery but for some other motive once he got there, that
10 there was something incident, something like a situation
11 where there -- maybe a conspiracy to commit a burglary but
12 once in there the man finds the person -- for example,
13 they find the person who owns the house with his wife in
14 there or something and gets mad and kills them. And I
15 admit, the evidence of that is slight in this case but I
16 think there is some evidence of that.

17 THE COURT: Again, I am going to decline to use that
18 particular charge. The last one mere, cognizance or acts
19 of acquiesce is not sufficient. Isn't that one also
20 covered in the mere presence charge?

21 MR. BOYD: I don't think that's covered to the extent
22 that someone can approve of a crime committed but not
23 participate at all, that wouldn't cover that situation. I
24 have seen your charge and I don't think it covers that
25 situation.

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1 THE COURT: Again, I am going to decline to use this.
2 I will do this, in going through this discussion I may --
3 I think I will reverse myself a little bit and that is on
4 the first charge, the prior knowledge charge I probably
5 will include that. Mr. Thompson, do you want to discuss
6 that at all? Just saying prior knowledge that it is going
7 to be committed without more is not enough to make a
8 person guilty of a crime.

9 MR. THOMPSON: That's fine, Your Honor, if you want
10 to charge that.

11 THE COURT: All right. The one general charge
12 concerning individual consideration, that's number one,
13 right?

14 MR. CHIARENZA: Yes.

15 THE COURT: Okay. We have got that, it's in the
16 charge.

17 MR. CHIARENZA: I believe that's correct, Your Honor.

18 THE COURT: Why don't you do this: Tell me --

19 MR. CHIARENZA: I submitted these before I read the
20 Court's charge.

21 THE COURT: Tell me which ones that you want to leave
22 in or not. You're not worried about number one. Number
23 two is which one?

24 MR. CHIARENZA: Mere preparation.

25 THE COURT: All right, hang on. Okay. What about

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1 that one?

2 MR. CHIARENZA: Your Honor, I don't know that that is
3 contained in the Court's charges and --

4 THE COURT: How about under the attempt language?

5 MR. CHIARENZA: Well, I have another charge for
6 attempt as well.

7 THE COURT: We will get to that in a minute. You
8 notice my language says it's necessary that some act be
9 done in pursuance of attempt directly pertaining to the
10 commission of a crime.

11 MR. CHIARENZA: That will be sufficient, Your Honor.

12 THE COURT: Okay.

13 MR. CHIARENZA: And then I would address my proposed
14 attempt, which is number three.

15 THE COURT: All right. I have got it, it's got the
16 blanks on it?

17 MR. CHIARENZA: Yes. The Court has addressed that.
18 Number four, general charge on proof and that's obviously
19 included. Five was reasonable doubt and the Court I
20 believe -- my charge is unnecessary. I would have a minor
21 issue with the Court's charge on reasonable doubt on the
22 case.

23 THE COURT: Well, it's in there. The Manning
24 language is in there.

25 ~~MR. CHIARENZA: I understand, Your Honor. And I~~

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1 just -- for the record I just on page four just in the
2 last sentence I just have always objected to them kind of
3 switching it there at the very end, "if on the other hand
4 you think there is a real possibility that he is not
5 guilty you must give him the benefit of the doubt."
6 That's the language that I object to and would prefer that
7 language say if on the other hand you think there is a
8 reasonable doubt as to the defendant's guilt. Because I
9 think there is a substantial difference between a
10 reasonable doubt of guilt and a real possibility of not
11 guilty. It's almost a burden shifting right there in the
12 charge that we have to prove a possibility of his
13 innocence. And there's a real possibility of that when he
14 walked into the courtroom, there's a presumption of that
15 so that's the only language --

16 THE COURT: Well, you understand that this one is
17 prescribed verbatim from the Supreme Court.

18 MR. CHIARENZA: I am just trying to change more law,
19 Your Honor.

20 THE COURT: And a noble cause it is. But what's
21 next?

22 MR. CHIARENZA: Resolution and doubt with the
23 defendant is number six and that is amply addressed. I
24 hold some language regarding cause and fact, it's number
25 seven, it's entitled cause and fact.

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1 THE COURT: That's the but for language that's
2 usually used in malpractice cases and while it's quoted in
3 a 1923 case as you know that is basically civil language.

4 MR. CHIARENZA: I understand that, Your Honor, and
5 it's just -- it was quoted in a criminal case. And I know
6 that typically we don't discuss concepts of proximate
7 cause in criminal law, but this was there and I thought I
8 would try and get it charged to the jury.

9 THE COURT: Okay.

10 MR. BOYD: I would join in that request also.

11 THE COURT: Okay. I am going to decline to use that
12 one. What is number eight?

13 MR. CHIARENZA: Your Honor, I think eight has been --

14 THE COURT: What is number eight?

15 MR. CHIARENZA: Mere knowledge association.

16 THE COURT: Again you've got to give me the number
17 and tell me which one it is first. The quicker you do
18 that the quicker I can go onto it.

19 MR. CHIARENZA: Mere knowledge and association. And
20 again, I believe the Court has ruled on what it wants to
21 charge there. Mere presence in general would be number
22 nine and again I believe the Court has adequately covered
23 that. Mere presence of a party is number ten, again
24 previously covered. Mere presence or association of a
25 co-conspirator, number 11, previously covered by the

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1 Court. I believe the Court in its own charge covers the
2 statement of non-testifying co-defendants and I am
3 satisfied that the Court's charge is adequate there.

4 THE COURT: That's number 12, right?

5 MR. CHIARENZA: That's number 12.

6 THE COURT: Okay.

7 MR. CHIARENZA: Your Honor, defendant's statements to
8 authorities is number 13.

9 THE COURT: Now, number 12 was the one -- you do
10 different things, you've got different titles. It's
11 entitled statement of non-testifying codefendant, right?

12 MR. CHIARENZA: Correct.

13 THE COURT: Thirteen is defendant's statement to
14 authorities.

15 MR. CHIARENZA: Yes, sir. I think that it just goes
16 into greater detail regarding the statement made by a
17 defendant and how that statement ought to be considered.
18 I understand that the Court did have some language in its
19 charge and would just submit this for the Court's
20 consideration as being just a bit more.

21 THE COURT: I decline and will use my charge.

22 MR. CHIARENZA: Your Honor, co-conspirator's
23 statements is 14. I don't know if that is adequately
24 addressed by the co-defendant's statement language
25 because --

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1 THE COURT: I'm not sure either because I have got a
2 question mark on my --

3 MR. CHIARENZA: The difference between a defendant
4 and a co-conspirator. As we are all aware there were two
5 other co-conspirators in this case, not co-defendants.

6 THE COURT: You've cited a Georgia case for it. I
7 have seen this language and I think I have actually used
8 this language before. But is there a South Carolina case
9 that you know of?

10 MR. CHIARENZA: Your Honor, I am guilty of merely
11 taking this directly out of CD that came with Judge
12 Irvin's book and that was the case that was cited.

13 THE COURT: I understand. Solicitor, what is your
14 position? And Mr. Boyd, do you join in that one?

15 MR. BOYD: I do, Your Honor.

16 THE COURT: Solicitor, what is your position on it?

17 MR. THOMPSON: Your Honor, I didn't see any South
18 Carolina case law that said that these four elements are
19 required. And I would point out as well that this is
20 something that in addition while I think the Court has
21 covered it in a decent amount it is already in the charge.
22 But as well it wasn't all co-conspirator's statements that
23 are necessarily used. I guess what I am trying to say is
24 that some of the things that A. J. Williams would have
25 testified about were the defendant is giving statements

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1 against their own interest and that would allow them to be
2 in otherwise whether these applied or not. So I think
3 this isn't necessarily appropriate at this time to be
4 charged.

5 THE COURT: Anything else on it, Mr. Chiarenza?

6 MR. CHIARENZA: Your Honor, just to point out that
7 there are other statements encompassed by this.
8 Mr. Williams actually testified to things that
9 Mr. McCollum said in preparation. And so you've got
10 McCollum's statements that need to be scrutinized under
11 this, not just -- we talk a lot about Mr. Williams'
12 statements because he has testified and, you know, he's
13 kind of in a different position. But as part of his
14 testimony he directly testified regarding statements that
15 individuals allegedly made in the planning stages here.
16 So those are in fact alleged statements between
17 co-conspirators and I think it would be proper to charge
18 this language to the jury to determine the validity of
19 this statement.

20 THE COURT: Solicitor, anything else on it?

21 MR. THOMPSON: Your Honor, only that once again that
22 A. J. Williams testified. I don't know, I think that also
23 gives some distinction but I don't know that this is
24 necessarily the four points of law that would be South
25 Carolina law, so I don't know that we can charge that as

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1 the law in the State of South Carolina.

2 THE COURT: Considering the rules of evidence, Mr.
3 Chiarenza, I am not necessarily sure that this is good law
4 for South Carolina. Because where a statement against
5 someone's interest may be admissible in essence this
6 charge would tell them that if it doesn't meet one of
7 these four it doesn't matter what the rules of evidence
8 say it's not going to be admissible. Of course, the
9 interesting thing is that the rules of evidence is one of
10 the things cited down there. Do you want to add anything
11 to it?

12 MR. CHIARENZA: No, sir, no Your Honor.

13 THE COURT: Mr. Boyd, do you have anything else on
14 it?

15 MR. BOYD: No, sir.

16 THE COURT: I am going to decline to use that one.
17 What is the next one?

18 MR. CHIARENZA: Vicarious liability of
19 co-conspirators, and that's number 15.

20 THE COURT: Okay. You still want to include that
21 one?

22 MR. CHIARENZA: Yes, Your Honor.

23 THE COURT: Mr. Boyd, what is your position on this?

24 MR. BOYD: I agree, Your Honor.

25 THE COURT: Solicitor -- now, a few minutes ago you

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1 mentioned foreseeability and the natural cause of
2 consequences. Both of you understand that if we get into
3 this both of you have submitted a bunch on this, two or
4 three on this and if I do one I have got to do them all
5 and we're going to really head down the road on that. Any
6 way, this one says basically this, that if you find the
7 defendant conspired with the co-defendants then you can
8 find the defendants liable if the State establishes beyond
9 a reasonable doubt that the acts were committed while he
10 was a member of the conspiracy, and that the criminal acts
11 of the co-defendant's charge was intended or was the
12 natural or probable consequences of a planned and agreed
13 upon conspiracy, obviously there's no question that's good
14 law. I don't know how far we want to go with the natural
15 or probable consequences language even to the point of
16 getting the jury confused possibly. Anything to add, Mr.
17 Chiarenza?

18 MR. CHIARENZA: No, Your Honor. I would just seek to
19 have that charge read to the jury as presented to the
20 Court.

21 THE COURT: Mr. Thompson?

22 MR. THOMPSON: Well, Your Honor, we do believe that's
23 the law. We were looking for something with foreseeable
24 in it and we would ask that for the charge -- for number
25 two be charged as well.

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1 THE COURT: I know you are going to do that.

2 Anything else, Mr. Chiarenza?

3 MR. CHIARENZA: Your Honor, no. Just my next charge
4 is exactly on foreseeability.

5 THE COURT: Right. Mr. Boyd, anything else?

6 MR. BOYD: Just a second, Your Honor. Your Honor,
7 while I join in the request for this charge if it's going
8 to get into also charging the State's requested charge
9 number two I would withdraw it out of my request that that
10 be charged.

11 THE COURT: All right. Again, Counsel, I think the
12 language of the charge that I have got in there takes care
13 of it. I am going to decline to use that one. What is
14 the next one?

15 MR. CHIARENZA: Just directly addressing natural and
16 foreseeable consequences, it's titled conspiracy, that's
17 number 16, Your Honor.

18 THE COURT: You still want to include it?

19 MR. CHIARENZA: Yes. I would just submit that
20 foreseeability is an element and it's the law in this
21 state then I would like to have some language explaining
22 to the jury what foreseeability is and this particular
23 language does that. Specifically I am asking the Court to
24 tell a jury -- to charge the jury that in order to
25 establish that my client is guilty of murder which

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1 occurred in this case, and that that murder was the
2 natural and probable consequence of the planning and
3 agreed upon conspiracy to commit an armed robbery, that
4 the State must show beyond a reasonable doubt that a
5 reasonable person in his position would have foreseen the
6 criminal act of murder would be committed. I don't know
7 that any of that language was adequately covered in what
8 has been proposed to the charge up to this point.

9 THE COURT: What about that, Solicitor?

10 MR. THOMPSON: I believe foreseeability is something
11 that the State would have charged to the jury.

12 THE COURT: So you are going keep agreeing with these
13 until I agree to put number two in.

14 MR. THOMPSON: That's about right, Your Honor.

15 THE COURT: Mr. Boyd, what is your position?

16 MR. BOYD: Your Honor, again, I would join in to
17 request this charge.

18 THE COURT: Counsel, I'm inclined to use 16, and what
19 I would do is probably add the last paragraph of the
20 State's request number two, put those two together. What
21 about that?

22 MR. CHIARENZA: I can live with that, Judge, as long
23 as my foreseeability language has the hitchhike on that
24 paragraph, I will take that.

25 MR. THOMPSON: We accept that, Your Honor.

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1 THE COURT: Such harmony here, I'm impressed with
2 this. We will put those two together, that would
3 ultimately be a part of the conspiracy language.

4 MR. CHIARENZA: 17, I'm sure that's covered in the
5 Court's charge on witnesses.

6 THE COURT: The other concern is that it gets pretty
7 close to commenting on the facts also. But anybody --
8 Mr. Thompson, do you want to add anything to it?

9 MR. THOMPSON: We think you've covered it already.

10 THE COURT: Go ahead, Mr. Chiarenza.

11 MR. CHIARENZA: Your Honor, I have done another one
12 on biased regarding immunity. But in good conscious I
13 don't think there's been any direct testimony that anyone
14 was granted immunity per se in this case so I withdraw
15 that request. I don't know if the Court's charge on
16 credibility of witnesses specifically addresses a witness
17 who has been convicted of a crime.

18 THE COURT: I don't think there were any, were there?

19 MR. CHIARENZA: Yes, sir.

20 THE COURT: There was some testimony that A. J.
21 Williams had a bunch of charges.

22 MR. CHIARENZA: Your Honor, he has been convicted of
23 numerous crimes. He pled to all of this prior to
24 testifying in three unrelated crimes as well.

25 THE COURT: Were they used on credibility, though,

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1 or -- as I recall he was just rambling about all of the
2 things he had done.

3 MR. CHIARENZA: Certainly obviously credibility --
4 the jury knows he has been charged. If the judge would
5 charge it we could argue his credibility as a result of
6 those convictions to the jury.

7 THE COURT: Solicitor, what is your position on that?

8 MR. THOMPSON: Well, Your Honor, I think it's covered
9 and I think basically in talking about the credibility of
10 witnesses in your charges I would note this one thing
11 would just try to call more attention to one person in the
12 case.

13 THE COURT: Okay. I don't have the credibility
14 language in there under the credibility issue. I will
15 include it, though. And assume, there's only one left,
16 that's prior inconsistent statement number 20, and that
17 one is actually in there.

18 MR. CHIARENZA: Yes, Your Honor.

19 THE COURT: Okay. All right. Counsel, let's see if
20 we can recap. I will use State's request number one, the
21 last paragraph of State's paragraph number two, State's
22 request number three, Defendant McKnight's request number
23 one, and defendant's Page's request number 16 and 19,
24 which is just a routine thing normally. Okay. Is that
25 your understanding of it, Mr. Thompson?

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1 MR. THOMPSON: Yes, it is, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 MR. CHIARENZA: I think so, Your Honor. And I will
4 let you know if it's not. Let me check.

5 THE COURT: Let me go through so you can write it
6 down and we'll take a break before the jury comes in and
7 double check. State's one, two, last paragraph of number
8 two, and three. Defendant McKnight's number one,
9 Defendant Page 16 and 19.

10 MR. THOMPSON: If it please the Court, Your Honor?
11 There were a couple of spots that I would ask for minor
12 adjustments, the first being on page seven where it talks
13 about statements of defendant. I would ask that you
14 specify that's a non-testifying defendant. I know you
15 specifically talk about Terrance McKnight within this but
16 I think it would be a little bit helpful if they knew it
17 was just the statement of non-testifying co-defendants
18 since these will go back to the jury so they understand
19 basically as far as A. J. Williams goes they can consider
20 his statements, even though he's a codefendant because he
21 testified.

22 THE COURT: The first paragraph makes it clear, it
23 states the State has introduced a statement --

24 MR. THOMPSON: It does. If they have any question --
25 I don't want that to confuse -- even though it's clearly

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1 it's on McKnight that it talks about that's clear.

2 THE COURT: Right. Because he's on -- in terms of
3 the statement he is the only statement that we have from
4 the defendant in this case.

5 MR. THOMPSON: Well, other than A. J. Williams --

6 THE COURT: He's not a defendant in this case not
7 with what we are trying.

8 MR. THOMPSON: Yes, I understand. But I don't know
9 them to confuse -- I think a lot of times we discuss
10 everybody as being co-defendants because there were four
11 defendants in the case and I don't want them to confuse
12 that in some manner, put that as well A. J. Williams
13 statements that somehow they can't consider those.

14 THE COURT: Okay. I don't know how to do that
15 because the first sentence just right out of the box says
16 the statement alleged to have been made by one of the
17 defendant's, Mr. McKnight. I don't want to say
18 non-testifying defendant, then that's going to put some
19 suggestion about the fact he didn't testify.

20 MR. THOMPSON: That may just be something I was being
21 too picky about.

22 THE COURT: Okay. I can say one of the defendants in
23 this trial.

24 MR. THOMPSON: Okay.

25 THE COURT: Will that help?

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1 MR. THOMPSON: Yes, Your Honor.

2 THE COURT: All right. Go ahead.

3 MR. THOMPSON: I think a couple of them as to the
4 hand of one hand in all on page 14, I would simply ask to
5 change that language slightly when it talks about right
6 there at the end of the first sentence the act of one is
7 the act of both, I would ask that that says all. Because
8 I think that while we are trying only two of the
9 defendants since there are four defendants here --

10 THE COURT: That should say all.

11 MR. THOMPSON: And I would ask that at the beginning
12 of the next sentence where it says two or more people can
13 be guilty of the same crime.

14 THE COURT: I think this charge just came from a case
15 where we had two co-defendants before.

16 MR. THOMPSON: There was just one other part where it
17 says if both -- all are together and I would simply ask
18 that we do it in that manner.

19 THE COURT: Okay.

20 MR. THOMPSON: And the final part, Your Honor, that
21 the State had concern about was on page 18 in the second
22 paragraph where it says there are two defendants in this
23 case, I would ask to just put in there there are two
24 defendants in this case -- before you can consider in this
25 case basically that there are two defendants, or whatever

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1 language that just so they're only considering two. I
2 don't want them to hold it against the State that Lamont
3 McCollum is not on trial, I don't have want them to have
4 considered is A. J. Williams guilty because that's already
5 been determined.

6 THE COURT: Okay. All right. What about that, Mr.
7 Chiarenza?

8 MR. CHIARENZA: I would just suggest the Court just
9 add two defendants on trial in this case.

10 MR. THOMPSON: That's fine. I have no problem with
11 that, I think that would help.

12 THE COURT: Mr. Boyd, is that all right with you?

13 MR. BOYD: Yes, sir, that's fine.

14 THE COURT: What else, Mr. Thompson?

15 MR. THOMPSON: There was one other thing. With the
16 violent crime possession of a firearm during the
17 commission of a violent crime on page 15, I would ask that
18 you add in attempted armed robbery is a violent crime as
19 well.

20 THE COURT: Okay. That's right.

21 MR. THOMPSON: And the only other request that the
22 State would have is that the Court charge voluntary
23 manslaughter in this case as a lesser included offense to
24 murder.

25 THE COURT: You are asking for voluntary

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1 manslaughter?

2 MR. THOMPSON: Yes, Your Honor.

3 THE COURT: All right. Mr. Chiarenza?

4 MR. CHIARENZA: I need to consult for a second with
5 my client.

6 THE COURT: No other requests from the State now,
7 Your Honor, right?

8 MR. THOMPSON: No.

9 MR. CHIARENZA: I just have a question. The Court
10 will send the indictments back, front and back or the
11 Court is not going to send the indictments back?

12 THE COURT: We are going to send back verdict forms
13 and there will be a verdict form for each charge. The
14 indictments aren't evidence, I don't know of anything
15 that's come up on the indictment. Mr. Thompson?

16 MR. THOMPSON: I guess it would be just -- how is he
17 going to comment -- it's fine to comment on the
18 indictments saying they are charged with that.

19 MR. CHIARENZA: I just want them to read what they're
20 charged with, that's all.

21 MR. THOMPSON: I have no problem with that. But I
22 would have a problem if we said they are charged with
23 this -- he tried to say versus like in the murder
24 indictment it says he shot and killed him. He didn't
25 shoot and kill him and you've got to find him not guilty.

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1 I don't think that's an appropriate argument.

2 MR. CHIARENZA: I want to read -- I want to make sure
3 they know what he has been charged with, that's what I
4 want them to read. My argument I am going to make there,
5 I think I'm allowed to argue that the State hasn't met the
6 burden of proving the charge that they charged my client.

7 THE COURT: Well, you can do that and defense lawyers
8 always do that, say they haven't met the burden of proof.
9 But if you are going to say he is not guilty because he
10 didn't fire a shot or something, that -- I guess I'm not
11 sure where you're going with it. But Mr. Pope, you seem
12 to be anxiousness to say something.

13 MR. POPE: Yes, sir, Your Honor. We touched briefly
14 on this maybe during the -- I'm getting lost -- the
15 directed verdict motions at some point and I may be able
16 to go back and lay hands on the case. But the case law in
17 South Carolina is directly -- I think it was when a motion
18 they made to quash the statement you were joking about
19 squash and quash. But the language of Tommy Pope took a
20 gun even though maybe you and I were acting together and
21 you had the gun is clearly supported by our case law. If
22 we're going to get into the issue of you can't convict him
23 because it says this then we're going to request a charge
24 that says, you know, that that is appropriate case law and
25 that's appropriate charges. Basically we start trying the

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1 indictment. If that's the case then, Your Honor -- and I
2 understand he's given latitude to argue -- then we would
3 ask for a charge.

4 MR. CHIARENZA: I will stay away from that, Your
5 Honor.

6 THE COURT: Anything else, Mr. Chiarenza?

7 MR. CHIARENZA: No, Your Honor.

8 THE COURT: Mr. Boyd, do you have anything to add?

9 MR. BOYD: No, sir.

10 THE COURT: All right. Let's take a short break here
11 about ten or 15 minutes or so and then you can go over
12 that issue with Mr. Page and if you have anything he wants
13 to bring it up I will give you something else to think
14 about and come up with something else.

15 (A recess was taken.)

16 THE COURT: Mr. Chiarenza, what is your position on
17 the lesser included?

18 MR. CHIARENZA: We discussed that yesterday but I
19 just wanted to reconfirm our conversation. My client is
20 opposed to an involuntary manslaughter charge, Your Honor.
21 And I would just submit while obviously we addressed this
22 pretrial regarding Mr. McCollum I just submit for the
23 Court that was kind of a different argument, more of one
24 seeking to quash the murder indictment because I didn't
25 believe that the murder elements could be met. The Court

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1 took judicial notice that the solicitor seems to believe
2 this is an involuntary manslaughter by allowing Mr.
3 McCollum to plead to that. However, at this point in
4 looking back and reviewing the evidence that was presented
5 I don't think that there's been evidence presented of an
6 act that occurred in the sudden heat of passion with
7 sufficient legal provocation. In addition to that my
8 client's just desire here is to have the jury render a
9 verdict regarding his guilt or innocence on what he has
10 been charged on, does not want the jury to have a
11 comprised verdict. So for those two reasons, Your Honor,
12 we are opposed to a lesser included.

13 THE COURT: You say you've talked to your client and
14 he is in agreement with that; is that correct?

15 MR. CHIARENZA: I think he would confirm everything I
16 have just told you.

17 THE COURT: Is that correct, Mr. Page?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Mr. Boyd?

20 MR. BOYD: Your Honor, I agree with the solicitor
21 that voluntary manslaughter should be charged. And I
22 think there are facts in this case -- that there were some
23 facts in this case to meet to that conclusion. Apparently
24 when the victim opened the door there was some kind of
25 argument between he and Mr. McCollum and the other

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1 individual, we don't know because there's been no
2 testimony exactly what that argument was about, so there's
3 certainly potentially the elements of manslaughter in that
4 and for that reason I would ask and we would like
5 voluntary manslaughter to be charged for the jury.

6 THE COURT: Okay. Mr. Chiarenza, did you want to
7 comment on that?

8 MR. CHIARENZA: No, Your Honor.

9 THE COURT: Okay. Counsel, it is a fairly close call
10 and I am inclined to grant the motion to charge voluntary
11 as a lesser included for basically the reason that
12 Mr. Boyd says, that there was some testimony about a
13 dispute. It wasn't very strong but I think it's enough to
14 at least get to the question of the charge so we will do
15 it.

16 MR. POPE: Your Honor, just for closing purposes, do
17 you give both a killing of a person without malice or
18 killing of a person in the sudden heat of passion, is the
19 heat of passion sufficient legal provocation? Does it
20 have both of those?

21 THE COURT: Yes, sir. That is the language they use
22 with voluntary manslaughter.

23 (The jury returned to the courtroom.)

24 THE COURT: And all of the parties are present in the
25 courtroom, all jurors have returned. Jurors, I apologize

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1 to you for taking so long. I thought we would be through
2 quicker than we were. What we do is I am required by law
3 to have what is called a charge conference with the
4 lawyers and that is to hear from them in terms of what
5 charges they want. But what my normal procedure is is
6 that I go ahead and charge and give them -- in fact, as
7 you know noticed we have all got computers here, I have
8 e-mailed to them during the trial a copy of my charge and
9 usually that shortens things but then they don't want so
10 much, they don't have to submit. As it turned out we had
11 about 40 charges that we had to go through one by one that
12 were requested and that's their right to do that, there's
13 nothing wrong with doing that but it just took -- I didn't
14 realize it would be that many and it just took awhile to
15 do that. I want you to know we haven't been sitting on
16 our thumbs in here, we have been pretty busy doing that.
17 But in the process even though it will take a little while
18 to do this, that was still -- the fact that we went
19 through that will still shorten it because very frankly
20 had I taken all of those 40 requests and added them to my
21 charge it would have taken three, four or five hours to do
22 it, but it will take probably no more than 30 minutes or
23 so I think. So we did shorten the process considerably
24 for you by doing that, but I wanted you to know that's
25 what we were doing.

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1 I am going to ask if Ms. Bosco, I am going to ask if
2 you will serve as the forelady of the jury, please, ma'am.
3 You don't have to do anything right now, there's no extra
4 pay but I'm sure you are not worried about that anyway.
5 But I will let you know when you have to do so. Jurors,
6 thank you for patience with us. I can tell you that the
7 reason we've done all of this, too, is that we are now
8 through with all of the evidence in the case and we are
9 now going to get ready to get the case to you. What
10 happens is this: The attorneys are going to have closing
11 statements, when they're through with their closing
12 statements I am going to give you an instruction on the
13 law and in just a little while here it's going to be your
14 case. I'm sure you probably figured something was coming
15 because you knew that the clerk came in and took your
16 lunch order and hopefully by the time we get through --
17 she did not take your lunch order? Okay.

18 (Off-the-record discussion was held.)

19 THE COURT: The procedure of closing as I understand
20 will be the State will close. I believe Mr. Pope will
21 close for the State and Mr. Boyd will have his closing
22 statement and then Mr. Chiarenza; is that correct,
23 Counsel?

24 MR. POPE: ~~That's correct, Your Honor.~~

25 MR. CHIARENZA: That is correct.

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1 MR. BOYD: Yes, sir.

2 THE COURT: And then after that I will give you a
3 final instruction on the law and in just a little while it
4 is going to be your case, so we promise you. All right,
5 Solicitor?

6 MR. POPE: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 (The 911 tape was played.)

9 MR. POPE: I believe it was last Monday or Tuesday --
10 it has been a long week, I know it has for you guys --
11 when you first heard this and the Judge contrary to what I
12 obviously thought had sworn you. Remember, I tried to get
13 you sworn twice? You raised your hand and you swore that
14 you would well and truly try and a true deliverance make
15 to give a verdict. You will end up -- by the time you get
16 through hearing from me you will hear from both counsels
17 from the defense, you will hear from three lawyers and
18 then you will hear from the judge. And the judge is going
19 to tell you that you guys judge the facts, that we are
20 making arguments based on what we believe the facts were
21 presented, what evidence was presented, but if you guys
22 heard it different, believe it different, remember it
23 different, then you are to take what you believe. We have
24 12 jurors who come from all walks of life, you come from
25 all different types of experience and background and

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1 common sense and education. You are to bring each of that
2 and all of that to bear when you go into the jury room.
3 That's why one person doesn't decide, one juror doesn't
4 decide, one citizen doesn't decide what the facts are and
5 the truth in the particular case. If I misstate the law
6 or one of the defense counsel misstates the law I can
7 assure you, it would not be intentional. But ultimately
8 if you hear something different from me or from those guys
9 then you hear from this man, you take what he gives you as
10 the law. You take what you saw, what you know, what you
11 remember as the facts, and you take your common sense when
12 you get up -- they wouldn't let you bring drinks in the
13 courtroom, but you can take your common sense out with you
14 when you go. You don't leave it in the courtroom either.
15 When you get ready, when you go out and you start
16 deliberating that is what you do. You bring your life
17 experiences to bear, place it on what you heard and what
18 you tell him. You may get into all kind of stuff, being a
19 jury you are going to hear all of these different phrases
20 like malice and reasonable doubt and all of these things
21 that maybe you are equipped to deal with and maybe you've
22 never faced in your life before. What is the purpose?
23 What is the reason that you guys have been here all week?
24 The truth. The judge will instruct you and I think he is
25 actually going to give you a copy, Madam Forelady, you

1 guys will have a copy of his instruction after he tells it
2 to you. Within that instruction -- and he is talking
3 about looking at witnesses and evidence and judging the
4 credibility, throughout this entire process you have one
5 single objective and that is to seek the truth regardless
6 from what witness or evidence the testimony may come.
7 When it finally gets down to who says this or who says
8 that, what you guys have to do -- and it's hard for us
9 sometimes because we're right here up against it, you
10 can't see the forest for the trees. What you guys have to
11 do is step back and look at the evidence and look at the
12 case and say that day on March 16th on that road where man
13 was lying at that trailer, what is the truth of what
14 happened? I don't envy your job, but at the same token it
15 can't be much simpler based on what you see and what you
16 know and how you decide, who you believe in everyday life.
17 How do you decide if it's a good deal on a car? How do
18 you decide if this is a good thing or that's a good thing,
19 all of those things -- all of that decision making process
20 you bring to bear on what's come into this courtroom and
21 you decide what's the truth. If you do that no one can
22 begrudge you, not the State, not the defense, no one can
23 begrudge you because it seems overly simplified and you
24 see so much on TV about what it's like for a jury and all
25 of that, it's about finding the truth. The State is

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1 required to prove the evidence, there's not an absolute
2 certainty. The State is not required to prove it beyond
3 all shadow of a doubt. Anything in your life you can have
4 a doubt. You can doubt that your car is going to be out
5 in the parking lot when you leave today. I'm not you, I
6 hope it will be and likely it would be, but it may not.
7 The sun may not come up tomorrow. But what you have to
8 bring to bear is a reasonable doubt. A reasonable doubt
9 is a doubt that would cause a reasonable person to
10 hesitate to act. And here comes some lawyer language, a
11 reasonable person to hesitate to act. That's really not
12 that complicated either, it really gets -- when you make
13 your decision, if you make a decision about anything in
14 life do you think about it? Do you go back and forth? Do
15 you weigh the pros and cons? Do you measure things and
16 think, "Will this course go this way?" Certainly you do.
17 That's not a reasonable doubt, that's called deliberation.
18 I haven't been in a jury room but I believe there are
19 chairs in there and the reason there are chairs in there
20 is when the case is over and you have all of the evidence
21 and you sit down with the foreperson and you go through
22 and everybody brings to the table what they heard, what
23 they saw, what they believed, what they think of a
24 witness, all of these things. They look at the evidence
25 and go back in finding the truth, that is reasonable.

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1 That is not a reasonable doubt but you think well, maybe
2 it was this or maybe it was that. Reasonable doubt is one
3 that would be such that it would make you hesitate to act.
4 The judge -- luckily again you will have this in there but
5 he will instruct you, too. It's not every possible doubt.
6 Well, you know, maybe Lamont did swap guns with Jaleel or
7 Jaleel was on the porch and Lamont is the one that grabbed
8 the wrist, that's not the type of doubt we are talking
9 about, every possible doubt. And I submit ultimately
10 under the law that wouldn't matter which one did what.
11 But it's not, well, I kind of doubt that I am sure how far
12 so and so went down the road, that's not the component.
13 The issue becomes when you tear everything away and you
14 look and you decide on this case what is the truth. Are
15 you confident? Are you firmly convinced that what you
16 have decided is the truth? And again, I am not trying to
17 over simplify but that's basically what it is, figure out
18 the truth and are you convinced that's the truth? By the
19 same token the instructions will tell you if you feel
20 there's a real possibility that such and such didn't
21 happen or they're not guilty, if you feel really -- you
22 feel they were not involved, they weren't guilty of
23 whatever charge that you are looking at then you have an
24 obligation to find them not guilty. So when you are going
25 back and if the truth is you think if they weren't

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1 involved, they didn't play their part in these different
2 charges then you have a responsibility and the State would
3 have to tell you that. I have to ask you that, that's a
4 burden we have to prove that beyond a reasonable doubt.
5 If you think we didn't, if you think there's a real
6 possibility they didn't do it then you need to find them
7 not guilty.

8 Going back to March 16th what do we have on this
9 case? You know, you've heard me several times -- maybe I
10 watch too much TV because everything you have unlike TV,
11 unlike TV -- now that we have got CSI why they didn't get
12 a molecule from that rock and be able to tell you what
13 this man had for lunch last Tuesday, they can do that on
14 TV. But in the real world you've got real men and women
15 working cases with evidence trying to find the truth of
16 the matter. And what were they able to do in this
17 particular case? York PD is on the way, York PD arrived,
18 they go to the scene, they find the victim laying in the
19 road, they secure the crime scene. They find the shell
20 cases on the porch. And you will have those in evidence,
21 you got those shell casings, State's Exhibit 45, State's
22 Exhibit 46, they sent them to SLED. Opened the door to
23 the house, item number four, the spent bullet, most likely
24 ~~the one that went through his groin. Do you remember,~~
25 that was not found in his body, is laying in the floor

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1 right inside the doorway. And then number five, they find
2 his blood. They look for fingerprints, they look for
3 hairs, they look for fibers, they look for footprints,
4 they look for all of the things you see on TV. And what
5 were they able to get? This physical evidence. Does that
6 mean nobody was there? They did the GSR. You remember
7 they did the gunshot residue on Rashad, they did the
8 gunshot residue on the victim. There's no gunshot
9 residue. They even checked to see if the man had been
10 involved with the gun himself, whether the victim had.
11 They did everything possible to check and find the
12 physical evidence. Does that mean that nobody was there
13 that day? Does it mean that whoever did this can get away
14 with murder because there's no physical evidence? They
15 take his body to the morgue to Dr. Maynard the next day.
16 And you heard Dr. Maynard testify the steps they take,
17 they go through and they remove -- again you will have
18 this -- State's Exhibit 51 which is the other bullet that
19 went through his chest, through his lungs and into his
20 back. So you say well, we don't have anything, we don't
21 have the gun. Well, you do have evidence that tells you
22 something. The Judge will instruct you on direct and
23 circumstantial evidence. Direct evidence is exactly what
24 it sounds like, it's an eye witness. You were in this
25 courtroom you saw this, you saw that. Circumstantial

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1 evidence -- and the Judge will give you instructions --
2 one example is if things work out and you end up back in
3 the jury room and the pizzas are there, how did those
4 pizzas get there? You know -- you didn't see it happen
5 but you know that somebody -- you took the piece of
6 information that he said the clerk was going to get the
7 pizzas and you go back, would it be reasonable for you to
8 believe that while you were gone the clerk got the pizzas?
9 I submit you make those kinds of decisions everyday. The
10 rain decision. If you have been locked in this courthouse
11 and you don't have any windows and everybody is sitting
12 out in the audience had umbrellas and rain coats, is it
13 reasonable for you to believe that it's raining even
14 though you didn't see it? That's called circumstantial
15 evidence. The Judge will tell you a proof of a chain of
16 facts and circumstance indicating the existence of a fact.
17 In other words, using the pizza example, using the rain
18 example, you take what you know, what you see and you take
19 it to the next fact and that's appropriate. I would say
20 in this case there's a prime example Mr. Chiarenza has
21 done it, given the opportunity I am now here to do it,
22 everything we have seems to say that these two bullets
23 came out of these two cartridges and that it came out of a
24 .25 automatic. How do I know that? Let's take some
25 chains and facts in evidence. Well, the SLED guy says

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1 that a .25 automatic as opposed to a revolver kicks the
2 casings out so that would tell me why they are laying on
3 the porch. He tells me that these two casings came from
4 the same gun and he was never able -- that gun was gone,
5 that gun was carried away by the perpetrator but he tells
6 us that those come from the same gun. He tells us that
7 these two bullets, the one that came out of his body and
8 the one that was in the floor came out of the same gun.
9 Mr. Chiarenza kept saying come on, come on, as a
10 scientist, he says, "I can tell you this came from the
11 same gun and this came from the same gun, as a scientist I
12 can't say that it was the same gun." But as a juror
13 applying circumstantial evidence and common sense did
14 these bullets come out of the same gun? I would submit
15 they did come out of the same gun. The evidence, the
16 circumstantial evidence indicates that all of this came
17 from a .25 automatic. I think that's reasonable and
18 that's reasonable now. You say, Really? Do you know?
19 Were you there? Did you see it? Do you know? You can't.
20 That's what reasonable doubt is not. You can know that,
21 you can be comfortable, you can firmly believe that that's
22 the case without actually having seen it. The judge will
23 tell you -- and this is very important -- these inferences
24 that you make from chains of facts going together versus
25 testimony of things that people saw, there's no

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1 distinction and no words. The things you saw, if you saw
2 it rain versus you saw the umbrellas and you know it
3 rained, either one of those carries the same weight as far
4 as evidence and you can consider that in the same fashion.
5 So let's look at the investigation. Because I submit when
6 they talk about a proof of a chain of facts and
7 circumstances indicating the existence of a fact, I think
8 she indicated that the investigation over that nine month
9 period, what was it she said, something like a puzzle?
10 Putting pieces of a puzzle together? Get a piece of this
11 and a piece of that. You would hear the Judge say we are
12 ordering pizza. You may smell pizza in the hall, you see
13 the boxes in there, all of those different things put
14 together. That's what was happening on this
15 investigation. They tested the evidence and you've heard
16 and we brought you -- did they get fingerprints off these
17 bullets? No. Did they try? Yes. Did they have any gun
18 powder residue that would give you more information? No.
19 Did they try? Yes. Did they process the scene? Did they
20 get more information than the physical evidence you have?
21 They tried, but did they get it? No. The evidence that
22 was available was tested. To say that the only time you
23 can ever convict would be with eye witness testimony would
24 ~~fly in the face of exactly what the Judge is going to~~
25 instruct you. To say you can only convict with forensic

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1 evidence but every time -- and this is a pretty good
2 example, these things don't scream out who pulled the
3 trigger, these don't say who had owned the bullet, these
4 don't say who had the gun. But to say you can never
5 convict on murder would put a premium on these type of
6 cases; just do a good job, get away, cleanup, take care of
7 your business, cleanup your mess and there would never be
8 a conviction of murder. Fortunately under our system
9 bringing citizens to bear, applying their common sense and
10 seeking the truth we are not faced with that dilemma. The
11 interviews. We're going to go through a number of
12 interviews. Again, it was like piecing a piece of a
13 puzzle together and each piece fitting. You get four or
14 five pieces and you can't figure out where they go and you
15 set them to the side and get another one and eventually it
16 starts becoming clear and you are able to work it back
17 together. That's what happened in this particular
18 investigation. Now, some of the witnesses that testified
19 actually would say things or not say things or leave parts
20 out or bring parts to bear and you would go wait a minute,
21 the statement put both of them up, this one said this and
22 this one said that. Our obligation, our job is to bring
23 to you guys as much evidence as you can for you to
24 determine what the truth is. It's not for me to stand and
25 say my opinion of what the truth is, it's for you guys to

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1 determine what the truth. What does Gaither Williams
2 bring us? That's the lady that had the guys out under her
3 window, the crowd out in the Hall Street Apartments. They
4 were talking about guns and different variations of it,
5 move it out of here, get over and she didn't want them
6 under her window. She said -- and this is important I
7 guess for identification purposes -- "I seen the big guy
8 Lamont. He's bigger than the rest of them and I know they
9 call him Monster." He is bigger than the rest of them.
10 She didn't say, "I saw that one guy big guy and a bunch of
11 little guys," She said, "I seen the big guy Lamont." She
12 said she didn't know Jaleel, she didn't know these guys,
13 she did know Lamont and she saw Lamont. So that's Sunday
14 morning with the crime happening over at about 2:00. What
15 else did she bring us? She gives us that gray car, that
16 bronze colored car that was present, and she gives us
17 Lamont leaving it and going up to the crime. Do you
18 remember? She said, I "saw that gray little car coming
19 out and Lamont was in the passenger seat." So she had
20 Lamont leaving that area but then she doesn't know Jaleel
21 and she didn't know the woman, she brought you the pieces
22 of that puzzle that she needed. And you guys judge her.
23 You judge her believability, her credibility, you can take
24 what you want from her, what you believe and what you
25 don't, you decide what to take from what parts she put

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1 into this case.

2 Mary Burress. Now, Mary Burress did not testify, but

3 you remember Mr. Chiarenza was bringing it out I think on

4 cross examining Ms. Robbins, he was bringing out the

5 issues of what you think. Mary Burress lives down at the

6 end of the Hall Street Apartments. Do you remember under

7 that big tree is at the same place Gaither Williams lives.

8 "On the day of the shooting I was at home with Lofton in

9 bed. At one point Lamont knocked on the door and Lofton

10 went out on the porch with Lamont who I know as Monster

11 and Jaleel who I know as Ja." And so that morning now, at

12 that same time in that same area we now have Lamont there,

13 we have got the gray car there, we've now got Jaleel who

14 she knows as Ja who I believe Mr. Williams also said he

15 knew him as Ja. So now we have Mr. Page there that day.

16 And again, this is taking place at the corner of Sunset

17 and Elon. This is all taking place down here. So as

18 you're putting the pieces down in the puzzle what do we

19 have now? We have got the gray car and Lamont and Jaleel

20 here together on the morning it happened around the time

21 of the shooting and that's before we get to any

22 co-defendants, before we get to any girlfriends. We have

23 got them there in the area at the time of the shooting.

24 And the Court -- the system allows you to decide in

25 judging the credibility of these individuals to believe

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1 part, to discard others, to take it in whatever context
2 that you deem appropriate to make a determination. Now,
3 let's talk about Rashad Simpson. Independent of what
4 these two ladies have told us, because now we have got
5 Lamont and Jaleel down at the apartments at that time, we
6 have got the gray car, what does he tell us? He described
7 the clothing. Where does he encounter them? Remember, he
8 got ready to go down to his friend's house to watch the
9 Duke/North Carolina game, and they called him over and
10 they asked him something about -- now he doesn't know
11 anything about the story of what's going on in the tree or
12 robbery or anything but they say hey, something about
13 knowing where there is some dope. He said he didn't know
14 them but he described -- I think he described Mr. Page as
15 having jeans and he described Lamont with having a gray
16 hoodie and they were calling to him. He described them
17 and he described their height and this is important. The
18 two guys, they were like six-three and I think the
19 evidence indicated McCollum was like 280 and Mr. Page was
20 like two and a quarter. He described the two big guys, he
21 described their skin but he describe them as being about
22 six-three and they asked him about drugs, where can I get
23 some weed or where can I get some stuff or whatever he
24 said, but he kept walking. And they kept calling him to
25 come here now. This is Rashad now telling this, the day

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1 that it happened. This is independent of anybody else
2 saying that that is the story, that that's what came
3 together. He's telling that day that these guys
4 approached him as he's going down to his friend's house
5 and calling and telling them to come here. Later on as
6 the pieces are coming in the puzzle, there were enough
7 pieces in the puzzle that Sara was able to -- Ms. Robbins
8 was able to get a photo lineup of Lamont McCollum. She's
9 still working Jaleel, she's still having Jaleel who I know
10 as Ja. You can't run a driver's license from Tommy, I
11 know him as Tommy, you've got to have enough information.
12 You may know me and you may know my name, you may know my
13 first name. Can you give sufficient information to locate
14 me to find me, to identify me? I submit that at this
15 juncture they could not. The only other point I want to
16 at this -- this is the only time the State is going to
17 talk to you, you get to hear from both attorneys and from
18 the defense so I have to anticipate what they will say.
19 "Well, folks here is the answer, I am telling you who did
20 it, Lamont did it with A. J. that would sell pretty good.
21 They're not the ones on trial today. Lamont did it,
22 because I think it's pretty clear Lamont pulled the
23 trigger, and A. J. who has pled to it and he said he saw
24 it, so Lamont did it with A. J." One main problem with
25 that right from the beginning is Rashad made it clear he

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1 knew A. J., so why not say, "And then A. J. came up to me
2 with this other guy in a gray hoodie and tried to say
3 something about getting some drugs." Secondly, A. J. and
4 Mr. McKnight are five-seven. You've got four folks in
5 there, you've got the little guys and the big guys. I
6 submit from the beginning he told them when they were
7 encountering him -- again, you remember, you remember the
8 evidence, you heard it, when they're encountering him --
9 this is before his uncle was shot, this was before Mr.
10 Cunningham was shot when they encountered him down on the
11 street. Ultimately he picks them out of a lineup and Mr.
12 McCollum was identified as number three that allows them
13 to put another piece of the puzzle. But let's talk about
14 Katrina Howard. Do you remember Ms. Howard? She's the
15 one that came and the Judge will tell you again that you
16 judge credibility, you judge the believability. When she
17 sat here on the stand and she was being cross examined by
18 Mr. Chiarenza and he would get kind of short and she was
19 kind of nervous and you decide, was she credible? Is she
20 not credible? Is she credible on part? Is she not
21 credible on other? Regardless, I would submit however it
22 seems that she may be trying to protect Lamont -- and I
23 submit that I think that's what it looks like, she comes
24 to the table with something that says Jaleel did the
25 shooting. Now, like Ms. Robbins said, if they start out

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1 with descriptions of the guns based on who had the
2 revolver, based on the .25 being on Lamont, based on these
3 being .25, based on them being kicked out of the gun, I
4 think the evidence based on what A. J. said, I think the
5 evidence says this man did not shoot. Now, if the State
6 just wanted to sell you a bill of goods I would be going,
7 Oh "yeah, she saw it and it wasn't Lamont, Lamont didn't
8 have to "-- you see, Lamont is not before you today, you
9 are not trying Lamont today. So I could be saying,
10 "Lamont didn't do it, he did it." I don't think that's
11 the truth. Of course, it's not my opinion of the truth
12 you've got to decide, but I think the truth is what you
13 hear from A. J., what you hear from the other witnesses.
14 But what does Ms. Howard give you? She gives you Lamont
15 and Jaleel are there. She explains how they were down on
16 Hall Street Apartments, they were down at Ms. Burress'
17 house and they are outside Gaither Williams' house, how
18 they got there from Gastonia and that they're there that
19 Sunday morning. You can say, "Well Lord, solicitor, you
20 proved they're there, they are there, they are there." We
21 have to prove it. You say, "How many times are you going
22 to tell us they're there?" I have to prove they're there,
23 then I have to prove they committed the crime. They don't
24 have to prove anything, that's their right, I have to
25 bring it to you. Ms. Howard says they are there, they're

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1 hanging out under her tree, she describes their gray
2 vehicle. It's an interesting point, I can't tell you what
3 to take from what she said, you guys have to decide. But
4 here is an interesting point, she tells you how they got
5 away. You remember after the shooting and Lamont and
6 Jaleel run down the hill, they were run down the hill
7 toward the way where we were looking at that first
8 picture? You remember running down the hill like past the
9 body down on that road down the side -- I'll put the map
10 back up in a minute, but down on the side where the 911
11 call came from. But do you remember what that lady on the
12 911 call said? It is a drive-by because the car came by
13 and pop, pop, and the car came by. I submit again, those
14 are the kind of things when you are putting the pieces of
15 the puzzle together, those are the kinds of things you
16 look at. Do you believe what she said about there were
17 eight people on the porch? Do you believe what she said
18 that Lamont didn't have a gun at all? I submit that that
19 probably is not credible. I don't know, it may defy
20 science when you look at that picture for eight folks to
21 fit on that porch. I don't think the evidence supports
22 that. Do you believe she was there? Do you believe they
23 were hanging around the tree? Do you believe a gray
24 vehicle? Do you think that's how they got away? That's
25 what this means when the Judge instructs you about you can

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1 take part and discard part, you decide what's important.
2 Because it's funny, they see a car drive by, 911, she says
3 they're taking them out of there and low and behold she
4 drives back up where Hall Street is up there after the
5 shooting, Gaither Williams says she sees the gray car
6 coming with Lamont and a passenger. Again, I touched on
7 this, you have to make a determination as Jaleel being the
8 shooter, we will get to that at the appropriate time and
9 the Judge will instruct you. You heard Mr. Thompson say
10 at the beginning the hand of one is the hand of all.
11 Jaleel is not required to be the shooter, there's no
12 requirement to prove here -- and again candidly I can't
13 give my opinion, only my statement as to the evidence -- I
14 don't think that the evidence indicates that he's the
15 shooter. That does not change the charge before you and
16 we will talk about that.

17 Credibility. I have touched on this several times.
18 You are the judge. You guys judge credibility, you judge
19 believability, you decide -- and again, I don't want to
20 over simplify everything but it's the same thing you do in
21 everyday life. If somebody is trying to sell you a bill
22 of goods and you look at them and you know it, how is it
23 you know it? How do you know somebody is conning you
24 versus somebody is shooting straight? How do you judge
25 who is telling the truth, who to believe, who not to

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1 believe? All of those things you've learned in your
2 entire life as to how you apply that, that's what you do
3 with witnesses. You judge the credibility. As I said you
4 can believe a portion, you can believe their right about
5 their name and that may be it. You can believe however
6 you want, whatever you want about what they're saying,
7 that's your promise as a juror. Because when it finally
8 comes back to it all of this fitting, all of this
9 evidence, all of this thinking, all of this putting up
10 with me is all to the point of you guys figuring out what
11 is the truth. And the Judge will tell you and the clip I
12 showed at the beginning actually comes from the Judge when
13 he charges you on credibility.

14 Now, let's talk about A. J. Williams. Do you
15 remember Mr. Williams? He's one of the two little guys in
16 the scene of four in the armed robbery. A. J. made a
17 tremendous mistake, something I have probably been cursed
18 with most of my life. A. J. talked too much down at the
19 jail, not to law enforcement, not to gain something, but
20 down at the jail A. J. starts talking about it. Now, how
21 did they end up talking about it? I guess -- I don't
22 know. The jail, who knows, I guess you've got time on
23 your hands how does he end up talking about it. It
~~24 doesn't seem like the thing you want to talk about, but~~
25 the important thing to know before York PD is ever on the

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1 scene with this guy and he's talking in the jail about it,
2 he mentions Lamont, he mentions Jaleel or Jameel, or
3 however -- ultimately they said that the pronunciation was
4 in the tape. Now, if you believe some how law enforcement
5 is trying to cook some kind of pudding because they've got
6 a nine month old case and they need to solve it and nobody
7 is talking and some how they sent this informant under to
8 plan this information, this guy is telling this before law
9 enforcement ever comes on the scene. And I submit the guy
10 that called from the jail and said I have got information
11 worked for York before or helped York undercover or
12 whatever he said they did, I would submit maybe that's why
13 that guy knew to call York because he had worked with York
14 before and provided them with information. So that
15 happened in December of 2003, and A. J. Williams again,
16 you judge his credibility, you judge his believability.
17 He shuffled in here with his leg irons and sat right there
18 in a shirt his mama bought him and told you what he
19 says -- what he placed his hand on the Bible and says this
20 is the truth. Everybody placed their hand on the Bible.
21 You guys have got to decide what you believe and what you
22 don't believe. If you believe him at all or has he got
23 something to gain? We're going to talk about that. Does
24 he have something to gain that would let him come in here
25 and cook this pudding against Jaleel and against his first

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1 cousin? Apply your common sense to it. He talked to all
2 three -- about all three before law enforcement was ever
3 involved, he pleads in 2004 and gives another statement.
4 Okay. In 2004 is the statement that finally delivers
5 Terrance doing the same thing he was doing. Before it was
6 Terrance and maybe put two and two together and a little
7 bit about Terrance. Why does he protect Terrance? It's
8 his first cousin. Arguably you got caught, arguably you
9 gave them the trigger man, Lamont. Why add Terrance?
10 Does he get a better deal for some how bringing extra
11 people? Because the defense is going to talk about it,
12 rightfully so. He pled and he pled guilty to the
13 conspiracy, he pled guilty to the attempted armed robbery
14 and he did not plead guilty to the murder. Did he get a
15 better deal somehow? Do you have to turn in four other
16 guys that were there? Maybe he should have bought into
17 Katrina Howard's statement, what if it would have been
18 eight, maybe he would have walked if it was eight. That's
19 not the way it goes and it doesn't appeal to the common
20 sense. Is there any reason whatsoever to add Terrance
21 unless it's the truth? If you've got Lamont and he's the
22 shooter, you know, in his story if he's wanting to sweeten
23 the deal, why not say, yeah, and then Jaleel some too?
24 ~~Why? Because Terrance was there aiding an abetting and~~
25 that's a legal term, participating and Jaleel was

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1 participating. Now, his inconsistencies. He's got
2 inconsistencies. I'm sure the defense will point them
3 out, they pointed them out on cross examination between
4 the statements. If you look at the way his testimony
5 flowed from the time you first got -- when he got caught
6 at the jail talking to the guy and they talked to him and
7 he basically denied everything. Even back when the crime
8 took place he was out there that day, he knew these folks,
9 he denied everything. I submit from the beginning he has
10 been protecting himself. Each statement -- and I think he
11 said it from the stand and you remember it the way you
12 remember it -- at one point he said he had rode to the
13 store with the girlfriend. That gets you a little bit, "I
14 can tell you what I know but I'm still a little bit away
15 from it." And each time he told it he brought himself
16 more back to the truth. I submit for the longest time he
17 protected Terrance. He has got no reason to put Terrance
18 in it unless it's the truth. He has got plenty of reasons
19 not to, it's your first cousin, why bring him in it? And
20 on Terrance until after his plea the full picture from A.
21 J. not from Terrance's mouth, from A. J. the full picture
22 was not there. Let's look at the consistencies between
23 the statements, and again being kind of awkward because he
24 testifies we talked about statements and don't refer to
25 statements and do pieces of statements and follow-up the

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1 requirements as we have to in the law. As Mr. Chiarenza
2 or Mr. Boyd may question on something and I question on
3 something, unfortunately the real statement, the full
4 statement is not in evidence, it's not before you so you
5 have to remember the question, the testimony, the
6 statements as you recall them. But I submit the evidence
7 indicates that in his statements much like those other
8 folks, much like those ladies, you've got the four of them
9 hanging out at the Hall Street Apartments under the tree,
10 you've got the sizes and description of Jaleel, the guy he
11 knows as Ja, Lamont he knows as Monster. You've got the
12 clothing description, you've got the girlfriend there,
13 Katrina Howard, in the gray car. You've got Jaleel and
14 Lamont with pistols, and again if you are trying to cook a
15 pudding why not say that Jaleel had a .25 automatic that
16 kicks out bullets? You know, he said Lamont had a pistol
17 like that and Jaleel had a revolver. Talked about the
18 gray hoodie, he talked about the black coat, he talked
19 about them having their guns in their pocket, talked about
20 that first attempt on Rashad. Now, that's the one Rashad
21 told you about where he's talking and they walk up. Of
22 course, Rashad just knew he wasn't stopping. They asked
23 him about dope and kept saying come back here and come
24 back here and Rashad kept moving, he was smart enough to
25 keep moving. But from under the tree and the planning

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1 that was going on that was the first attempt, the initial
2 attempt to rob Rashad. I would submit if Rashad had
3 stopped, if Rashad had come back then Willie Cunningham
4 probably would not be the victim, Rashad would have been.
5 They planned the robbery and you've heard the different
6 phrases and the testimony and I will allow you to recall
7 it as you did at that point. They are going to rob
8 Rashad, they are going to hit him, they are going to rob
9 Rashad. He looked nice, he wore chains, he looked good,
10 he had money. When Rashad didn't move away from his
11 residence the plan morphs into "we are going to go to his
12 crib, we are going to go get his stuff, we are going to go
13 get his stash, we are going to go to his place and rob
14 it." They planned the robbery, they talked specifically
15 about robbing. They talked about what they would do at
16 the trailer, what each one would do and what their roles
17 would be. A. J. said that he and Terrance would act as a
18 lookout and get a cut, knock on the door or knock on the
19 trailer if somebody was coming. This is kind of
20 interesting because arguably these guys didn't talk to
21 each other when they were giving their statements, but he
22 talks about bouncing a ball. I think he testified from
23 the stand -- and again, you recall it the way he did --
24 but there's another trailer adjacent to it and that A. J.
25 and Terrance were bouncing a ball when they're acting as

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1 lookouts. Now, it will be up to you to decide when you
2 get back in the jury room what the truth is. Did they
3 just happen to be bouncing a ball down right outside of
4 Sunset Avenue while this crime was going down? Were they
5 just merely present or was there a reason that they were
6 bouncing a ball. Because if you are standing and looking
7 it might look suspicious, but if you and I are bouncing a
8 ball while we're watching it gives them some cover. I
9 submit you hear that from A. J. and you heard it from
10 Terrance. It places Lamont and Jaleel on the porch when
11 Mr. Cunningham comes to the door. And again, he made it
12 clear, I think the forensic evidence makes it sufficiently
13 clear and he made it clear that Lamont shot Cunningham.
14 Again, if he had something to bear against Jaleel, if he
15 had something to bear against Terrance, then why not say
16 they shot him? I mean, basically the forensic evidence is
17 what you have that somebody got shot and they got shot
18 with these, and the gun was taken away and you never have
19 seen the gun. So arguably he could name whoever he wants,
20 or he can tell you the truth and tell you the different
21 involvement of each individual.

22 Now, let's look at Mr. McKnight's statement. And the
23 Judge will instruct you that Mr. McKnight's statement is
~~24 for the purpose of considering Mr. McKnight. It seems a~~
25 little tricky because you're saying you are trying to seek

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1 the truth, but it is admitted against him certain parts
2 were to show when the investigation was done that certain
3 things were done as far as credibility of Ms. Robbins, but
4 the purpose -- you consider Mr. McKnight's statement
5 against him. In his statement -- and now these statements
6 you will have in the jury room -- in his statement he
7 talks about the robbery plan, the plan to rob Rashad. I
8 think he says something to the affect of him looking nice
9 or something. He talks about the participation, what each
10 one was going to do. He said, "Rashad was clean, he
11 looked nice. Lamont said he wanted to rob somebody. He
12 had a thing for Rashad and said he was fixin' to rob that
13 nigga. We started walking toward the trailer where Rashad
14 stayed. Me and A. J. was in the road bouncing the ball."
15 Let me talk to you for a second about mere presence. When
16 you look at his statement this all took place hanging
17 under the tree, drinking beer, smoking weed, planning
18 mischief. It all took place down here. Some point
19 earlier Rashad takes his walk down here and Jaleel and
20 Lamont try to get him to stop with the whole you've got
21 some weed deal but Rashad kept walking. So they're back
22 here under the tree and they are planning, they're robbing
23 and he's going to look nice, and the walk begins to the
24 trailer. The thing I will note -- and the Judge will tell
25 you on mere presence it's in -- I'm just there when a

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1 crime take place I'm not guilty, just being there is not
2 guilt. There has to be some involvement, there has to be
3 some activity, there has to be some part when you are in
4 furtherance of what's going on. When you talk about
5 conspiracy we will talk about what's called a tacit
6 understanding. And a tacit understanding is this: An
7 understanding to do something, to communicate to do
8 something without a direct agreement. I can't say how
9 many times you guys have come in and out of the jury room
10 this last week. Did the person in front of you turn
11 around and say, "Okay now, you are going to go behind me
12 and when I get in there I am going to sit in that chair
13 and I want you to sit in this one and then you sit in this
14 one and you sit in this one?" How did you know how to
15 file in? How did you know? You had a common scheme and
16 plan, you were to serve as jurors. Now, the bailiff may
17 have said, "All right, time to go back in the courtroom,"
18 but in knowing the plan you knew each of your parts. I
19 noticed he didn't have to get you straightened out and
20 everybody wanted to sit in this seat. You know your part,
21 that's part of the bigger plan, that's a tacit
22 understanding. I didn't go back with you but I submit he
23 didn't tell you where to sit down, you may have planned it
24 the first time, but once you begin then you are involved
25 with it. "Lamont said he wanted to rob somebody, he had a

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1 thing for Rashad, fixin' to rob that nigga." We started
2 walking toward the trailer where Rashad stayed. Me and A.
3 J. were in the road bouncing the ball." Okay. Once they
4 make the move from here and these four guys head this
5 direction, the train is leaving the station. Once they
6 get here the conspiracy has fallen into place and the plan
7 is in action. Once they move here with an intention to
8 rob with each having their different responsibilities, you
9 guys be lookout, we will go over here and do that. You
10 don't have to say, "Okay, we will be lookouts, sign me
11 up." I submit you don't get from that, you judge it from
12 their actions, and I submit that when you get here, is
13 this just a better place to play basketball? That's where
14 your common sense comes in. Is this just a -- "down here
15 is not really a good place to bounce the ball, I am just
16 going to go down here. I am just going to go down here
17 and bounce the ball in the road for awhile." Does that
18 appeal to your common sense? I submit that it doesn't and
19 that the conspiracy, the attempt to arm rob took place
20 when they're leaving here.

21 The Judge will instruct you on conspiracy. The
22 conspiracy language of the charge says when we combine,
23 unite, confederate, conspire, tacit understanding. That's
24 most important because the issue of tacit understanding is
25 ~~it doesn't have to be a spoken agreement, you don't have~~

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1 to sign a contract. You can judge from the actions that
2 they are part and parcel. Otherwise I can receive all of
3 the benefit, I can go with you, I can do everything but if
4 I just keep my mouth shut and never agree then you can
5 never be guilty. Then I can say, I was merely present, I
6 was just watching but then you would receive the benefit
7 of the crime and that's not what the law allows. It does
8 not require an overt act. The agreement alone constitutes
9 the conspiracy. In other words, if I say, "I'm with you,
10 I'm on jury duty too and I am going in the courtroom with
11 you," I may never go in the courtroom, I'm still part of
12 the conspiracy to get us all to the courtroom. And this
13 is probably the most important element and the Judge is
14 going to instruct you on this as far as conspiracy, and
15 this will be in his charge that he will present to you,
16 this is the language of withdraw: "A person completely
17 withdraws from the common design or plan and communicates
18 his withdrawal to his associates under circumstances that
19 permit the associates to withdraw then the person escapes
20 criminal responsibility for the acts of the associates."
21 All right. Again, if I decide after the train leaves the
22 station that I want off the train and I tell everybody I
23 am out of here, I don't want any part of it, I'm off the
24 train and you have the same opportunity, my
25 co-conspirators have the same opportunity, then I am not

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1 responsible with what you guys do after that. However, if
2 the withdrawal was not communicated to a particular
3 associate or if that associate did not have the
4 opportunity to withdraw after the communication, then the
5 person remains responsible for the actions of that
6 associate that were the natural and probable consequences
7 of the common design. In other words, A.J. and I are
8 bouncing the ball, Lamont and Jaleel go to the porch, I
9 get tired of bouncing the ball, I decide this probably
10 wasn't the best idea I ever had and I tell A. J. I am
11 leaving as Mr. McKnight indicated he did. The law of
12 withdrawal requires -- and this is what the Judge will
13 instruct you -- you can't started leaving when it starts
14 going bad on the porch and say, "I'm not part of it
15 anymore." You have to afford Jaleel, you have to afford
16 Lamont the same opportunity to abandon by going, "Hey
17 guys, before y'all get up there I'll tell you I'm out of
18 here." You can't leave after it goes bad and say, "I
19 wasn't involved." That's the law of withdrawal. It says
20 the law requires that the person involved in common design
21 must withdraw entirely and completely from it and must
22 communicate that withdrawal to his associates, all of his
23 associates. A person who continues in the common design
24 cannot claim withdrawal. It's the burden of the State to
25 prove that the defendant was not withdrawing from their

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1 part in the common design. I would submit by his own
2 statements Mr. McKnight was not merely present and left to
3 go down to the ball field to put in a motion the robbery.
4 He is bouncing the ball, the same purpose that A. J. is
5 there for. The fact that he says this in his statement,
6 "I went walking down the hill before the shot was finally
7 fired" is insufficient to let him out of the conspiracy
8 and to let him out of the crimes.

9 Talk about the charge. I am not going to waste a lot
10 of time on it, the Judge will instruct you on this and
11 again you will have the instruction. Attempted armed
12 robbery against is almost one that you just have to lay
13 your common sense on it. Because the Judge is required to
14 start with larceny which is basically stealing and then go
15 to robbery, stealing by force, and then go to armed
16 robbery and walk you through it and that will be in the
17 jury instructions, you will hear him say it. Attempt is
18 just what it sounds like, putting it in motion,
19 attempting. It doesn't matter if you don't succeed. I
20 attempted the robbery and as soon as I realized I try to
21 grab your hand or wallet or whatever and you are resisting
22 and I stop, I still have made that attempt. I can set out
23 to do it, I can set out to the attempt and as long as I do
24 some object that moves us forward in the attempt; knocking
25 on the door, going to the trailer, opening the door,

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1 making a statement, watching the house, being the lookout,
2 any of those, once that begins then the attempt is taking
3 place. That's stealing. Taking the property of another,
4 taking personal property, carrying it away. And again,
5 you are not going to have carrying away in this case
6 because it was an attempt so it never took place. What
7 you've got to look at, they go there to rob. What does
8 that mean? They go there to take the personal property,
9 take it for themselves with the intent to steal, that
10 makes it a larceny, with the violence or threat of
11 violence. When you go -- when you are going to be
12 physical or you are going to use weapons, then the larceny
13 becomes a robbery and you use a deadly weapon then the
14 Judge will instruct you certainly as clearly it is in this
15 case using deadly weapons, at that point it becomes an
16 armed robbery. I would submit the elements would all be
17 there for attempted arm robbery.

18 Murder. The Judge is going to instruct you about
19 murder, and I will tell you he's also going to instruct
20 you about manslaughter and I will touch on each of those.
21 Murder is the killing of a person with malice
22 aforethought -- again, here is the legal lesson in this
23 case -- either express or inferred. Malice
24 aforethought -- and I will talk about it separately in a
25 moment -- is a term of art and law that says someone that

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1 is wicked -- not wicked, they might be a nice guy but in
2 their act they are wicked, they are bent on mischief.
3 Like that crowd under the big tree down there, that they
4 are up to no good basically. I guess it's the way mama
5 would say, if they are up to doing no good and they can
6 say, "Hey, let's be up to no good," you can infer it from
7 their actions and from their conduct. Malice is -- one
8 way the Judge will say it is doing an act with no just
9 cause or excuse. I submit that the man looked nice and
10 the man had money is not a just cause or excuse to rob
11 him. It can be as I said a minute ago expressed or
12 inferred and you can do it from the surrounding
13 circumstances. In other words look at the crime, like
14 what happened, look at the man is left laying bleeding,
15 his lungs filling with blood in the middle of the road and
16 say, Is that devoid of social duty? Is that a heart
17 fatally bent on mischief? Is that wickedness? You can
18 look at that. Is going to a man's house and knocking on
19 his door with both of you having pistols and two guys
20 looking out, is that malicious? And I submit that the
21 evidence would indicate it is. The Judge will also tell
22 you that another way to describe it is doing an unlawful
23 act without just cause or excuse. An attempted armed
24 robbery is done without just cause or excuse. The Judge
25 will tell you you can infer. It's up for you to decide,

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1 but you can infer from the use simply of a deadly weapon
2 in the murder if there's malice present. He'll also tell
3 you about felony murder. Felony murder is basically when
4 you kill somebody while committing a felony -- and
5 attempted armed robbery is a felony -- then you can infer
6 that malice is there.

7 Now, aforethought, that's where it gets a little
8 tricky. Because on TV -- and I am back on TV again -- on
9 TV there's always premeditation. We don't have that, we
10 are not required to show that. In South Carolina the
11 premeditation, that is not part of our murder statute.
12 Malice aforethought means that anytime before I pull this
13 trigger, if malice is my heart or my actions are
14 malicious, just if any time prior to the pulling of that
15 trigger that's sufficient. It doesn't have to be a
16 minute, doesn't have to be an hour, doesn't have to be a
17 day. I submit in this case malice starts down there under
18 the tree three or four blocks away well before they get to
19 the house.

20 And the Judge will instruct you about manslaughter.
21 In South Carolina -- again unlike TV -- in South Carolina
22 we don't have murder one and murder two and murder three
23 where they always say plead murder two, this, that and the
24 other, our second level or a lesser included in South
25 Carolina is called manslaughter. It's the killing of a

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1 person without malice. So when you're looking in this
2 case clearly Mr. Cunningham was killed. When you look at
3 the charge and you have to decide basically was his death
4 murder or was it manslaughter? Murder is the killing of
5 another with malice aforethought, manslaughter would be
6 without malice. If you looked at the facts and
7 circumstances and somehow you said, "Well, I don't
8 think -- I think that robbing is a just cause. I think
9 that using a deadly weapon doesn't mean they were
10 malicious, they were just having fun." If you think being
11 armed robbery -- I don't infer malice from that, if you
12 thought some way or somehow there was no malice present in
13 this case, there was no malice when those two bullets were
14 fired into Mr. Cunningham, that maybe his death is a
15 manslaughter. I tell you what is his death isn't, it
16 isn't an accident, it isn't a mistake. So what you have
17 to decide between on the murder charges for both
18 defendants between -- is it a murder -- is it with malice
19 or is it without malice? Or another way the Judge will
20 say if you decide from the pieces of testimony where when
21 Mr. Cunningham came to the door and there was the struggle
22 and Jaleel and Lamont and the grabbing the wrist and all
23 of that, if somehow that heated up the sudden heat and
24 passion of any four of them, if that heated up Lamont who
25 we believe pulled the trigger or Jaleel and that --

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1 Mr. Cunningham, you've got to think about this -- that
2 Mr. Cunningham grabbing him was sufficient legal
3 provocation. In other words, these guys come to his door
4 to rob him, if you think defending himself is sufficient
5 or legal provocation to justify Lamont getting upset and
6 deciding to put two bullets in him, that would remove
7 malice. If you think somehow it's Mr. Cunningham's fault,
8 that he shouldn't have struggled and that caused the whole
9 thing and if he would have just laid down and they could
10 have took his stuff -- there's no law that requires that
11 by the way -- but if you think somehow malice is not
12 there, then again it goes back to what is the truth. If
13 you think there's no malice just say they are guilty of
14 manslaughter.

15 You've heard from the beginning, heard from the Court
16 that the hand of is one is the hand of all. We have to
17 prove intent, too, we have to prove intent as it begins as
18 far as the conspiracy. And again, you can't cut in their
19 head and see what this one was thinking, what that one was
20 thinking, you have to make the determination from what you
21 see, what you hear and what you know of the surrounding
22 circumstances. Did they intend to go together? Did they
23 intend to go commit the robbery? Did they intend to have
24 their different roles? The common purpose of a conspiracy
25 or attempted armed robbery, working together, the common.

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1 purpose may not be to kill and murder. In other words, I
2 don't think it started out it didn't sound like it, they
3 didn't say, "Let's go down there and kill somebody." They
4 said, "Let's go down there and rob somebody." It might
5 not have been the purpose to kill or murder, but if it was
6 unlawful -- as for instance to break in and steal or go
7 rob a man's house and then in the execution of this common
8 purpose a homicide is committed by one as a probable or
9 natural consequence of acts done in pursuance of the
10 common design, then all present participating in the
11 unlawful common design are as guilty as the slayer.

12 I would submit to you that four people, two of which
13 have guns, going to a man's door to rob him of his
14 possessions, to attempt to rob him, to attempt to arm rob
15 him, your common sense tells you that a natural and
16 probable consequence of taking guns and pulling them out
17 on a man or not pulling them out, going to rob him and
18 just having the gun in my pocket just in case I need it,
19 that a natural and probable consequence of those actions
20 could be the death of somebody. Again, that's something
21 you have to decide. The point being here, the defense
22 cannot be, "Well, okay, I was merely present and if I
23 wasn't merely present I left, and if I didn't leave we
24 just planned on robbing them and I didn't plan on killing
25 them." You can't have a piece of it. You can't only have

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1 the good out of the crime and not be saddled with the
2 responsibility. Again, it comes back to you and what is
3 the truth as you apply the law.

4 That day down Hall Street they made one plan to get
5 Rashad -- and again, I think there's a pecking order in
6 this group of four. Do you think the little guys were
7 calling the shots, the little guys without the guns were
8 calling the shots? No. But this car had four wheels on
9 it and each of them served a purpose. As they go down and
10 they have their plan -- and this is after the first trip
11 where just Jaleel and Lamont tried to get Rashad, and they
12 go to the door, Jaleel and Lamont go to the door, A. J.
13 and Terrance are bouncing the ball, just chose to bounce
14 the ball right here. Mr. Cunningham comes to the door,
15 they move to affect the armed robbery and Mr. Cunningham
16 decides that he does not want to be arm robbed, he does
17 not want to allow them to take his possessions and he
18 attempts to defend himself if you believe the testimony.
19 At that point Terrance leaves, A. J. leaves this way --
20 well, the shooting takes place, Terrance and A. J. leave,
21 Jaleel and Rashad go that way. Jaleel and Rashad end up
22 down -- I'm sorry, Jaleel and Lamont end up down this way,
23 A. J. and Terrance end up down here, Mr. Cunningham ends
24 up laying in the road bleeding to death and they clear
25 out.

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1 I am allowed to talk to you about this. The Judge
2 will not instruct you on this but I want this to factor
3 into your common sense about what's true and that's called
4 flight. You can consider flight as evidence of guilt. In
5 other words, these guys that were hanging around all day
6 that were around the tree, making this plan, doing all of
7 these things, after the shots are fired where did they go?
8 You can consider flight as evidence of guilt. A. J. and
9 Terrance haul it down Sunset, Jaleel and Lamont flee from
10 the scene in the gray car. They flee the scene, they flee
11 the area. Then Jaleel stayed in York or either with
12 Lamont in Gastonia at the time of this crime. He was
13 located in Vancouver, Washington, Washington State nine
14 months later. You can consider flight as evidence of
15 guilt. If you look at Mr. Page's charges, conspiracy, the
16 Judge will instruct you -- again, I have touched on it
17 quickly through it -- conspire, confederate, unit with
18 tacit understanding. I submit the evidence indicates as
19 far as Jaleel Page that he was up in it, he was
20 leadership, he was front row. He doesn't have a tacit
21 understanding, he was having an active participation, he
22 was prepared to go forward.

23 The attempted armed robbery, this is the core of this
24 whole case that they are going to that trailer to commit
25 the armed robbery. They were foiled by Mr. Cunningham and

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1 it ended up costing Mr. Cunningham his life. And the
2 murder. You have before you, you have to decide murder or
3 manslaughter. You have to decide was the killing -- when
4 Lamont pulled the trigger did he have malice? Were the
5 actions of any of the four from the time they loaded up
6 down at Hall Street, all of the planning that it showed a
7 heart devoid of social duty fatally bent on mischief? Was
8 there malice with the use of a deadly weapon, malice of
9 armed robbery? I submit this thing overflows with malice.

10 Possession of a firearm during the commission of a
11 violent crime. Murder is a violent crime. The Judge will
12 tell you attempted armed robbery is a violent crime.
13 Jaleel had the revolver, he got the benefit for having the
14 revolver, arguably it didn't kick out these shells. All
15 of the statements on the porch Jaleel took his revolver.
16 It doesn't say use of a firearm, possession of a firearm
17 during the commission of a violent crime.

18 Possession of a pistol under 21. You've heard that
19 he was 19 years of age at the time, that in and of
20 itself -- possessing that revolver in and of itself is a
21 crime.

22 Terrance McKnight got same conspiracy, and with
23 Terrance you look at what he says, you have to look at his
24 actions. I think he and A. J. were kind of running the
25 flank. Was it one of the statements A. J. said, "It would

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1 make me feel important if I had a job." Ultimately he and
2 Terrance were bouncing the ball and ultimately he and
3 Terrance were lookouts, ultimately he and Terrance were
4 going to get a cut. I could not present you a piece of
5 evidence where Terrance signed a contract. I don't have
6 something to hold before you that says and then he said
7 and my part I will do this and I will do that because it
8 was with a tacit understanding. But you can infer when
9 you look at the facts and you look at his own statement
10 about the plan evolved for the robbery, when they headed
11 out to the trailer he was there with them and he was
12 bouncing the basketball. Now, does he say, "I was
13 bouncing the basketball to be a lookout?" No. That's
14 where you can take a piece of evidence from anywhere you
15 want, including A. J.'s testimony and make a determination
16 of what the truth was in this particular case. That will
17 apply to them as far as attempted armed robbery and that
18 will apply to them as far as the murder.

19 You know, if you look and you say A. J. and Terrance
20 really pretty much were in the same boat, they were out
21 there doing the lookout thing and bouncing the basketball
22 it wasn't like they were up on the porch being malicious,
23 well you've heard time and again that the hand of one is
24 the hand of all. But if you look and said A. J. came in
25 here, he only pled to the conspiracy and armed robbery, he

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1 didn't plead to the murder. If you think that Terrance is
2 exactly in the same boat -- A. J. got the benefit of
3 coming in, if you think Terrance is in the same boat then
4 find him not guilty of the murder. I submit to you under
5 the law he is in fact guilty of murder, but if somehow it
6 just doesn't stick with you right that A. J. came in and
7 got the benefit of the bargain and Terrance didn't, if
8 that's what you think is right in this case -- it's about
9 the truth, it's about you guys finding the truth -- if
10 that's what you think is the truth then say so. But I
11 submit what it comes down to is this: That day
12 Mr. Cunningham got gunned down and that gray car turned
13 that curve down there and A. J. and Terrance ran down the
14 hill, they got away with murder. And one week led to two
15 and two to four, and then a month and two months and nine
16 months and Sara kept putting those pieces of the puzzle
17 together, and finally A. J. shows up. And you've heard
18 it, I am not going to beat it, you know how he showed up.
19 They say, your star witness, A. J. you've got to believe
20 A. J. You've got to believe A. J. I tell you what, A. J.
21 is in this case. You know, the puzzle box, you know the
22 lid to the puzzle box, it has the picture on it and you
23 look at the lid and you put the pieces and put the pieces.
24 Now, if you've got the wrong box, if you got the wrong lid
25 these pieces don't fit together. I submit this case with

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1 these puzzle pieces, A. J. is one of the four defendants,
2 A. J. is the picture by which these pieces fit together.
3 And defense can say, "Ah hah, A. J. he is the case." No,
4 he is the picture, this is the puzzle. He's the picture.
5 If the pieces don't fit the puzzle won't go together. You
6 get A. J. and use A. J. let's say we didn't. Let's say
7 those four guys go their separate ways, Willie Cunningham
8 is laying there; he bleeds to death, the gun is carried
9 away, no gun to match, nobody says anything, A. J. keeps
10 his mouth shut, we don't bring this guy who pled who was a
11 codefendant. That's another alternative. Don't let you
12 hear from one of the co-defendants because each of them
13 have the right to remain silent. We have to prove the
14 case. They have an absolute right to remain silent.
15 Don't bring the codefendant in, that's what they would
16 have you to believe, discount A. J. don't listen to A. J.
17 He's in it for himself, he got a break, he got a deal.
18 Don't listen to A. J. and if you don't listen to A. J. not
19 nine months but from here on out, they get away with
20 murder. Render a verdict that speaks the truth. Thank
21 you.

22 THE COURT: Mr. Boyd?

23 MR. BOYD: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 (A bench conference was held.)

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1 THE COURT: Ladies and gentlemen, we will take a
2 short break at this time, five or ten minute or so to give
3 you a chance to move around a little bit and get some air.
4 Won't have a chance for a smoke break right now but we
5 will get one later on. Just don't talk about the case.
6 Jurors I understand that the pizza is already in the jury
7 room but don't eat it just yet. Okay?

8 (A break was taken.)

9 THE COURT: All parties and attorneys are in the
10 courtroom. I note all jurors have returned at this time.
11 We are going to have closing from the defense. Again, I
12 will ask you to give them your undivided attention,
13 please. Mr. Boyd?

14 MR. BOYD: May it please the Court? As you all know
15 the State doesn't allege that Terrance McKnight pulled the
16 trigger that killed the victim in this case. The State
17 doesn't allege who was up on the porch. The State is
18 alleging that he participated in this crime as a lookout
19 in some way. The State still has the burden of proving
20 that and I just want to go through just a few things and
21 comment on a few things that Mr. Pope talked about. Mr.
22 Pope is asking you to jump to a lot of conclusions and
23 infer a lot of things that you really can't infer in this
24 case. Looking at the evidence you've heard the testimony
25 of a number of witnesses over the course of the days.

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1 You've heard from Katrina Howard, I don't know what
2 credibility you give her testimony, I really don't care
3 because she didn't mention Terrance McKnight. She said
4 nothing at all about Terrance McKnight. You heard from
5 Rashad Simpson, he didn't mention anything about Terrance
6 McKnight. None of the other witnesses or lay witnesses
7 mentioned Terrance McKnight until you get to A. J. Simpson
8 (sic) and A. J. Simpson (sic) is where it comes in.
9 Basically the case against Terrance McKnight depends on A.
10 J. Williams -- I'm sorry, I think I called him Simpson --
11 A. J. Williams. The State's case depends on him. It
12 depends on him. Now, I want to go through a few things
13 about how he came to be involved in the case. The first
14 thing as Mr. Pope told you, A. J. is the in the jail and
15 he is talking to someone else, a jailhouse informant and
16 apparently the jailhouse informant said, "Well, you know,
17 I can benefit myself by giving some information on a
18 murder." So he contacts the police and he agrees to be
19 recording, and during that time A. J. talks about the
20 Cunningham murder. Now, as a result of that the police
21 talk to A. J. and he gives them a statement, I believe
22 that was approximately December 31, 2003. You know, the
23 interesting thing is though if you back it up, he's in the
24 jail -- A. J. is in the jail, he's talking to this guy, it
25 says -- he mentions names but there's never anything about

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1 what he said about Terrance. Because, in fact, he would
2 have no reason. They said -- they had a tape recording,
3 they had the guy wired, and he is in the jail and he is
4 talking and certainly A. J. has no reason talking to him.
5 He is not -- has no reason to be covering up for anyone
6 because he's not covering up for himself then. So he's
7 talking to them and then the police talk to him and he
8 tells them first that he's sitting in the car with a black
9 female who we assume he's talking about Katrina Howard,
10 and that he sees the murder from that. He says at that
11 time that Terrance had nothing to do with it. And then a
12 few days later on January 7th of 2004 he gives another
13 statement and at that time admits basically the other part
14 of it, that he in fact wasn't sitting in the car and he
15 says at that time about Terrance that Terrance was there.
16 And he says Terrance knew what was going on and he says
17 that Terrance knew what was going on, he put two and two
18 together. That's the first statement he has made when he
19 has come forward with all of this. Well, if you take what
20 he said then Terrance is charged with conspiracy.
21 Terrance is charged with attempted armed robbery and
22 basically it all goes about back to the conspiracy, that
23 they said he had an agreement to act as a lookout in some
24 way. Well, if you're having to put -- if you know what's
25 going on because you are putting two and two together then

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1 you don't have an agreement, you're figuring out what was
2 going on. He put two and two together. That's not an
3 agreement, that's him knowing what is going on but
4 certainly that's not him agreeing to do anything. And
5 knowing what is going on is not enough to convict someone.
6 He must have participated in some way according to the
7 law. I don't want you to get confused on this. The fact
8 that Terrance knew that they were talking about robbing is
9 not enough to convict him of the crimes. Being present at
10 the scene of the crime is not enough to convict someone,
11 the Judge will tell you that in his instruction. And you
12 will have his written instructions in the jury room.
13 Being present is not enough, knowing that the crime is
14 going to be committed is not enough to convict someone of
15 the crime. Take for example if my neighbor tells me I am
16 going to take a baseball bat and am going to beat the
17 daylights out of the neighbor on other side of him and I
18 say, "I am going to follow along. I am going to watch him
19 do this," and I follow along and I see him beat my other
20 neighbor senseless, I am not guilty. Because although I
21 was present, although I knew what was going to happen, I
22 didn't participate so I am not guilty of that crime.
23 Now, there is another crime called misprision of a
24 felony, and that's when someone knows a crime is going to
25 be committed and doesn't do anything to prevent it like

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1 contact law enforcement or warn the victim or that they
2 have information about the crime and failed to come
3 forward and talk about it, that's a separate crime, and in
4 that case I would be guilty of that crime. And based on
5 A. J. Williams' statements of the 31st of January and then
6 January 2nd of 2004, Terrance was charged with misprision
7 of a felony based on what A. J. Williams has said at that
8 time. Even though the police at that time had information
9 that Terrance was present, they had information that
10 Terrance knew what was going on, they didn't have
11 sufficient evidence to charge him with murder or attempted
12 armed robbery or conspiracy and they charged him with
13 misprision of a felony. And I will tell you right now,
14 he's guilty of that, he is guilty of misprision of a
15 felony. Because he heard about what was going on, he
16 didn't do anything to prevent or warn, he didn't contact
17 the police after it happened, he's guilty of that. If
18 that's what he's charged with I would say he's guilty.

19 Nothing else happens as far as murder charges against
20 Terrance McKnight until December 16th of 2004, and what
21 happens on that date? A. J. Williams enters into a plea
22 agreement, a written plea agreement. At that time A. J.
23 Williams has been charged with murder. A. J. Williams
24 knows at that time he's charged with murder. He knows
25 that if he is convicted of murder he's facing at a worse

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1 case scenario life in prison without the possibility of
2 parole, but at a best case scenario the best he could hope
3 for would be 30 years without the possibility of parole if
4 he's convicted, that's what he was facing. And he was
5 also facing the attempted armed robbery charge of 20 years
6 and a conspiracy charge of five years. But in addition to
7 that A. J. Williams had other charges pending against him
8 that had nothing to do with the Willie Cunningham murder.
9 He had charges of -- he had charges of common law robbery
10 of someone else, of a Hosea Jesus Ventura. He was charged
11 with conspiracy to commit grand larceny from someone else.
12 He was charged with grand larceny of that person. He was
13 charged with resisting arrest. So he had a number of
14 other charges, other charges unrelated to the Cunningham
15 murder for which he was facing potentially up to 31 years
16 for, so he was entering a plea on those charges. He
17 enters into a plea agreement and he gets an active ten
18 year sentence, which is agreed upon, it was a plea
19 agreement that he got that. And it was also agreed that
20 the charge of murder would be dismissed. It was agreed
21 that he would plead guilty to the conspiracy and attempted
22 armed robbery and sentencing would be withheld on those
23 charges. Why is sentencing being withheld on those
24 charges? Why wasn't he gone ahead and sentenced then? It
25 was agreed that he would get a minimum of ten years on

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1 those charges related to the murder of Willie Cunningham.
2 He would get no more than 20 years on those charges,
3 somewhere in that range. But why was sentencing withheld
4 at that time? Because they wanted him to testify and be
5 used in the Cunningham murder. Now, there's nothing wrong
6 with the State doing that, but when -- if they get up here
7 and says he has no reason to testify, he has no reason to
8 say anything, if that's the case why withhold sentencing
9 until after he has testified, until after he's fully had
10 the cooperation about that? And at that point I submit to
11 you that A. J. Williams has a reason to lie, he has a
12 reason not to tell the truth and he has a reason to
13 implicate anybody he can because he has got something to
14 gain and he has got something to lose at that point. He's
15 facing up to 20, as little as ten, you know good and well,
16 you use your common sense, he wants the ten or as close to
17 that ten as he can get, he doesn't want the 20. And it's
18 only after he enters that plea agreement and he goes ahead
19 and he enters that plea that he again talks to the police
20 and now after all of that time he says, "Well, Terrance
21 was a lookout with me." But he has got a reason to say
22 that now, he's got a reason, it's called 20 years hanging
23 over his head. It's also in his plea agreement. As I
24 said if he withdraws from the plea agreement the State
25 will seek and can go forward on a murder charge and seek a

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1 sentence of life without parole on him. So he has got
2 that all on his head. And sure, Terrance is his first
3 cousin, he may not like or want to hurt his cousin, but
4 he's going to look out for number one first. You are not
5 dealing with A. J. Williams -- with an honorable person.
6 You can consider his credibility, you can consider -- and
7 the Judge will tell you this, on credibility someone's
8 prior record, consider. Forget about his involvement in
9 the Cunningham murder, look at his record otherwise. Look
10 at the fact that he pled guilty to the common law robbery,
11 look at the fact that he pled guilty to grand larceny and
12 those other charges, consider that on his credibility.
13 Only after all of that time was Terrance McKnight charged
14 with murder. Up to that time they had first charged him
15 with misprision of a felony. I concede that he's guilty
16 of it. But murder? Attempted armed robbery? Conspiracy?
17 No.

18 I want to ask a very simple question about what a
19 reasonable person would do. The State's case against
20 Terrance McKnight is based on the testimony of the word of
21 A. J. Williams, not his first statement, not his second
22 statement but it's based on what he said after his plea
23 agreement in this plea. I ask you to consider what a
24 reasonable person would do under these circumstances.
25 Would a reasonable person, if they met A. J. Williams

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1 knowing what the person knows about it, would you be
2 willing if he would say, "Loan me \$50 and I will bring it
3 back to you tomorrow," would a reasonable person be
4 willing to loan him \$50 and trust him with \$50 knowing
5 what a person knows about him? I submit to you if you --
6 if a person can't answer that question yes, then I submit
7 a person can't answer that question to trust him enough to
8 convict another person, another citizen of murder. If he
9 couldn't be trusted with \$50, can he be trusted with a
10 life and the freedom of another citizen? I submit to you
11 he cannot. But let's go a step farther. Even if you
12 believe A. J. Williams' testimony, even if you believe
13 what he said about Terrance's -- what happened that day
14 and Terrance's involvement, I asked him on cross
15 examination, "What did Terrance say? What did Terrance
16 say out there?" And he said I think something to the
17 affect of he didn't remember what Terrance said or didn't
18 remember if Terrance said anything. If Terrance never
19 agreed to be a lookout then even if you are taking A. J.'s
20 testimony as truthful, if he never agreed to be a lookout
21 then he's not guilty of this. Now, Mr. Pope talks about
22 having a tacit understanding, that it doesn't have to be
23 verbal or agreed and that could be true, but there has to
24 be some kind of agreement. Where else in the evidence is
25 there any agreement? Is there anything there that he

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1 nodded his head? Okay. Is it there, anything, that he
2 did anything? He gives the example of jurors walking in
3 and out of the courtroom there being an agreement. Well,
4 I submit to you Mr. Pope is wrong about that. Because
5 jurors -- you as jurors don't have a choice of whether you
6 are going to come in here or not, there's no agreement you
7 are going to do it. You are told you've got to do it, and
8 you don't have an agreement as to what chair you are going
9 to sit in, y'all come in and whoever is first take a
10 particular chair. The State has to prove beyond a
11 reasonable doubt -- and I'll talk about beyond a
12 reasonable doubt in a minute -- the State has to prove
13 beyond a reasonable doubt that there was some agreement,
14 that Terrance had some agreement to act as a lookout or to
15 participate in this, and if the State fails to prove that
16 then Terrance McKnight must be acquitted of this. The
17 State wants you to make an assumption there was an
18 agreement because he was with these people, but you can't
19 jump to an assumption, you have to base it on the evidence
20 that's been presented. You can't convict on an
21 assumption.

22 You can look at the facts in this case and you can
23 tell what happened. Terrance McKnight at that time was 16
24 years old. He is 16 years old, they're out there at these
25 apartments, they're hanging out with a bunch of guys,

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1 there's these older guys there, two older guys, and they
2 are also not only older guys, they are big guys, six-three
3 or six-four, well over 200 pounds. You know these guys
4 are mouthing off, showing off, showing they have guns,
5 showing they are big shots and Terrance McKnight, he's
6 impressed by that. These guys are talking about robbing
7 someone and everything, they start walking somewhere,
8 Terrance is walking along, "Are these guys really going to
9 do this?" You know, he's probably a little scared, a
10 little excited, wondering whether they're going to do
11 this. These guys start walking up on Willie Cunningham's
12 porch and it comes to his mind, "Hey, these guys are
13 serious. They are really going to do this. I am out of
14 here," and he starts walking down the hill. He didn't
15 participate in this murder. He was hanging around with
16 people he shouldn't have been hanging around. He should
17 have done a lot of things different. He should have
18 contacted the police. He should have warned Mr.
19 Cunningham. He should have done all of those things. But
20 unfortunately he was acting like an immature 16 year old.
21 One thing that is for certain in Terrance's statements to
22 the police was about being scared. When he first told the
23 police he didn't want to give a written statement, he was
24 scared about this. At the end of his statement he said,
25 "This is the real story, I was scared."

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1 The State has the burden of proof in this case.
2 Terrance McKnight is presumed to be innocent. He doesn't
3 have to come into this court and prove to you that he was
4 not a participant in this murder. The State has to prove
5 to you that he was a participant in this murder. We have
6 presented no evidence in this case. He could have taken
7 the witness stand, there was no need for him to. He has
8 told the police what he knows about this. He has told the
9 police where he was, but one thing he told the police --
10 or never told the police, ever, that he was a participant
11 in it. He told him what his involvement was, he never
12 told them that he was a participant in this robbery. What
13 presumption of innocence is is that the State has to prove
14 their case to you, they have to prove his participation.
15 The State has to do that with what's called proof beyond a
16 reasonable doubt, because our law is based on the
17 assumption that it's better to take a chance of a guilty
18 person going free than to take a chance of an innocent
19 person being convicted. And unfortunately innocent people
20 do get convicted and guilty people sometimes go free. Our
21 system is not a perfect system. And I submit when an
22 innocent person is convicted it's a travesty of justice
23 and it happens because jurors don't understand the concept
24 of reasonable doubt. It's not a concept of you weigh the
25 evidence and whichever side the scales of justice come

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1 down on wins. In a civil case that's the case. You
2 balance it out and whichever side the scales tip on back
3 and forth that's who gets the verdict. But in a criminal
4 case the scales have to be loaded down in favor of the
5 State before you can render a verdict of guilty. It's not
6 just you can go back to the jury room and you can find,
7 "Well, I don't think Terrance McKnight is a participant in
8 this," in that case your verdict would be a verdict of not
9 guilty. If you go back to the jury room and think maybe
10 he did, maybe he didn't, in that case your verdict would
11 be not guilty. This is where it gets hard. You could go
12 back in the jury room and you can say, "Well, based on all
13 of the evidence I've heard I think he is guilty but you
14 know, I'm not sure." There's that hesitation. If you
15 hesitate to convict on the statement of A. J. Williams, in
16 that case you have a duty to render a verdict of not
17 guilty because you can only convict if you are convinced
18 beyond any reasonable doubt that Terrance is guilty.

19 In this case I would submit to you that the State has
20 failed to prove it beyond a reasonable doubt. Have they
21 proved that he walked down the street and he walked up
22 close to the Cunningham house? They have. Have they
23 proved that he heard them talking about robbing
24 beforehand? Yes, they have. Have they proved that he
25 participated in it and have they proved that he had an

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1 agreement with anyone? No. You may think that Terrance
2 needs some punishment for this and I don't disagree with
3 you, he deserves some punishment. But when you look at
4 the charges that he has been charged with he is not guilty
5 of those and I ask you for a verdict of not guilty. Thank
6 you.

7 THE COURT: Mr. Chiarenza?

8 MR. CHIARENZA: Please the Court? You have to bear
9 with me, I am old school. I don't have the facilities
10 that the prosecution has in order to make my case to you.
11 And in fact, a great many of the things that the solicitor
12 told you quite frankly I agree with. I thought 95 percent
13 of what he had to tell you was right on the money because
14 what did he talk to you about? Well, he talked to you
15 about the law in this case that the Judge is going to
16 charge you, I can't take any issue with that. The Judge
17 is going to speak after I speak and he's going to charge
18 you how to apply the law of South Carolina to the facts
19 and the evidence that you believe you heard in this case.
20 I take no issue with that. Mr. Pope also told you about
21 the evidence they have in this case, the physical evidence
22 and I take no issue on that. I told you way back Monday
23 or Tuesday when we first spoke if y'all remember that they
24 would have 50 or so items of evidence in this case and not
25 a single one of those items would point to the guilt of my

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1 client. I think Mr. Pope more or less confirmed that.
2 Well, I'll take that back, because I think in his view if
3 these are puzzle pieces and then Mr. Williams puts the
4 puzzle -- he's the picture of the puzzle then Mr. Pope, I
5 submit, would tell you that these items do prove to the
6 guilt of my client. What I am telling you is you can't
7 look at a single one of those items, 50 or 60 of them, and
8 say this bullet links Jaleel Page to the crime because it
9 has got something on there that only Jaleel Page could
10 have contributed to this crime or this piece of clothing
11 or this shell casing or this photograph. So under his
12 theory, yes, these may be puzzle pieces. But under
13 whether or not any of these things directly point to my
14 client to the exclusion of any other possible suspect, no.
15 They have a photograph of my client, it's a driver's
16 license photo. Every one of you that has a driver's
17 license has a driver's license photo, it doesn't mean you
18 are guilty of murder. We'll talk about that photograph,
19 what they did with it or didn't do with it in a moment.
20 As I told you, I agreed with 95 percent of what
21 Mr. Pope had to say, problems with the details and as
22 y'all know, the devil is in the details. He spoke to you
23 about the burden of proof but I don't think he really
24 illuminated what that burden is all about. He said that
25 the State has the burden to prove my client guilty beyond

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1 a reasonable doubt. The Judge is going to charge you as
2 to what a reasonable doubt is. I just want to talk a
3 little bit about the concept of a burden. I chose that
4 word for a reason. They didn't say the State has the task
5 of proving the defendant guilty, they didn't say the State
6 has the errand of proving the defendant guilty, they
7 didn't even say the State has the chore of proving the
8 defendant guilty or the job of proving the defendant
9 guilty. They call it a burden and a burden suggests
10 personal responsibility of great weight which requires
11 much toil, effort and work. The State has a burden to
12 bear and I submit to you in this case they have not
13 satisfied their burden. Because what they gave you in
14 Mr. Williams' statement -- and by now you probably know
15 what the defense feels about Mr. Williams' statement --
16 but you are not going to get off that easy, we're going to
17 get into that in a moment. They gave you Mr. Williams'
18 statement, they put Katrina Howard on the stand so you
19 could believe bits of pieces of her testimony. And they
20 brought 50 or 60 items of evidence that have nothing to do
21 with my client. Why do I think then they didn't meet
22 their burden? Well, that photograph they had of my client
23 could have easily been put in a photo lineup and wasn't,
24 wasn't done at any point. The detective would have you
25 believe that the reason they didn't do that is because now

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1 we knew who he was so we didn't have to do that. Well,
2 the only reason you knew who he was or thought you knew
3 who was basically what A. J. Williams was telling you.
4 And here is a guy who is a criminal, who as he sat in that
5 witness chair before you has been convicted of half a
6 dozen crimes. This is the guy that because of his
7 testimony Detective Robbins said, "There was no reason to
8 put your guy in a lineup at this point." I'm talking
9 about a burden here. Why not do that? I think at some
10 point in the solicitor's argument he said, "It's our
11 responsibility to bring the evidence into court and prove
12 this case to you." Well, if that's true why not go back
13 into that trailer park and talk to these people and say,
14 "Did you see either one of these guys here that day?" Why
15 not ask Rashad Simpson? In fact -- and you can have any
16 of this testimony replayed for you, and I know that's not
17 what you want to do on a Friday afternoon is come back in
18 but it's real important. So don't go back there -- if
19 there's a conflict over what somebody said or didn't say,
20 get it right. Come back in and ask the Judge to listen to
21 it, it's worth it. We all want to go home, so does my
22 client, so you owe it to him to get it right. But if you
23 aren't sure about something, come back in here and listen
24 to it. But Rashad Simpson said, "I saw two big guys, they
25 asked me about some weed, I kept walking." I asked him --

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1 at some point in his testimony he said it was Lamont
2 McCollum and Jaleel Page. I asked him, "Well, you didn't
3 know the guys when you saw them "-- and I'm paraphrasing
4 again but I believe all of this came out in his
5 testimony -- no. He didn't know those guys that were
6 asking him for weed. Later on maybe on cross -- or I
7 can't even remember if it was my cross examination or the
8 State's direct, I'm sorry -- he was asked, "Well, who were
9 the guys?" And he said, "Lamont McCollum and Jaleel
10 Page." And I asked him, "The only reason you are saying
11 or you know it was Jaleel Page is because that's what the
12 police told you, right?" And he said yes. So the police
13 could have given him any name for that other guy and in
14 his mind that's who that would have been. He's not
15 telling you of his own personal knowledge that on that day
16 Jaleel Page asked me for weed and he was never shown a
17 lineup. And he sat in that witness chair, my client has
18 been there for five days, Rashad Simpson never said that
19 guy there is one of the guys who asked me for weed that
20 day. How burdensome is that? The State has got that
21 burden, they didn't do that.

22 Detective Robbins would you have you believe that
23 it's too burdensome to attempt to get any physical
24 evidence nine and a half months after the crime. Well,
25 Mr. Pope was fond of referencing television. I think

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1 we're all aware that cases can be solved five, ten, 15
2 years after the crime based on newly discovered evidence.
3 How burdensome would it have been to go back to the
4 trailer park? I don't know what they could have found.
5 There's testimony that these guys were drinking beer,
6 busting bottles under that tree, maybe there's a bottle
7 behind some bushes somewhere with some fingerprints on it.
8 I don't know if there is. We're talking about a guy who
9 is charged with murder here and they want you to convict
10 them on the word of A. J. Williams, Katrina Howard and
11 very little less. Do you remember the burden? Nine and a
12 half months later we didn't even bother to try and find
13 him. And to think it also was their testimony that they
14 didn't have to try and get a photograph, not that they
15 couldn't, ultimately I believe on cross examination she
16 said, "Well you know, we didn't even try to get it." They
17 have a burden that they have not met. This is a murder
18 charge. They didn't go back there and bring anything new
19 to any of the witnesses who could have told you anything
20 about this now that they had a suspect. They were
21 satisfied that they had enough.

22 How about the car? Katrina Howard, the gray car,
23 black car, primer colored car, why not take a picture of
24 the car and present it? How much of a burden would that
25 have been? Present it to you, present it to us, present

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1 it to anybody. This is supposedly the getaway car that
2 people saw driving by, and on that point I would submit to
3 you regarding the 911 tape -- and you hear it the way you
4 hear it -- the solicitor wanted to portray that tape as
5 that person definitely seeing a car drive by. Well, I
6 heard them say drive-by, I did hear that, then I heard the
7 dispatcher say is it drive-by and then I hear her say,
8 "Well, no, I heard the shots." Okay. So I don't think
9 that there's any conclusion or any definite statement on
10 that 911 tape that says, "I saw a car go by, or a car is
11 driven by or any description of the car." But if there
12 was or if this is a person who may or may not have seen
13 the car was shown a photograph of Katrina Howard's car,
14 perhaps that might have tightened things up a little bit
15 more. That's their burden and they didn't even bother to
16 do it.

17 What's the State's basic case here? Well, basically
18 this crime occurs in March 16, 2003 and they follow
19 various leads. There was some white guys in the area
20 smoking pot in a car and there was -- maybe it was a
21 ripoff gone bad, it was this and that. And Detective
22 Robbins indicated that there was various bits and pieces
23 of information coming in and it really wasn't going
24 anywhere. Then around sometime in July they get
25 information that the shooter, the guy who shot Willie

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1 Cunningham is on page 61 of the York Comprehensive High
2 School yearbook. So they go get a copy of the York
3 Comprehensive High School yearbook, there's Lamont
4 McCollum and he's developed as the prime suspect at that
5 point, and that's in July. So there's a little bit of a
6 spike in the progress of the case there and then not a
7 whole lot more happens. They take Lamont McCollum's
8 photo, show it to Rashad Simpson who says, "Yeah, that's
9 one of the guys." But no warrants are issued for Lamont
10 McCollum, no press conference is held, nobody is looking
11 for Lamont McCollum, at least the detective didn't testify
12 to that, until along about December. A. J. Williams is in
13 the detention center on a number of other charges
14 unrelated to this matter and he starts talking. And
15 Mr. Pope asked what I think is a very pertinent question
16 about that. First he said A. J. made a mistake, I will
17 certainly join Mr. Pope in this. This is probably
18 something we are both cursed with is talking too much. A.
19 J. made a mistake, he was talking too much. I submit to
20 you, ladies and gentlemen, that was not a mistake. That
21 was a calculated maneuver on the part of a criminal.
22 Think about it. In July a shooter is identified. In July
23 police are down in the neighborhood showing this lineup to
24 Rashad Simpson and apparently doing some follow-up
25 investigation. A. J. lives in that neighborhood, A. J.

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1 knows Rashad Simpson, A. J. is starting to feel the noose
2 tighten, A. J. is starting to feel the heat. Sometime
3 between July and December A. J. commits another crime and
4 he's in the detention center. You know, he may have been
5 in the detention center in July, I'm not sure, whatever
6 the case he is from the neighborhood -- and I don't know
7 if the testimony is either one way or the other so I don't
8 want to misstate something. But be that as it may he
9 knows they're closing in. Somebody ratted out Lamont,
10 that wasn't A. J. That was somebody who said the picture
11 is in the yearbook. So A. J. knows it's probably not much
12 longer before they figure out he was involved. So A. J.
13 starts spinning a story. I think he is an intelligent
14 guy, I'm not here saying he's an idiot, I'm telling you
15 he's a liar. But I think he's crafty and I think he knew
16 that his goose was cooked. I submit to you that A. J. is
17 down in the jail and A. J. witnessed the shooting and A.
18 J. knows Lamont did the shooting, A. J. knows Lamont shot
19 twice because A. J. was standing right next to him when it
20 happened. Boy, A. J. doesn't want to be on this porch.
21 The fact he was on the porch is bad. In fact, A. J. told
22 you, "I was trying to keep myself out of the middle of
23 it." When I was talking to him about all of those
24 inconsistent statements, "I'm trying to keep myself out of
25 the middle." Well, if you're not in the middle where are

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1 you? You are on the side. Where did A. J. put himself in
2 his statement? On the side. "I was on the side of the
3 trailer?" Because he knew it was just a matter of time
4 before folks in that neighborhood said, "Well, if Lamont
5 did the shooting and Lamont was with A. J. that day, those
6 guys hang out together, then A. J. has got to be
7 involved." So he knew he was there, he knew he was
8 involved, he knew it was a matter of time, so he starts
9 spinning a tail that's favorable to him. "I didn't want
10 to be up in the middle of all of this." So he took the
11 side. Of all of the inmates downstairs in the York County
12 Detention Center right here in this building, however many
13 they've got down there, 100 or 200, I don't know, but one
14 guy A. J. Williams decides to spin this tail to is the
15 long time York Police informant Kenyatta Sherrer. That
16 worked out pretty well, didn't it? Either it was just a
17 big mistake and A. J. is babbling about being involved
18 with a murder for no apparent reason, because logic would
19 tell you if he just keeps his mouth shut everything will
20 be okie dokie. But not only does he talk but he decides
21 to talk to rat fink number one, a guy who has got a
22 history with the York Police Department, a guy who A. J.
23 Williams testified on my cross examination that he knew or
24 knew of. I also asked A. J. "Were people talking down in
25 the jail? Yeah." And you were hearing things. There's a

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1 lot of scuttle butt going on, rumors, this and that. He
2 said, "We had heard that that girl might have been
3 Lamont's girlfriend." So I submit to you that A. J.
4 wanted off that porch.
5 Mr. Pope asked and I must commend him because, boy,
6 he sure did figure out what I was going to come up here
7 and talk to you about. And I would submit to you it's an
8 obvious and plausible possibility that we came to this.
9 He asked you why would A. J. put Terrance there and Jaleel
10 there? Well, he doesn't put Terrance there first, does
11 he? If A. J. was looking out for Terrance, if A. J. was
12 just casually speaking to just another buddy down there at
13 the jail and letting it all flow anyway about his
14 involvement in this murder, well, then why keep Terrance
15 out of it? He's telling it like it is, he's just -- this
16 is just idle chatter down there at lunchtime, why would he
17 keep Terrance out of it? But he did, he did keep Terrance
18 out of it for some reason. Maybe because Terrance wasn't
19 in it at all. Possibly Terrance got injected into the
20 story there when A. J. needed somebody else to corroborate
21 this story. Who better than his impressionable 16 year
22 old cousin to help him get out of all of this mess. So I
23 submit to you that you can consider that when you are
24 considering Mr. McKnight's statement. Where did the
25 statement come from and why is it so darn similar to A. J.

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1 Williams' statement? Two lies are better than one.

2 While we're on the topic of Terrance's statement,

3 it's kind of like the 600-pound gorilla sitting on the

4 couch, we are all pretending it's not there, right?

5 You're going to be charged that you cannot consider

6 Mr. McKnight's statement against my client. You are going

7 to have it back there, you are going to read it, but that

8 is the law. You don't have to worry about why that's the

9 law, that is the law. When you go back there despite the

10 fact there is a statement from Terrance McKnight, it is

11 not evidence against my client. You are not even supposed

12 to think it, but if one of you brings it up while you are

13 deliberating about my client, I would urge the rest of you

14 to remind that juror, "We are not to supposed to consider

15 this piece of evidence against Mr. Page." You can

16 consider it for any other reason. You can consider it in

17 Mr. McKnight's case, you can consider it regarding what

18 Mr. Williams may have done or not done, but you can't

19 consider it as evidence in my client's guilt.

20 Mr. Pope I think gave you all a great description and

21 definition of circumstantial evidence and this and that,

22 we draw certain conclusions by certain things. Well, he

23 wants you to conclude that neither one of those guys who

24 spoke to Rashad Simpson could be A. J. Williams. I have

25 got no problem with you excluding that. Clearly

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1 Mr. Simpson said they were both tall, A. J. Williams is
2 five-seven. I take issue with the concluding that the
3 other guy was necessarily Jaleel Page because he was never
4 identified by Mr. Simpson other than he said that was
5 Jaleel Page. He never looked at a photograph of him and
6 said that was the other guy.

7 The State's case, numerous discrepancies in the
8 statements from A. J. Williams, he's just simply not
9 credible. A. J. is looking out for A. J. and A. J.
10 started looking out for A. J. long before he started
11 talking to the police. A. J. did not want to be on that
12 porch. A. J. knew he had to get to the side. The reason
13 A. J. didn't cook up some story about it was like the gun
14 fight at the OK Coral out there, the guys were pow, pow,
15 pow, because A. J. is smart enough to know two shots were
16 fired, they're only going to fire two bullets. If I start
17 making up some story about how all of this other nonsense
18 was going on then it's just not going to look right.

19 Who knew Rashad? A. J. Who knew that Rashad carried
20 lots of money? A. J. Who lived right around the corner
21 from the Cunningham's? A. J. Who apparently had Rashad's
22 telephone number to be able to call him after

23 Mr. Cunningham was shot? A. J. Rashad told you A. J.
24 ~~called him until later when he said somebody else called~~
25 him. And I haven't quite figured out how that plays in to

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1 protect A. J. but I will point out that it's just another
2 discrepancy. In the final statement he gave he said, "Oh,
3 it wasn't me that called, it was some other guy." Why is
4 it important that A. J. knows Rashad and that A. J. lives
5 around the corner and that A. J. is walking back and forth
6 in this neighborhood and seen there on a regular basis?
7 Because as Joyce Cunningham told Detective Robbins Willie
8 Cunningham was a security-minded individual. Willie
9 Cunningham did not open the door for someone he did not
10 know. And the solicitor pointed out that none of us are
11 going to have the opportunity to ask Mr. Cunningham that
12 question. But we got the answer from his wife who lived
13 with him, who probably knew him better than anyone else in
14 the world, knew his habits. She told the detective he
15 would not open the door for someone he didn't know. Well,
16 I will give you two different scenarios. You've got two
17 guys six-foot four, 240 pounds and up both toting guns on
18 your front porch, or you've got A. J. the kid from around
19 the block on your front porch, which one are you going to
20 open the door for? Is there a possibly there that maybe
21 A. J. was on that porch, maybe that's why the door got
22 opened?

23 We talked about a puzzle. I could probably go on for
24 hours about Katrina Howard, I will spare you. Because
25 really again here is where the solicitor and I agree, no

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1 way nine people could have been on that porch. Solicitor
2 says that even he believes that the evidence has shown
3 Lamont McCollum was the shooter in this case, so we will
4 just leave Katrina there. We may have to come back to
5 her.
6 Mary Burress, talked about her briefly. Solicitor
7 told you it is their responsibility to bring the evidence
8 to court, bring the witnesses here for you. Mary Burress
9 wasn't here. Got into a couple of words that she said to
10 the detective. I don't know why Mary Burress wasn't here,
11 because she's not here we can't measure her credibility.
12 You have no idea if she got one eye circled around, crazy
13 in her head or what, she wasn't here and we have no idea
14 what's up with this person. But what we do know is she
15 was laying up in the bed at 2:00 on a Sunday afternoon.
16 We know that her neighbor, Gaither Williams, said that
17 when the shots were fired Gaither woke Mary up and got her
18 out of the bed. So as far as what Mary knew or didn't
19 know about what was going on that day, I'll let you all
20 measure that to the extent that you can given the fact
21 that you didn't get to size her up here in the courtroom.
22 But I will submit to you back to that burden is they could
23 have brought her in here and let her tell you all about it
24 and they didn't.

25 Gaither Williams, solicitor I think have pointed to

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1 two different statements from her. In her written
2 statement she doesn't say one big guy and a bunch of other
3 little guys, she says the biggest guy is Lamont, whatever
4 it was she said. I submit to you as to that statement
5 what's more likely, you've got two guys that are six-foot
6 four, 200 and something pounds hanging out with a bunch of
7 little guys, are you going to say the one big guy or the
8 bigger guy? I submit to you you probably would say there
9 were two big guys, you know. Because making the
10 difference between this guy being bigger than that guy
11 when they were both six-four and they're both up in the
12 two hundreds, I would submit to you it was not what a
13 witness would be likely to say. Beyond that I believe in
14 her actual testimony on the stand she was a little more
15 clear that there was only one big guy, only one big guy
16 and everybody else was much smaller. Again, you can come
17 back here and replay it if you want to. At no time did
18 she say my client was out there. I believe for the last
19 question I asked her was, "Did you see my client out there
20 that day?" And she said, "No." So not only is there a
21 real question about whether or not Mr. Page was really
22 there, because the people that put him there are Mary
23 Burress earlier on in the day and the moment she got out
24 of bed, I guess, and Mr. Williams, Katrina Howard, and
25 that's all you can consider against my client as far as

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1 people who put him there. Mr. Simpson only says there was
2 a big guy. Later on he was told by police that that
3 guy -- big guy was Jaleel Page.

4 So the first -- when I get to the end of this, and
5 there is a end, I am going to ask you to consider two
6 possibilities: One would be that my client is simply not
7 there at all and that A. J. Williams has put him there, or
8 that my client was there because he hangs around there
9 from time to time he was there. He may have even asked
10 Rashad Simpson for some weed or been standing next to the
11 guy. I submit to you that there's no credible evidence of
12 that, but certainly you are the jurors, you can decide to
13 believe that. Even if you want to believe my client was
14 there earlier in the day, that Mary Burrese saw him about
15 noon and that he was standing next to Lamont when Lamont
16 asked him for some weed. Even if you believe all of that
17 it doesn't put him on the porch, it just doesn't. The
18 only people who put them on the porch that you can
19 consider are Katrina Howard and A. J. Williams. Katrina
20 we know is just -- has no credibility. The solicitor told
21 you Lamont McCollum is the shooter. So now we take
22 Katrina away and now the only person that puts my client
23 on the porch is A. J. Williams, and went back to this A.
24 J. Williams. It keeps coming back to A. J. A. J. has
25 every reason in the world to lie and I submit to you that

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1 he was lying from the very start. And we know he was, the
2 police told you he was. He told them, "I don't know
3 anything about this, I don't know nothing about it." It
4 wasn't until later when the circle was starting to close
5 in that A. J. spun his tail because A. J. didn't want to
6 be in the middle so he put himself on the side. Don't
7 forget that door. Why did Willie Cunningham open the
8 door?

9 I'm just trying to see that I covered all of my
10 points here and hopefully be able to wrap this up, I know
11 you've got pizza waiting. The solicitor asked you to find
12 the truth. The truth in this case, the truth is that they
13 didn't prove their case beyond a reasonable doubt.
14 There's nothing wrong with that. The truth here,
15 sometimes it's impossible to know what the events were,
16 it's impossible to say what exactly happened. We would
17 all love to have the absolute truth in every case, but if
18 the truth is that the solicitor did not prove his case
19 beyond a reasonable doubt then that is the truth that your
20 verdict must speak -- your verdict must speak that. The
21 truth here today then would be Mr. Page is not guilty
22 because he walked in here presumed innocent, the State
23 didn't prove his guilt beyond a reasonable doubt so the
24 truth we speak then is that he's not guilty. I want the
25 truth just as much as the solicitor does, believe me.

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1 Solicitor asked you why would A. J. put these other guys
2 in. A. J. wasn't worried about putting other guys in so
3 much as he was worried about getting himself out. That
4 was the first thing he wanted to do, get me out of this,
5 but that left a void so he had to put somebody else there
6 because witnesses were going to stay there were two guys
7 up on that porch.

8 You can consider whatever it is you want to consider
9 in this case that's been submitted to you as evidence.
10 The solicitor said that you can consider flight as
11 evidence of guilt and then he told you my client was
12 arrested in Washington State. You didn't hear any
13 testimony about a manhunt for my client, he wasn't on
14 America's Most Wanted. In fact, I believe what Detective
15 Sara Robbins told you is that they issued warrants on
16 December 31, 2003, they had a press conference on
17 January 6th, a week later, that's when the word went out
18 that we have got these two suspects or four, whatever, we
19 want to find in this case. Three days later my client
20 turned himself in when he heard about the warrants and he
21 happened to be in Washington. If I call your house and
22 your mom says you are in Washington, that's not evidence
23 that you are guilty of murder. Okay? Don't get confused.
24 ~~Fleeing from knowing prosecution. When there's a warrant~~
25 and you know about it and you take some affirmative act to

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1 get away from it, certainly that would be evidence of
2 guilt. In this case all they've told you is that the
3 warrants were issued, a week later there was a press
4 conference, three days later my client said, "There's
5 warrants for me, I am here." I would submit to you that
6 he did anything but flee. So a flight is innocence of
7 guilt -- I'm sorry, if flight is evidence of guilt what
8 can you read into what my client did?

9 The most important detail that I would submit that
10 Mr. Pope left out of his otherwise thorough closing
11 statement to you is this: If you choose to believe that
12 my client was there and if you choose to believe that my
13 client participated in this crime, that he planned it,
14 went forward with it, was up there on the porch, then this
15 is the most important detail that I want you to keep in
16 mind. You are going to have this in the jury room, page
17 15 of the Judge's charge, natural and probable
18 consequences, this goes to their hand of one thing. In
19 order to establish that a criminal act of murder by a
20 defendant was a natural and probable consequence of the
21 plan and agreed upon conspiracy to commit armed robbery,
22 the State must show -- it's the same burden they have for
23 everything else -- the State must show beyond a reasonable
24 doubt that a reasonable person in that defendant's
25 position would have foreseen that the criminal act of

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1 murder would be committed. You may be sitting there
2 thinking, "This hand of one thing doesn't sound fair to
3 me," and I believe that Mr. Pope even eluded to that.
4 Mr. Williams, he didn't have to plead for murder and now
5 Mr. McKnight is in a similar position, he's on trial for
6 murder and that may not sit right, but -- and I believe
7 Mr. Pope even told you that if you've got a problem with
8 that then don't find Mr. McKnight guilty of murder.
9 Somehow we have said -- somehow that doesn't stick with
10 you then don't find him guilty of murder. So what he told
11 you there is that you have discretion and what gives you
12 this discretion is this detail on page 15. Say, all
13 right. There's this general concept that we are going to
14 hear about that when a bunch of people decide to do
15 something and one guy is really the guy who is doing it
16 but everyone else when something really goes bad and
17 something terrible happens these guys that didn't intend
18 it to happen, they are just as guilty as the guy who did
19 the terrible thing. That's my charge. The Judge would
20 charge you on the real law, but that's the hand of one
21 charge. This is the discretion that you have and this --
22 it's really not even discretion, this is what you must
23 find in order to say, "All right. We are going to go with
24 this hand of one because we believe the State has proven
25 to us beyond a reasonable doubt that anybody in Jaleel

CLOSING ARGUMENTS

1 Page's shoes would have foreseen that a murder was going
2 to be committed." I submit that has absolutely not been
3 proven and eluded to in any way whatsoever. And again,
4 you consider that only if you believe that he was involved
5 at all and I submit to you he wasn't. The only guy who
6 puts him -- that after we whittle away all of the other
7 stuff and all of this evidence it doesn't point to him,
8 the only guy who puts him on this porch is the guy who was
9 on the porch, A. J. Williams.

10 It's a murder trial, ladies and gentlemen, there is a
11 lot at stake here for everybody. I will just ask you to
12 go in there and deliberate in this case. I want you to
13 realize that while we can pray for the family of Willie
14 Cunningham and we can grieve for them, it's not our job to
15 seek vengeance for them. Nobody is supposed to do that,
16 least of all the 12 of you. Your job is to put the State
17 to its burden and deliver a verdict that tells us whether
18 or not they've met that burden. I submit to you quite
19 simply that the evidence you have in this case, no way.
20 Direct a verdict, find a verdict for my client in this
21 case, absolutely find him not guilty of murder. If you
22 don't think he was there then he's not guilty of the rest.
23 If you truthfully believe he was on that porch then I
24 won't invade your province, you deliberate as you should.
25 My client is not guilty of murder and I submit he's not

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1 guilty of any of the rest of it. Thank you.

2 THE COURT: All right. Let me ask now if the
3 bailiffs and deputies please seal the doors and see that
4 no one comes in and out at this time. Now, Madam
5 Forelady, ladies and gentlemen, at this time you've heard
6 all of the evidence in the case. You've heard final
7 statements of the lawyers. It's now my duty to give you
8 an instruction as to the law which applies in this case.

9 And let me tell you that my charge, what I have done is I
10 reduced my charge to writing to a written little
11 manuscript. And Madam Forelady, you will have the
12 manuscript in the jury room with you for reference. I
13 will certainly insist, of course, that you consider the
14 charge as a whole, don't give one section as greater
15 weight over the other. Consider all of it as valid law of
16 South Carolina so be sure and remember that. But
17 certainly if there are questions about particular issues
18 you may use it to make reference to that. And it does
19 have topical headings so you can tell what is where.

20 Now, as I told you, ladies and gentlemen, the State
21 of South Carolina by virtue of these indictments charges
22 the defendants, Mr. Jaleel Page and Mr. Terrance McKnight,
23 with certain criminal offenses. You will not have the

24 ~~indictments in the jury room, and so I will not read them~~
25 to you, but again remember, they're not evidence. They

JURY CHARGE

1 are only statements of the charges against the defendants.
2 They charge Mr. Page and Mr. McKnight both with murder,
3 criminal conspiracy and attempted armed robbery. The
4 State also charges Mr. Page additionally with possession
5 of a pistol by a person under 21 and possession of a
6 weapon during the commission of a violent crime. Now, to
7 all of these indictments the defendants plead not guilty
8 and that thereby places upon the State the burden of
9 proving the defendants' guilt. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove his innocence. It is a vital and
12 important rule of our law that no matter how great or
13 serious the offense with which a person is charged, he is
14 always presumed innocent until his guilt has been proven
15 beyond a reasonable doubt, and this presumption of
16 innocence remains with him at all times through the
17 process unless and until the jury based on the evidence
18 presented finds him not guilty. It is your solemn duty as
19 a jury if not clearly convinced of his guilt beyond every
20 reasonable doubt to the contrary to acquit the defendant.
21 Neither defendant testified in this case and the fact
22 that they did not testify creates no presumption against
23 either one of them whatsoever. You may not permit this
24 fact to weigh in the slightest against either of the
25 defendants, nor may you consider it in your discussions or

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1 deliberations in any way. And the reason, of course, is
2 because the State has the burden of proof, they have no
3 burden of proof. The State has the burden beyond a
4 reasonable doubt. What do we mean by proof beyond a
5 reasonable doubt? Well, a reasonable doubt is a doubt
6 that would cause a reasonable person to hesitate to act.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendants' guilt. You know,
9 there are very few things in the world that we know for
10 absolute certainty, and in criminal cases the law does not
11 require proof that overcomes every possible doubt. Based
12 on your consideration of the evidence if you are firmly
13 convinced that a defendant is guilty of one or any or all
14 of the crimes charged, then you must find him guilty. On
15 the other hand if you think there is a real possibility that
16 he is not guilty you must give him the benefit of the
17 doubt and find him not guilty.

18 I told you earlier, you are the finders of fact in
19 this case. I cannot even comment on the facts and have
20 not done so. As the finders of fact you are the judges of
21 the credibility, or in other words the believability of
22 all of the witnesses who have testified in this case. And
23 in considering their credibility you can consider a number
24 of factors including the appearance and manner of the
25 witnesses on the stand sometimes referred to as the

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1 demeanor of a witness. You may consider whether the
2 witness was forthright or hesitant, whether the witness'
3 testimony was consistent or contained discrepancies. You
4 may consider the ability of the witness to know the facts
5 about which he or she testified or whether the witness had
6 a reason to be biased or prejudiced in favor of his or her
7 testimony. You may also consider whether the witness'
8 testimony was corroborated or in other words made stronger
9 by the other evidence or whether it was impeached or made
10 weaker by the other evidence. And the testimony of a
11 witness may be discredited or impeached by showing that he
12 previously made statements which are inconsistent with his
13 present testimony. Now, the testimony of a witness may
14 also be discredited or impeached by showing he was
15 convicted of a crime. Now, a prior conviction does not
16 mean that he's not competent to testify or does not
17 necessarily mean that he's not a reliable witness. The
18 prior conviction is merely a circumstance which is given
19 for you to consider in determining the credibility of a
20 witness. And, of course, it's for you to determine if any
21 weight should be given to a prior conviction as
22 impeachment in determining credibility. You have a right
23 to believe a small portion of a witness' testimony and
24 throw out the larger or vice versa. You may believe a
25 single witness against all of the others or vice versa.

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1 And of course you do not do so just by counting the
2 witnesses that testify. You have one objective and that
3 is to seek the truth regardless of the source from which
4 it may have come, bearing in mind you must give each
5 defendant the benefit of every doubt.

6 Now, among the witnesses were witnesses called
7 experts. They were witnesses with special knowledge,
8 skill, training or educations in a particular field and
9 were allowed to give opinions in the field of their
10 expertise. Remember, I told you that in determining the
11 weight to be given an expert's opinion, you should
12 consider the qualifications of that expert and the reasons
13 given for his or her opinion. You are not bound by any
14 opinion of an expert. You decide how much weight to give
15 to it. Now, in a case such as this there are two parts of
16 evidence generally presented, one is called direct
17 evidence, the other is called circumstantial evidence.
18 Direct evidence is the testimony of a person who claims to
19 have actual knowledge of a fact. Now, circumstantial
20 evidence is proof of a chain of facts and circumstances
21 which indicate the existence of a fact and issue. The law
22 makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence nor is a
24 greater degree of certainty required for circumstantial
25 evidence than it is direct evidence. You should weigh all

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1 of the evidence and after doing so if you are not
2 convinced of the guilt of a defendant on any particular
3 charge you must find him not guilty on this charge.

4 Now, the State also introduced a statement which is
5 alleged to have been made by one of the defendants in this
6 trial, Mr. McKnight. While it is my duty to determine
7 whether or not the statement is admitted, it is your duty
8 to determine the existence, the voluntariness and the
9 weight of any alleged statement. You must make the
10 ultimate determination of whether or not Mr. McKnight in
11 fact made the statement. If you determine he made it then
12 you must determine whether it was voluntary, and if you
13 determine it was voluntary you will then decide what
14 weight, if any, should be given to any statement by the
15 defendant. You must scrutinize carefully all of the
16 surrounding circumstances before giving any weight to any
17 alleged statement. You must be satisfied beyond a
18 reasonable doubt that the statements were made by
19 Mr. McKnight, that it was influenced by a promise of
20 reward or threat of harm, and if you find beyond a
21 reasonable doubt that an alleged statement was made
22 voluntarily then you must decide what weight if any to be
23 given to the statement. Of course, if you find it was not
24 voluntary then you would not consider the statement for
25 any purpose. Now, if you find that the statement should

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1 be considered you may consider this statement only against
2 the person making it, in this case Mr. McKnight. You may
3 not consider the statement in any way against the
4 codefendant who was, of course, in this case Mr. Page. It
5 can be considered only against Mr. McKnight.

6 Now, my duty as I told you earlier is to sit as the
7 instructor of the law. You must accept the law as I give
8 it to you as correct. You cannot question any of it, you
9 cannot make your own decisions about the law, you must
10 accept it as I give it to you as correct. At this time I
11 am prepared to go in discussions of the specific charges
12 against the defendant. Let, me ask you this, would any of
13 you like to stand? I see some of you moving around.
14 Would you like to stand for a second and stretch just
15 right where you are? Would that help anybody? All right.
16 Everybody okay? We will keep plugging along.

17 Let's discuss the charges that are against the
18 defendants at this time. We will discuss actually
19 conspiracy, attempted armed robbery and murder against
20 both of the defendants, and then possession of a pistol by
21 a person under 21, possession of a weapon during a violent
22 crime against Mr. Page only. During your deliberations
23 you must consider -- very important -- you must consider
24 each defendant separately. ~~The State must prove beyond a~~
25 reasonable doubt each element of the offense for each

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1 individual defendant. If the State fails to prove one of
2 the elements of any charge for any defendant then you must
3 find the defendant not guilty on that charge.

4 Let's talk about the charges. Conspiracy. A
5 conspiracy is an agreement between two or more persons to
6 do an unlawful act or to do a lawful act in an unlawful
7 way. The agreement alone constitutes the offense. Now,
8 as the jury you must decide whether a conspiracy existed
9 and whether a defendant was an active party to the alleged
10 conspiracy. Before a defendant can be convicted it must
11 be proven beyond a reasonable doubt that a conspiracy
12 existed and that the defendant was a knowing party to the
13 conspiracy, and that an unlawful act was committed by
14 someone in furtherance of the conspiracy. If the people
15 involved are not acting together but are acting separately
16 and individually then you may rightfully conclude they are
17 not involved in a conspiracy. However, if two or more
18 people pursue the same goal, one doing one act, another
19 doing another act, then you may conclude that they are in
20 a conspiracy to achieve that unlawful goal. If a person
21 completely withdraws from the common design or plan and
22 communicates his withdrawal to his associates under
23 circumstances that permit the associate to withdraw, then
24 the person escaped criminal responsibility for the acts of
25 the associates. However, if the withdrawal was not

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1 communicated to a particular associate or if the associate
2 did not have an opportunity to withdraw after the
3 communication, then that person remains responsible for
4 the actions of that associate that were the natural and
5 probable consequences of the common design. The law
6 requires that a person involved in a common design must
7 withdraw entirely and completely from the design and must
8 communicate that withdrawal to his associates. A person
9 who continues in the common design, which also -- in other
10 words the conspiracy -- cannot claim withdrawal. It is
11 the burden of the State of course to prove that a
12 defendant did not withdraw from an unlawful, common design
13 or plan at a relevant time, or in other words did not
14 withdraw from the conspiracy.

15 The second offense which both defendants are charged
16 is attempted armed robbery. Now, I am going to explain
17 this to you but I will tell you first that I am going to
18 define armed robbery and then some of the elements of it.
19 Armed robbery under South Carolina law is defined as
20 follows: Any person convicted for the crime of robbery
21 while armed with a pistol, sling shot, metal knuckle,
22 razor or other deadly weapon shall suffer punishment for
23 armed robbery. In order to help you understand I am going
24 to tell you first about an offense called larceny, then
25 robbery, then armed robbery. I know sometimes you hear

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1 these terms in everyday life and we throw them all
2 together, but they are in fact three separate things.
3 Larceny, robbery and armed robbery.

4 Larceny has four elements which must be proven beyond
5 a reasonable doubt to make out a crime for larceny, and
6 they are as follows: One, that there was a taking; two,
7 that it was of the personal property of another; three,
8 that after being taken the property was carried away; and
9 four, that this taking and carrying away of the property
10 was done with an intent to steal. That is the offenses
11 for larceny.

12 Now, the crime of robbery includes all four of these
13 offenses, but in addition there is one other necessary
14 element and it is that the taking and carrying away of the
15 property must have been done by placing the other person
16 in fear by violence or threats of violence so as to make
17 that person surrender the property without his consent and
18 against his will. Now, armed robbery again includes all
19 of the elements of larceny, all of the elements of
20 robbery, but again with an additional element and that is
21 that the robbery was completed by you use of a deadly
22 weapon. In other words, the person committing the robbery
23 had a deadly weapon and used it or threatened use of it
24 by -- and used that by when he placed the person
25 possessing the property in fear in order to obtain the

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1 property. And I would charge you that a pistol or gun or
2 rifle is a deadly weapon whether or not it was actually
3 loaded with ammunition at the time of the robbery.

4 Now, remember again, each defendant is charged with
5 attempted armed robbery. So what do we mean by attempt?
6 An attempt is an act done in part execution of a design to
7 commit a crime. There must be an intent that the act be
8 committed and any act done which is not in full execution
9 but in pursuance of that intent is considered as an
10 attempt. Now, an attempt is distinguished from
11 preparation to commit the crime and also from intent to
12 commit, just mere intent to commit. The law does not
13 punish the mere entertainment of criminal intent. To
14 bring the law into action it is necessary that some act be
15 done in pursuance of the intent immediately and directly
16 tending to the commission of a crime. In an act which the
17 crime should be perpetrated would constitute part and
18 parcel of the transaction, but which does not reach to the
19 accomplishment of the original intent because it was
20 prevented or was voluntarily abandoned. That is the
21 offense of attempt to commit armed robbery.

22 Now, the charge of murder. I told you earlier the
23 State charges both defendants with murder. Now, under our
24 laws in South Carolina we have a law which is called
25 lesser included offense, and what that mean is this: That

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1 any greater offense includes a lesser offense. It may
2 sound a little complicated but it's not very difficult.
3 It very simply means this: That in this case the charge
4 of murder may include the lesser offense of voluntary
5 manslaughter. Now, even though voluntary manslaughter is
6 not charged in the indictment you may consider it if you
7 find that the facts of the case fit that charge rather
8 than the charge of murder. So I am going to define for
9 you then first the law of murder, then the law of
10 voluntary manslaughter.

11 Murder. South Carolina law defines murder as
12 follows: Murder is the killing of any person with malice
13 aforethought either expressed or implied. Murder is the
14 killing of any person with malice aforethought either
15 expressed or implied. Now, in order to convict on murder
16 the State must prove not only that one of the defendants
17 or both killed Willie Cunningham, but they must also prove
18 beyond a reasonable doubt that that defendant did so with
19 malice aforethought. Now, in the law malice is referred
20 to as a term of arts, in other words it's a technical
21 term. It means wickedness, it means that there was no
22 just cause or excuse. It is something which springs from
23 depravity, from a heart devoid of social duty fatally bent
24 upon mischief. Now, while the law does not require that
25 malice exists for any particular length of time before the

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1 commission of the act, it simply must be aforethought.
2 There must be a combination of the previous evil intent
3 and act which produces the fatal result. Now, the words
4 express or implied -- remember, I said malice aforethought
5 is expressed or implied. Now, they do not mean different
6 kinds of malice, but what they mean are the ways in which
7 malice can be proven, the way it can be shown to exist.
8 In other words, it may be proven by direct evidence or by
9 inferences from the facts and circumstances which are
10 shown. Proof of malice may be expressed, in other words
11 direct where there is evidence of previous threats or
12 evidence of lying in wait, in other words, circumstances
13 which directly show that there was an intent to kill. But
14 in the circumstances of many homicides those circumstances
15 will often prevent the possibility of offering this kind
16 of evidence, this evidence of the existence of malice. So
17 of necessity the law says malice may be inferred under
18 certain circumstances even if there is not direct evidence
19 as to what was in the defendant's heart and mind. Malice
20 may be implied from the willful, deliberate and
21 intentional doing of an unlawful act without just cause or
22 excuse or from the use of a deadly weapon. Now, the
23 result and implication, in other words, the implication of
24 malice does not require you to infer malice, but it only
25 permits you to do. So it's up to you to decide that.

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1 This permissive inference is of an evidentiary nature, in
2 other words it's evidence and the implication again does
3 not permit and does not require you to infer malice, it
4 only permits you to do so. The inference of malice from
5 the use of a deadly weapon is simply an evidentiary fact.
6 It is to be taken into consideration by you the jury along
7 with all of the other evidence in the case. It is to be
8 given such weight as you the jury determine it should
9 receive. The inference of malice may be drawn from proof
10 of the use of a deadly weapon if you conclude that it's
11 proper after considering all of the facts and
12 circumstances in evidence. Now, if a person intentionally
13 kills another person during the commission of a felony
14 malice may be inferred. Murder, attempted armed robbery
15 and conspiracy are felonies.

16 Now, in order to establish that the criminal act of
17 murder by a defendant was a natural and probable
18 consequence of the planned and agreed upon conspiracy. To
19 commit armed robbery the State must show beyond a
20 reasonable doubt that a reasonable person in that
21 defendant's position would have foreseen that the criminal
22 act of murder would be committed. The common purpose may
23 not have been to kill and murder, but if it was unlawful
24 as for example as for instance to break-in and steal and
25 in the execution of the common purpose a homicide is

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1 committed by one as a natural and probable consequence of
2 the act done in pursuance of the common design, then all
3 present participating in the unlawful design are as guilty
4 as the slayer.

5 Let's talk about now voluntary manslaughter.

6 Manslaughter is the unlawful killing of a human being
7 without malice, expressed or inferred. You will notice
8 that the absence of malice is what distinguishes
9 manslaughter from murder. In other words, before you can
10 convict the defendant on murder you must find that malice
11 existed. But the proof of malice is not necessary for a
12 conviction of voluntary manslaughter. So the difference
13 between murder and manslaughter is whether or not a
14 defendant acted with malice. So then what is voluntary
15 manslaughter? Voluntary manslaughter is the felonious
16 taking of a life of another human being in sudden heat and
17 passion upon a sufficient legal provocation. Now, the law
18 recognizes that sudden heat and passion may affect one's
19 self-control for a reasonable time period and that thus
20 temporarily disturbs the way of reason and reduces the
21 crime of murder to voluntary manslaughter if the homicide
22 was committed in sudden heat and passion and provided
23 there was sufficient legal provocation. Now, sudden legal
24 provocation must be such as would cause a person of
25 ordinary reason and prudence, in other words, an average

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1 person to become enraged or lose control of himself
2 temporarily. If the sudden heat and passion had cooled or
3 if there was sufficient time for the passion to cool then
4 the killing would be attributed to malice not to the heat
5 of passion. And the amount of a cooling time would depend
6 on whether there was time for a reasonable person to cool
7 off. Now again, I told you voluntary manslaughter is the
8 lesser offense of murder. If you have a reasonable doubt
9 here is how you handle that. If you have a reasonable
10 doubt as to whether the State has met its burden of proof
11 and shown all of the elements of murder you would then
12 consider the lesser included offense of manslaughter. If
13 you then have a reasonable doubt as to whether the State
14 has proven manslaughter, you would then find the defendant
15 not guilty. And, of course, you may find a defendant
16 guilty of one or none of these charges but not more than
17 one, either murder or voluntary manslaughter or not
18 guilty, only one of those.

19 Now, I will charge you that the law of South Carolina
20 is this: That if a crime is committed by two or more
21 persons who are acting together in the commission of a
22 crime then the act of one is the act of all. If all are
23 together acting together, assisting each other in the
24 commission of the offense, then the law says that under
25 that circumstance the act of one is the act of all, or

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1 otherwise stated the hand of one is the hand of all. Now,
2 mere presence at the scene is not enough to prove someone
3 guilty of a crime. The burden is on the State to prove
4 every element of the crime charged, and if you find after
5 reviewing the evidence the State has proven that a
6 defendant was only present at the scene of the crime and
7 that they have not proven beyond a reasonable doubt any
8 other participation in the crime, then you must find that
9 defendant not guilty. The law says proof of mere presence
10 at the scene of a crime is not enough to find someone else
11 guilty. Prior knowledge that a crime is going to be
12 committed without more is not enough to make a person
13 guilty of a crime.

14 Now, these are the three charges against Mr. Page and
15 Mr. McKnight. As I told you, there are two separate
16 charges against Mr. Page. First, possession of a weapon
17 during the commission of a violent crime. And by the
18 way - hang on, we are almost there. Okay? Possession of
19 a weapon during the commission of a violent crime. A
20 person is guilty of this offense if during the commission
21 or while attempting to commit a violent crime they are in
22 the possession of a firearm or visibly display what
23 appears to be a firearm. And I would charge you that
24 ~~murder and attempted armed robbery are violent crimes.~~ A
25 firearm is defined as any machine gun, automatic rifle,

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1 revolver, pistol or any other weapon which expels a
2 projectile. Therefore if you find the defendant,
3 Mr. Page, guilty of murder and you find that the State has
4 proven beyond a reasonable doubt that he was in possession
5 of a firearm or displayed what appeared to be a firearm,
6 then you must find him guilty of the crime of possession
7 of a firearm during the commission of a violent crime.
8 And the other is under our code of laws it is unlawful in
9 South Carolina for a person under the age of 21 to possess
10 or acquire a pistol within this state. So if the State
11 proves beyond a reasonable doubt that Mr. Page either
12 possessed or acquired a pistol within the state and that
13 Mr. Page was under 21 at the time, then you must find him
14 guilty of possession of a pistol by a person under 21. If
15 the State fails to prove either one of these elements
16 beyond a reasonable doubt, then you must return a verdict
17 of not guilty on this charge.

18 Now, ladies and gentlemen, I'm going to wrap it up at
19 this point. I will tell you that you have been chosen as
20 jurors in this case. You have been sworn to impartially
21 try and determine the facts of the case and when you have
22 complied with your oath then nobody will have a right to
23 criticize your verdicts. You will have discharged your
24 duty as jurors. You must not be influenced by opinions or
25 expressions or ideas you may have heard outside of the

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1 courtroom but you must base your verdict only on the
2 evidence and the testimony and all of the evidence that
3 you've heard here in the courtroom, all of what came from
4 the sworn lips along with the exhibits through those
5 witnesses. You must not be swayed by any form of passion,
6 prejudice or sympathy for or against any of the parties.
7 You have no friends to reward, you have no enemies to
8 punish. Both sides -- all three sides are entitled to
9 fair trials at your hands.

10 Now, on each of the charges there are two possible
11 verdicts you can find, you can find a defendant not guilty
12 or guilty. And there's no significance in the order in
13 which I state it, just one has to be stated first.

14 Madam Forelady, you will have with you in the jury
15 room a verdict form for each charge against each defendant
16 and that is how you will be able to tell. You will find
17 that it leads you very easily in determining how you
18 handle those forms. Now, as to each defendant you must
19 not take into account the fact that he is charged with
20 more than one crime. Each defendant is entitled to a fair
21 trial on each charge and should not be prejudiced by the
22 fact that there is more than one charge against him. And
23 as to each charge you should consider whether the State
24 ~~has proven the elements of that charge and arrive at an~~
25 independent verdict for each defendant. And, of course,

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1 Madam Forelady, that's one reason that we give you each
2 with a separate sheet so that you can take each of the
3 charges and consider that charge, whether the State has
4 proven that charge and then not let them pour over into
5 each other. And, of course, there are two defendants in
6 this case. Whatever the verdict you find does not have to
7 be the same as to both defendants. You take each
8 defendant, consider the evidence only as to that defendant
9 on each charge against that defendant and write your
10 verdict accordingly in this case and according to the
11 instructions that I have given you and the evidence which
12 has come in. Where more than one person is charged with a
13 crime, if the evidence warrants it you may convict one and
14 acquit the other or you may acquit both or you may convict
15 both. It will depend on your view of the testimony and
16 the evidence of which you alone are to act on.

17 Your verdict must be a unanimous verdict, in other
18 words all 12 of you must agree on the verdict. And Madam
19 Forelady, on each of the verdicts when you have a
20 unanimous agreement on the verdict what you will do is
21 check the appropriate verdict, sign it, sign your name as
22 forelady and, of course, date it and you would do that on
23 each one of them. Now, in just a moment I am going to let
24 you step into the jury room. I am going to tell you when
25 you step to the jury room do not begin deliberating.

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1 There's some matters I have got to take up with the
2 attorneys and it will take me just a couple of minutes to
3 do that, but I don't want you to deliberate until I start
4 to tell you to do so. Now, however, you can start eating
5 and if some of you want to go take a break to go smoke you
6 can do that, but just do all of that first of all if you
7 will. I guess you can take your pizza out and smoke if
8 you want to do that. But don't start deliberating until
9 we actually send word for you to do it.

10 I understood there is one juror who that has a plane
11 flight at 5:30? Who is that? The forelady. Let me ask
12 if all of you would step to the jury room and we will take
13 that issue up.

14 (The jury left the courtroom.)

15 THE COURT: Let me ask you first of all, how do you
16 want to handle the forelady who has got a 5:30 -- it's now
17 2:30. We can go ahead and dismiss her and let the
18 alternate stay or we can let the alternate stay and keep
19 her in a secure room until and unless we need her. What
20 is the State's position on it?

21 MR. POPE: I would request that they be allowed to
22 deliberate and alternate stay. My concern is that we let
23 this one go because we have lost one already, if something
24 else comes up --

25 MR. CHIARENZA: Your Honor, would the alternate be in

1 there for deliberations?

2 THE COURT: No, sir.

3 MR. CHIARENZA: How can she be injected at a later
4 point?

5 THE COURT: Well, we do it as you know in capital
6 cases very often and what happens is -- and I know some of
7 the judges actually do it in other cases, too -- they
8 would just have to start deliberating all over if we came
9 to that point.

10 MR. CHIARENZA: My position then would be make the
11 switch now, Your Honor.

12 THE COURT: All right. Mr. Boyd?

13 MR. BOYD: That's my position also, Your Honor. I
14 don't want someone injected in at a later time and it
15 looks like a real possibility the juror -- she would have
16 to leave if she's got a plane flight --

17 MR. CHIARENZA: She would have to be there at 4:30.

18 THE COURT: Does the State have any exception to the
19 charge?

20 MR. POPE: I just want to call the Court's attention
21 on page 19, and I think what happened is I think you had
22 everything come back together and then we interjected the
23 manslaughter issue, that's the --

24 THE COURT: Counsel, I am going to let her go. And
25 based on the information that we have on the jury I am

1 also inclined to appoint Ms. Peeples, she seems to have
2 pretty good managerial skills. Madam Clerk, ask Ms. Bosco
3 and Ms. Peeples to step in a minute if you will. Okay?

4 (The two jurors returned to the courtroom.)

5 THE COURT: Ms. Bosco, I realize it's close. The
6 problem would be that if we didn't get a verdict I guess
7 within an hour or so then you would have to leave and if
8 we didn't have an alternate then we would have to declare
9 a mistrial because we wouldn't have enough jurors.

10 THE JUROR: But there is a later flight that I can go
11 standby on.

12 THE COURT: If you want to do that that's fine, I
13 don't have a problem. But the problem is we have got to
14 be absolutely certain. What time is the later flight?

15 THE JUROR: 9:30.

16 THE COURT: What time would you have to leave?

17 THE JUROR: 7:00.

18 THE COURT: Y'all step back out just a minute.

19 (The two jurors left the courtroom.)

20 MR. POPE: She's taking her jury service seriously.
21 She has a willingness to serve, a willingness to -- it's
22 rare to see that. I would submit again still keeping an
23 alternate -- in other words back to my original proposal.

24 ~~THE COURT: I don't know if it's fair to keep the~~
25 alternate and make her sit three or four hours, it would

1 be four and a half hours is what she would have to sit.

2 MR. POPE: Again, of course you mentioned death
3 penalty case, we have had it on some other cases too. It
4 would be really no different then her being present.

5 THE COURT: Mr. Chiarenza?

6 MR. CHIARENZA: Your Honor, the logical and simple
7 choice to me seems to be to let her go and seat the
8 alternate and start deliberating. In the event that this
9 woman does have to leave at 7:00 that's going to be 7:00
10 on a Friday night, then they've got to start all over
11 again and potentially affect all 12 of the jurors. I
12 think that a number of things can be read into the fact
13 that she wants to stay and I certainly -- I wouldn't be
14 comfortable with the downside of that. Obviously, I don't
15 know why anyone would want to stay, but I think the
16 easiest thing to do and not encounter a problem a few
17 hours from now is to make the switch.

18 THE COURT: I will be very frank with you, as many
19 people as I see trying to get off jury duty it's
20 refreshing that somebody wants to do their duty.
21 Mr. Boyd, what is your feeling about it?

22 MR. BOYD: Your Honor, I think you are right about
23 why she probably wants to stay, but logically I think --
24 I don't know how long the jury will be out. This is a
25 case a jury could very well take that length of time to

1 deliberate, so I just think it will be on the safe side to
2 put the alternate on.

3 THE COURT: Well, I think it would be unfair to Ms.
4 Peoples to ask her to wait four and a half hours. And I
5 realize we do that in capital cases we do it. But I would
6 be -- in particularly in the second phase as you are faced
7 the entire verdict structure being altered by not having
8 an alternate there.

9 MR. POPE: I guess my concern is if we put Ms.
10 Peoples we may lose a juror anyway and we are giving up
11 our alternate, that's my only concern. With the weekend
12 everybody --

13 THE COURT: I understand. Counsel, I think that as
14 unfair as that probably is to Ms. Peoples and I will
15 explain that to her, that probably is what we are going to
16 need to do. Because that is a very valid point, if
17 something happens to a juror now we are up the creek any
18 way. So let's do it. I am going to ask Ms. Peoples to
19 stay for awhile and let's see what happens with the jury.
20 I may not do that, wait until 7:00, we may pull the
21 trigger on Ms. Bosco a little earlier if we have to.

22 (The two jurors returned to the courtroom.)

23 THE COURT: Ms. Peoples, would it be to inconvenient
24 for you to stay in waiting for a little while?

25 THE JUROR: No, sir.

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1 THE COURT: I don't want you to do it any four hours
2 or so. Ms. Bosco, if it appears within maybe a couple of
3 hours that you are not going to get a verdict, by that
4 time you might let us know and we can go ahead and move
5 Ms. Peoples into your place. The problem is that there is
6 also -- and I apologize, I just didn't have that
7 information when I appointed you as the forelady but that
8 is another logistical problem, in addition to moving
9 another juror in we are going to have to move a new
10 foreperson in too and what happens is the jury has to
11 start to deliberate all over again.

12 THE JUROR: I understand.

13 THE COURT: So what we're going to do then, Ms.
14 Peoples, is find you a place for to you sit. We are going
15 to make you comfortable and give you something to read or
16 whatever you need to do or make -- maybe we can get a TV
17 or something to watch. But we appreciate both of you
18 doing that.

19 (The jurors left the courtroom.)

20 THE COURT: Again, your exception, Mr. Pope?

21 MR. POPE: I was just calling the Court's attention
22 on -- I have no objection to the way this was handled, I
23 am going back to the charge now. Page 19, possession of a
24 firearm during the commission of a violent crime, we don't
25 have manslaughter addressed there because, you know,

1 initially we didn't have manslaughter. It says, I charge
2 you that murder -- it should be murder, manslaughter and a
3 attempted armed robbery are violent crimes.

4 THE COURT: What if I just pen in the term
5 manslaughter, would -- defense, would you have any problem
6 with that?

7 MR. POPE: I have no objection to that, Your Honor.
8 I was going to call your attention to one more place, too.

9 MR. CHIARENZA: I suppose that's all right, other
10 than it drawing undue attention to the one word in the
11 whole charge in there. I don't know what at this point --

12 THE COURT: I will just bring the jury back in and
13 just tell them. We're going to spend all day talking
14 about these things and we don't need to do that. I will
15 just bring them back in.

16 MR. CHIARENZA: Your Honor, I just think I have to --

17 THE COURT: That's all right. What is your other
18 exception, Mr. Pope?

19 MR. POPE: I am just going to show two paragraphs,
20 therefore if you find the defendant guilty of murder, it
21 should again say murder, manslaughter or attempted armed
22 robbery.

23 THE COURT: Where is that now?

24 MR. POPE: That paragraph the firearm next to

25 therefore if you find the defendant guilty, it should say

1 murder, manslaughter or attempted armed robbery.

2 THE COURT: I will call them out. Mr. Chiarenza, do
3 you have any exception?

4 MR. CHIARENZA: Yes, Your Honor, the same charge I
5 just think that you need to on the last paragraph where it
6 says that therefore we find the defendant guilty of murder
7 whatever else you want to put in there to find that the
8 State has proven beyond a reasonable doubt that the
9 defendant was also in possession of a firearm or displayed
10 what appeared to be a firearm during the commission of
11 that crime. Because I think there's been testimony --
12 because that's the law. There is testimony that he was
13 showing the gun earlier in the day but that he had it in
14 his pocket on the porch.

15 THE COURT: All right. I will add that language. I
16 don't have a problem with that. Any other, Mr. Chiarenza?

17 MR. CHIARENZA: That would be all, Your Honor.

18 THE COURT: Mr. Boyd?

19 MR. BOYD: Just for the record I would of course
20 except to the Court's not charging my requested charge two
21 through five and ask that those be made a part of the
22 record.

23 THE COURT: All right. I will note that.

24 MR. CHIARENZA: I just want to put on the record my
25 excepting to whatever charges that I submitted as court's

1 exhibits that the Court did not charge.

2 THE COURT: I would note that both of you I think --
3 normally want to renew the exceptions you made beforehand;
4 is that right?

5 MR. BOYD: That's correct.

6 MR. CHIARENZA: Yes, sir.

7 (The jury returned to the courtroom.)

8 THE COURT: Jurors, this is only going to take a
9 minute. I only need to correct a couple of things, I just
10 had a couple of mis-slips more than anything. Remember, I
11 told you that there are two separate charges against
12 Mr. Page, one is possession of a weapon during the
13 commission of a violent crime, the other is possession of
14 a pistol by a person under 21. As to the possession of a
15 weapon during the commission of violent crime I need to
16 simple re-instruct you on it and tell you again that a
17 person is guilty of this offense if during the commission
18 or while attempting to commit a violent crime they are in
19 possession of a firearm or they visibly displayed what
20 appears to be a firearm, and I just left this out of my
21 text a few minutes ago. I told you before that murder and
22 attempted armed robbery are violent charges, manslaughter
23 also is a violent charge. So murder, manslaughter and
24 ~~attempted armed robbery are violent charges.~~ Remember, I
25 told you a firearm is defined as any machine gun,

1 automatic rifle, revolver, pistol or any weapon which
2 expels a projectile. So if you find the defendant,
3 Mr. Page, guilty of murder or manslaughter or attempted
4 armed robbery and you find that the State has proven
5 beyond a reasonable doubt that he was in possession of a
6 weapon or a firearm or displayed what appeared to be a
7 firearm during the commission of that violent crime then
8 you would find him guilty of the offense of possession of
9 a firearm during the commission of a violent crime.

10 That's all I had to add. You can go back to your pizza,
11 smoking or whatever. Just don't talk about the case yet.

12 (The jury left the courtroom.)

13 THE COURT: The jury is secured. Counsel, anything
14 else from the State?

15 MR. POPE: No, sir, Your Honor.

16 THE COURT: Mr. Chiarenza?

17 MR. CHIARENZA: No, sir.

18 THE COURT: Mr. Boyd?

19 MR. BOYD: No, sir.

20 THE COURT: All right, Counsel. At this time the
21 bailiff has all of the exhibits, the charge and verdict
22 forms and is everybody in agreement that everything he has
23 is appropriate to go into the jury and that there is
24 nothing missing and he doesn't have anything wrong? Is
25 the State in agreement to that?

JURY VERDICT

1 MR. POPE: To the best of our ability, yes, sir.

2 THE COURT: Mr. Chiarenza?

3 MR. CHIARENZA: Yes, sir.

4 THE COURT: Mr. Boyd?

5 MR. BOYD: Yes, sir.

6 THE COURT: You may take it in now and tell the jury

7 to begin deliberating as long as all of the smokers are

8 back. Now then, we are in recess now subject for recall

9 of the jury. The jury has the case at 2:59.

10 (The jury began deliberations and returned with a
11 verdict.)

12 THE COURT: All parties are present and in the
13 courtroom. Counsel, I understand the jury has a verdict.

14 Is the State ready to take the verdict?

15 MR. POPE: Yes, Your Honor.

16 THE COURT: Defense? Mr. Chiarenza?

17 MR. CHIARENZA: Yes, Your Honor.

18 THE COURT: Mr. Boyd?

19 MR. BOYD: Ready, Your Honor.

20 THE COURT: Let me say this to everyone in the
21 courtroom, when the verdicts are announced there is to be
22 no discussion or reaction of anybody in any way whether
23 pro or con. Officers and bailiffs, I will authorize you
24 ~~to take whatever action is necessary to maintain the~~
25 decorum in the courtroom. Again, let's have no reaction

JURY VERDICT

1 to anyone.

2 (The jury returned to the courtroom.)

3 THE COURT: All right. All parties and attorneys are
4 in the courtroom and all jurors are returned. Madam
5 Forelady, do you have a verdict?

6 THE JUROR: Yes, we do.

7 THE COURT: Has the jury reached a unanimous verdict
8 on all charges?

9 THE JUROR: Yes.

10 THE COURT: Would you hand it to the bailiff, please,
11 ma'am? Let me ask the defendants to rise please in the
12 announcement of the verdict.

13 THE CLERK: In the State of South Carolina vs.
14 Terrance McKnight we the jury by unanimous consent find
15 the defendant Terrance McKnight with the charge of murder
16 not guilty. We the jury find by unanimous consent
17 Terrance McKnight with the charge of attempted murder not
18 guilty --

19 THE COURT: I think that's attempted armed robbery.

20 THE CLERK: Armed robbery, I'm sorry. Terrance
21 McKnight with the charge of conspiracy is guilty. If this
22 be your verdicts please say you all by raising your right
23 hand. Let the record show that all affirmed.

24 In the State of South Carolina vs. Jaleel Page, we
25 the jury find the defendant, Jaleel Page, on the charge of

JURY VERDICT

1 conspiracy guilty. We the jury find the defendant, Jaleel
2 Page, on the charge of murder, not guilty. We the jury
3 find the defendant on the charge of attempted armed
4 robbery guilty. We the jury find the defendant on the
5 charge of possession of a pistol by a person under the age
6 of 21 guilty. We the jury find the defendant on the
7 charge of possession of a weapon in the commission of a
8 violent crime guilty. If this be your verdicts please say
9 so you all by raising your right hand. Let the record
10 reflect that all have affirmed.

11 THE COURT: Thank you, ma'am. Does anybody wish to
12 have the jury polled from the State?

13 MR. POPE: No, sir, Your Honor.

14 THE COURT: Defense, Mr. Chiarenza?

15 MR. CHIARENZA: No, sir.

16 THE COURT: Mr. Boyd?

17 MR. BOYD: No, sir.

18 THE COURT: Jurors -- are there any motions that need
19 to be made before we dismiss the jury?

20 MR. CHIARENZA: None, Your Honor.

21 MR. BOYD: No, sir.

22 MR. POPE: Nothing from the State.

23 (The jury was dismissed.)

24 THE COURT: All right. Any motions before we come

25 for sentencing from the State?

SENTENCING HEARING

1 MR. POPE: No, sir, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 MR. CHIARENZA: No, sir.

4 THE COURT: No motions?

5 MR. CHIARENZA: No, sir, Your Honor.

6 THE COURT: Mr. Boyd?

7 MR. BOYD: No, sir.

8 THE COURT: Okay. As you know the only standard post
9 trial motion is a motion for a new trial, and I understand
10 you are kind of in a predicament to ask for a new trial or
11 not. Okay. Are you ready for sentencing?

12 MR. BOYD: We are ready, Your Honor.

13 THE COURT: Is the State ready?

14 MR. POPE: If we could have just one moment. Please
15 the Court, Your Honor? And the Court is aware the
16 victim's family has been present throughout the trial.
17 The Court is also aware that Mr. A. J. Williams is facing
18 ten to 20 and 85 percent time, and also that Mr. Lamont
19 McCollum is before the Court for 15 to 25. I will tell
20 you as far as Mr. McCollum we would intend to ask for the
21 max and I would address that at the appropriate time.
22 Your Honor again if -- I looked to make sure. I
23 understand he's facing attempted robbery, conspiracy and
24 the two firearms charges that's what the Court has, is
25 that correct, for a total of up to 35; is that correct?

SENTENCING HEARING

1 THE COURT: 31. I understand the possession of under
2 21 carries one year.

3 MR. POPE: I thought it carried five.

4 (Off-the-record discussion was held.)

5 MR. POPE: Please the Court, Your Honor? And I will
6 have Mr. Cunningham step up in just a moment. I want to
7 note this particular defendant we have -- he has no
8 record. I will note that he has pending charges on
9 another armed robbery which was actually the one that it
10 is alleged -- of course, he's innocent until proven guilty
11 of that -- but it's alleged that he was the gunman in the
12 plea that Mr. Chiarenza crossed A. J. Williams about, the
13 strong armed robbery that he pled to. It was alleged
14 that --

15 THE COURT: In another armed robbery?

16 MR. POPE: Yes, sir.

17 THE COURT: And we have that pending. I will also
18 call to the Court's attention -- and I won't go into great
19 detail but I will have them if Mr. Chiarenza wants to
20 see -- they've had a tremendous problem with Mr. Page in
21 the jail. I see inciting a riot, making inmate threats,
22 inciting a riot, making threats, making threats, violent
23 inmate, refusing orders. I have two -- a printout and we
24 ~~have a notebook of two full sections of Mr. Page and his~~
25 conduct since he has been incarcerated in this particular

SENTENCING HEARING

1 matter.

2 Your Honor, I will ask Mr. Cunningham if he would
3 like to step up and speak now. While he is coming up,
4 Your Honor, I will note that again you've seen this case,
5 you've seen the nature of the case, you have seen what
6 happened. Clearly the jury does believe that he was in
7 possession of a firearm, that he was there attempting the
8 armed robbery, again, they gave him the benefit of doubt
9 on the murder and I respect that. But Your Honor, the
10 crime of violence, he went there armed, although his gun
11 is not the one that kills him he was right there present
12 aiding and abetting and again we would ask for the maximum
13 sentence to be reflected. Yes, sir, Mr. Cunningham, if
14 you would state your name and spell your name for the
15 court reporter and then address the Court.

16 MR. ROBERT CUNNINGHAM: Robert Cunningham:
17 R-o-b-e-r-t, C-u-n-n-i-n-g-h-a-m. Your Honor, the first
18 thing, I would like to know is two guys that big I don't
19 see why they have to carry a gun anyway. They've got all
20 the size, they're bigger than anybody else. I just want
21 Mr. Page and Mr. McCollum to know that he took a brother
22 from me, took a son from my mother and took a daddy from
23 his children and I feel cheated. And I feel like I'm
24 getting cheated again double because my tax money, my
25 sister's and my brother's tax money are going to have to

SENTENCING HEARING

1 pay to clothe and feed this man while he's in jail so I
2 feel like I haven't got any justification today. I'm
3 sorry, that's the way I feel.

4 THE COURT: I certainly understand. Yes, sir. All
5 right. Solicitor, anything else?

6 MR. POPE: Your Honor, you have -- again, you've seen
7 the case and you've seen the information and you know as
8 you discussed with Mr. McKnight, you know the violence and
9 I would ask that a sentence that reflects that
10 accordingly, Your Honor.

11 THE COURT: All right. Mr. Chiarenza?

12 MR. CHIARENZA: Thank you, Your Honor. May it please
13 the Court? As the Court is obviously aware the
14 codefendant in this matter, Mr. McCollum, was allowed to
15 tender a plea for a range of 15 to 25 years. It's been
16 essentially acknowledged by the State that they have every
17 certainty and belief that Mr. McCollum was the shooter in
18 this matter. To be candid with the Court, that same offer
19 was tendered to my client, he rejected that offer and
20 chose to go to trial. Your Honor, I would just -- and
21 just for the record ask that he not be prejudiced for
22 exercising his right to a trial. I would point out that
23 at least as far as the murder charge goes it was a proper
24 decision on his right to exercise his right to a trial.
25 He chose to exercise that right based in great part on

SENTENCING HEARING

1 discussions we had, legal discussions we had about the
2 hand of one and what would be required for proof. I think
3 he made an intelligent decision about doing that,
4 intelligent in the sense that it wasn't just arbitrary.
5 He weighed the pros and cons of making that decision given
6 what we believe the State could present -- would have
7 presented. Your Honor, in the course of the last -- I
8 have represented him almost since he has been incarcerated
9 and that has been since January 9th of 2004. He wasn't
10 down here until about a month later here, I mean South
11 Carolina, but he has been in custody since January 9,
12 2004. Shortly after he got here I was appointed and we
13 started the process of preliminary hearings, bond
14 hearings, matters such as that. Your Honor, there were a
15 number of frustrations in getting a my client a
16 preliminary hearing. I think we were up here three times
17 before we could get a preliminary hearing, never was it
18 any fault of his. The co-defendants continuously were
19 getting their counsel relieved and getting new counsel for
20 various reasons and that caused a strain in our
21 relationship because Mr. Page believed that I wasn't doing
22 what I needed to be doing on his behalf. In fact, there
23 was a time when it looked like I would no longer be his
24 attorney, we worked through that. He came before Judge
25 Alford twice on bond hearings/speedy trial motions, both

SENTENCING HEARING

1 times they were denied. He has been incarcerated for a
2 year and seven months. And, in fact, today's trial date
3 was continued from a previous set trial date because Mr.
4 McCollum's attorney again at the last minute was changed
5 and Ms. Johns got the case and needed some more time. I
6 point that out to illustrate for some of the reasons for
7 his frustration and for his behavior down in the detention
8 center. And certainly his behavior down there has not
9 been exemplarily and he has acted out at times and we just
10 ask the Court to understand the circumstances and his
11 condition. He is certainly got no one to blame for his
12 circumstance, but it's difficult to be down there and to
13 continually feel like no one is addressing your needs even
14 though your attorney -- and we've been down that road a
15 couple of times. I think we have put that behind us. He
16 has written me numerous letters, Your Honor. They are
17 intelligent, they are lucid, he brings you continuing
18 legal issues. He cites case law. This is a gentleman
19 with a mind. I at this time would not care to address why
20 somebody who is intelligent and seems to have faculties
21 for good cognitive reasoning would be involved in the
22 charges that he has been found guilty of because we do not
23 care -- we accept the jury's verdict, Your Honor, but for
24 ~~matters on down the road just would not address the facts~~
25 in this case.

SENTENCING HEARING

1 Your Honor, he has got an exposure apparently of 35
2 years. The Court knows who actually did the shooting
3 here. I will try and dissuade the Court of accomplice
4 liability and that theory and it's validity. But Your
5 Honor, certainly for there to be some balancing I would
6 ask the Court to look at Mr. McCollum's potential maximum
7 as a guideline where perhaps Mr. Page's sentence should
8 fall taking into account the fact that he exercised one of
9 greatest rights we have, which is the right to a trial and
10 at least as to the murder charge that was a proper
11 decision on his behalf. And again, I tell you he did that
12 intelligently and after analyzing all of the pros and cons
13 of going to trial. So I would just ask the Court that he
14 not be prejudiced for exercising that right, Your Honor.

15 What I would certainly like on behalf of my client is
16 for the Court to run sentences concurrent to the Court's
17 main sentence here. He has got a violent conviction, this
18 will be a no-parole offense. He's 21 now, he was 19 at
19 the time of this crime. Certainly the Court can
20 incarcerate him until he's nearly 50 and I don't think
21 that will serve society and Mr. Page in light of the Court
22 and prosecution and if I dare say other people concerned
23 in this case have already decided suits the needs of
24 society on Mr. McCollum. So for those reasons I would
25 just implore the Court to use that as a guide as to how

SENTENCING HEARING

1 the Court would sentence Mr. Page. That his just -- in at
2 least as much as who actually factually did the shooting
3 he has less culpability there. And I have seen him
4 interact with his family, his mother, his brothers and his
5 pastor, there's love there and there is hope for Mr. Page.
6 I don't know whether that hope will blossom and come into
7 fruition and that's largely dependant on the sentence he
8 receives here today, Your Honor. So I would just ask the
9 Court to bear all of that in mind. His mother is here and
10 his pastor, Phillip Cargile, is here. His mother's name
11 is Valerie Page. I believe they would both like to
12 address the Court briefly, Your Honor.

13 PHILLIP CARGILE: My name is Phillip Cargile, last
14 name C-a-r-g-i-l-e. I stand in the presence of the
15 Almighty God and I thank you, Judge, for giving me the
16 opportunity to speak on behalf of the Page family. We
17 regret the loss of Mr. Willie Cunningham and our love and
18 our grief goes along with her at this time. As I say, I
19 speak for the Page family and also his late grandmother
20 that passed in 2002, Shirley Page. She was a community
21 elder in Rock Hill and York County. I speak on behalf of
22 this young man because I know him, I have known him all of
23 his life. The things that they said concerning him and
24 ~~the detention center, I'm sure some of those things were~~
25 provoked because he is a mild mannered person and as was

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1 already said he's intelligent. And he was gainfully
2 employed and even when they had spoke about the Washington
3 trip as they said flight, he was employed when he went
4 there and he was gainfully employed just recently before
5 his incarceration here. He is intelligent. I have
6 counseled him numerous times and I know he can be a
7 productive citizen. In your sentence then I pray that you
8 would allow for that because I know he can be productive.
9 It seems as though he got caught up -- yes, he's a big man
10 but yet you know, peers -- you know, sometimes as the
11 Bible says, we train them up as a child they way he should
12 go and when he's older and he will not depart. He has the
13 foundation, he has love yet for mankind. I just pray in
14 your sentencing that you will just allow that he can be
15 productive and I thank you for it.

16 THE COURT: Thank you. I believe his mother wanted
17 to say something?

18 MR. CHIARENZA: No, sir. She's not able to address
19 the Court.

20 THE COURT: That's quite all right. Any other family
21 members, Mr. Chiarenza?

22 MR. CHIARENZA: No, Your Honor. Mr. Page, did you
23 want to say anything?

24 THE COURT: Did you want to say anything, Mr. Page?

25 THE DEFENDANT: Yes, Your Honor. I feel as though if

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1 the jury found me not guilty of murder then they should
2 have found me not guilty of everything else. I have
3 multiple grounds for appeal and I will get this time back
4 from Mr. Tommy Pope and the other solicitor. That's all I
5 have to say.

6 THE COURT: I understand. Well --

7 MR. POPE: Your Honor, I think that speaks for
8 itself.

9 THE COURT: Well, it does. After everything your
10 lawyer just said, Mr. Page, I'm amazed at that attitude.
11 You understand this -- let me note for record that I
12 understand, Mr. Chiarenza, that you want to continually
13 compare his sentencing with Mr. McCollum's whatever it
14 will be and I don't know what it will be yet. I know the
15 range because they had a plea agreement and as I
16 understand he worked -- the State offered -- did you offer
17 them the same plea agreements, Solicitor?

18 MR. POPE: Yes, sir.

19 THE COURT: And Mr. McCollum took it, Mr. Page did
20 not and there's nothing wrong with that. Frankly, it's
21 very appropriate that he did that and like you said, it
22 apparently was a pretty intelligent decision because the
23 jury -- as you know, the jury could have found him guilty
24 ~~on the murder charge. Apparently they chose not to even~~
25 though South Carolina law says that the hand of one is the

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1 hand of all, they chose not to apply that, which is okay.
2 But in so doing they gave him a break and for what I
3 gather he seems to be upset with them because they found
4 him guilty on anything. They could have -- of course, he
5 could have gotten a conviction for murder which would have
6 caused him to face a life sentence. I note Mr.
7 McCollum's -- normally a judge sentences in a case such as
8 this based on the case itself and all of the circumstances
9 surrounding the case and there are no limitations except
10 those prescribed within the statute and within the law of
11 the State and that's how I will sentence in this matter.
12 With Mr. McCollum's there was an agreement worked out
13 between the State and the defense that they would limit to
14 a high low range of 15 years to 25 years. And, of course,
15 when they did that and when we accepted the guilty plea of
16 course we -- the Court bound ourselves to that arrangement
17 by accepting the guilty plea, so that is the difference in
18 the two. We are bound by the guilty plea and the
19 arrangements of that, but we are not bound by that in this
20 particular case here because there was no such plea and no
21 such agreement.

22 What I will do is this: On the attempted armed
23 robbery charge I will order Mr. Page committed to the
24 department of corrections, the maximum sentence is 20
25 years, I will sentence him to the department of

SENTENCING HEARING

1 corrections for 20 years. The maximum sentence on
2 conspiracy is five years, I will sentence him to the
3 department of corrections for five years on that. For
4 possession of a weapon during a violent crime the maximum
5 sentence of five years and possession of a gun or pistol
6 by a minor under the age of 21 I will also sentence him to
7 the maximum of five years. Now, the total on that is
8 consecutive 35, however when we sentence we are bound to
9 consider charges that come from the same one event. The
10 two pistol charges come -- and I assume you agree with
11 this, Mr. Pope, that the two pistol charges come from the
12 same one thing; is that correct?

13 MR. POPE: Yes, sir.

14 THE COURT: So I will run those two sentences
15 concurrently with each other. All of the other sentences,
16 those will run consecutive to all other -- consecutive
17 with each other because those are based on events and
18 decisions that were made at different times. The entering
19 into the conspiracy took place at one particular time,
20 when he obtained the guns in violation of the law that was
21 at another particular time and when they made the decision
22 to attempt to rob Mr. Cunningham that was made at a
23 separate time. So those were made at separate times and
24 appropriately done in consecutive circumstances and I will
25 give him consecutive sentences on those and that will come

SENTENCING HEARING

1 up to 30 years. All right.

2 MR. CHIARENZA: Your Honor, if I could justify, I
3 understand the Court correctly in ruling on events that
4 occurred one time. I would just offer that necessarily
5 the possession of a firearm during the commission of a
6 violent crime must occur and cannot exist without
7 simultaneous occurrence, the commission of a violent crime
8 and just ask that that charge run concurrent to that
9 violent crime.

10 THE COURT: Well, you can still run concurrent. But
11 the possession of a pistol by someone 21 or under is going
12 to be consecutive because the obtaining of the pistol came
13 at a different time. I will do that, though. The
14 possession of a weapon during a violent crime will run
15 concurrent with the attempted armed robbery and conspiracy
16 charge and the possession by a person under 21 will run
17 consecutive to those charges. It comes out the same thing
18 I think, though.

19 MR. CHIARENZA: Thank you, Your Honor.

20 THE COURT: All right. Thank you.

21 (END OF TRIAL PROCEEDINGS.)

22

23

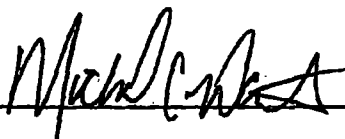
24

25

I, the undersigned Michael C. Watkins, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 23-27th days of May, 2005.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 18th, 2005.


Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

COUNTY OF

YORK, SOUTH CAROLINA

2011 JUL 15 AM 9:36

THE COURT OF COMMON PLEAS

JAIL ELVAUGHN PAGE #309433

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2011 CP 460 2584

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECEIVED
2011 JUL -1 PM 3:44
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCINSTRUCTIONS - 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 MCORMICK CORRECTIONAL INSTITUTION 386 REDEMPTION WAY MCORMICK SC
2. Name and location of Court which imposed sentence COURT OF COMMON PLEAS YORK, SC
3. Name(s) of co-defendant(s) (if any) A. J. WILLIAMS, LAMONT COLLUM, TERENCE MCLEAN, KENNETH SHERER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-65-46-4001 POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME
 - (b) 2004-65-46-4004 ATTEMPTED ARMED ROBBERY, 2004-65-46-4005 CRIMINAL CONSPIRACY
 - (c) 2004-65-46-4007 POSSESSION OF A PISTOL BY A PERSON UNDER 21
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MAY 27, 2005, 35 YEAR TOTAL FOR ALL CHARGES
 - (b) _____

- (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
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE SOUTH CAROLINA COURT OF APPEALS
- ii. THE SUPREME COURT OF SOUTH CAROLINA
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. DENIED THE PETITION FOR A WRIT OF HABEAS CORPUS REVIEW
- iii. _____
- (c) the date of each such result:
- i. APRIL 3 2008
- ii. NOVEMBER 5 2010
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INSPECTIVE ASSISTANCE OF COUNSEL
 (b) NEW EVIDENCE
 (c) SEE ATTACHMENT PAGE 3c

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHMENT III A
 (b) " " " III B
 (c) " " " III c AND III d

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? YES

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. DIRECT APPEAL
 ii. WRIT OF CERTIORARI
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. COURTS OF APPEALS PO BOX 11629 COLUMBIA S.C. 29211
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. AFFIRMED
 ii. DENIED THE PETITION FOR A WRIT OF CERTIORARI
 iii. _____

INEFFECTIVE ASSISTANCE COUNSEL

ROGERS v. WASHINGTON, 406 US 688, 687, 80 L Ed 2d 674, 104 S Ct. 2052 '1981'

UNITED STATES SUPREME COURT ESTABLISHED THE STANDARD FOR A CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL:

'FIRST THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE 'COUNSEL' GUARANTEED THE DEFENDANT BY THE SIXTH AMENDMENT. SECOND, THE DEFENDANT MUST SHOW THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE. THIS REQUIRES SHOWING THAT COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT IS RELIABLE.'

WICKLAND at 687

WHEREFORE, TO OBTAIN POST CONVICTION RELIEF ON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER WICKLAND, MR. PAGE WILL BE REQUIRED TO PROVE '(1) THAT COUNSEL DID NOT PROVIDE REASONABLY EFFECTIVE ASSISTANCE AND (2) THAT COUNSEL'S DEFICIENT PERFORMANCE PREJUDICE THE PETITIONER.

EX PARTE LAND 775 SW. 2d 847, 850 (ALA 2000)

John V. [Signature]

WILLIAM DEATHBOND D AND SUBSCRIBED BEFORE ME THIS

15 DAY OF June, 2011

John V. [Signature]
NOTARIAL PUBLIC

MAY 12 16 2019

NEW EVIDENCE

UN CAROLINA LAW ALSO PROVIDES FOR NEW TRIALS BASED ON NEWLY DISCOVERED EVIDENCE. CRIMINAL CODE 29(b) ALLOWS FOR SUCH MOTIONS TO BE MADE TO THE TRIAL COURT WITHIN A "REASONABLE TIME AFTER THE DISCOVERY OF EVIDENCE." SIMILARLY, THE POST CONVICTION PROCEDURE ACT ALLOWS A PETITIONER TO RAISE A CLAIM THAT "THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRES VACATION OF THE CONVICTION & SENTENCE IN THE INTEREST OF JUSTICE." SC (5/7/27 20(3) (4).

- 1) PREVAIL ON A MOTION FOR A NEW TRIAL UNDER RULE 29, A DEFENDANT MUST SHOW
- 1) THE EVIDENCE IS SUCH AS WILL PROBABLY CHANGE THE RESULT IF A NEW TRIAL IS GRANTED;
 - 2) THE EVIDENCE HAS BEEN DISCOVERED SINCE THE TRIAL
 - 3) THE EVIDENCE COULD NOT HAVE BEEN DISCOVERED PRIOR TO TRIAL BY THE EXERCISE OF DUE DILIGENCE
 - 4) THE EVIDENCE IS MATERIAL
 - 5) THE EVIDENCE IS NOT MERELY CUMULATIVE OR IMPERMISSIBLE

STATE NEEDS 333 SC 134, 508 SE 2d 857

WORK AFFIDAVIT TO AND SUBSCRIBED BEFORE ME THIS

15 DAY OF June, 2011

JC Franklin

NOTARY PUBLIC

COMMISSION EXPIRES: 12.16.2019

[Signature]

PURANT IN THAT THIS CAUSE OF ACTION PURSUANT TO THE JURISDICTION TO THE JURISDICTION SET FORTH IN CHAPTER 17 SECTION 17-27-00 WHICH SETS FOR COLLATERAL ATTACK UPON ANY GRANTS OF ALLEGED ERE HERETOBE AVAILABLE FOR THIS UNIFORM POST CONVICTION RELIEF APPLICATION THAT ARE BEING SUBMITTED OR AWARDED. APPLICANT ASSERTS THAT THERE ARE NO GROUNDS THAT CAN BE RAISED DUE TO THE LACK OF RECORDS AND ASSISTANCE OF COUNSEL PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE RULE 11.1(c) ELSEWHERE STATES THAT THE BURDEN OF PROOF IS ON THE APPLICANT TO SHOW HIS ENTITLEMENT FOR RELIEF BY A PREPONDANCE OF THE EVIDENCE, AND FOR THE APPOINTMENT OF COUNSEL TO ENSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION. IT WOULD BE UNOLIGIBALLY IMPOSSIBLE FOR THE APPLICANT TO CARRY SUCH A BURDEN WITHOUT THE AID OF RECORDS AND ASSISTANCE OF COUNSEL TO ESTABLISH HIS CONSTITUTIONAL CLAIMS.

THE APPLICANT REQUESTS THAT THIS HONORABLE COURT FOR THE APPROVAL OF THIS APPLICATION AND FOR THE APPOINTMENT OF COUNSEL SO THAT APPLICANT RIGHTS TO A P.C.R. WOULD BE DEEMED ABANDON DUE TO THE FACT THAT APPLICANT IS ONLY ONE (1) YEAR TO FILE THIS APPLICATION FROM THE DATE OF HIS CONVICTION AND/OR APPEAL.


 J. C. VAUGHN PAGE 301133

DEED OF AFFIDAVIT TO AND SUBSCRIBED BEFORE ME THIS

15 DAY OF June, 2011


 NOTARY PUBLIC

MY COMMISSION EXPIRES 12-16-2019

V
STATE OF SOUTH CAROLINA

APPLICATION FOR POST-CONVICTION RELIEF

MOTION TO ADDRESS ALL ISSUES

JOINES THE APPLICANT, METTL V. FAYE #307433, WHO ASK THIS HONORABLE COURT TO REQUIRE THE COURT APPOINTED ATTORNEY
 OBLIGED IN THIS POST-CONVICTION RELIEF ACTION TO BE Meticulous IN THE PREPARATION OF ANY ORDER PREPARED IN THIS CASE.
 SPECIFICALLY, THE APPLICANT ASK THAT EACH AND EVERY ISSUE RAISED IN THE POST-CONVICTION RELIEF APPLICATION AND ANY
 AMENDMENT HEREOF, AT THE HEARING, TO BE ADDRESSED IN THE ORDER OF THE COURT TO BE ISSUED AT THE CONCLUSION OF THE
 VENTILATORY HEARING IN THIS MATTER. THE REASON FOR THIS MOTION IS THAT IN REUTZ V. STATE, 423 S.E.2d 127 (1992)
 THE COURT STATED THAT THIS IS A LEGAL REQUIREMENT UNDER THE LAWS OF SOUTH CAROLINA; PURSUANT TO STATUTE, SECTION
 17-80. ALSO, SEE BROSON V. STATE, 328 S.C. 236, 493 S.E.2d 500 (1997) FURTHERMORE, IN LAIRD V. STATE, 262 S.E.2d
 737, PURSUANT TO 17-27-110 THE SUPREME COURT OF SOUTH CAROLINA HAS ADOPTED RULES DESIGNED TO AID IN THE
 POST-CONVICTION PROCESS, SUCH AS (WORDS OMITTED) RULE 5, WHICH PLACES UPON APPOINTED COUNSEL THE DUTY TO
 VERTIFICATION FROM THE APPLICANT WHETHER HE HAS INCLUDED ALL GROUNDS KNOWN TO THE APPLICANT AS A BASIS FOR
 ATTACKING THE JUDGMENT AND SENTENCE AND TO AMEND THE APPLICATION TO INCLUDE ANY CLAIMS NOT ALREADY
 STATED. "LAIRD, SUPRA"; THE APPLICANT, THEREFORE, REQUESTS THIS HONORABLE COURT GRANT THE MOTION FOR THE ABOVE
 STATED REASONS.

CONCLUSION

THE REASONS CITED IN THE POST-CONVICTION RELIEF APPLICATION AND THE AMENDMENT MOTIONS HEREOF, THE APPLICANT'S
 CONVICTION AND SENTENCE SHOULD BE VACATED, AND POST-CONVICTION RELIEF GRANTED.

COPIES AFFORDED TO AND SIGNED BY APPLICANT

15 DATE OF June, 2011

J. A. Kline
 NOTARY PUBLIC

COMMISSION EXPIRES: 12.16.2019

RESPECTFULLY SUBMITTED

S. J. V. J.

- iv. _____
- (d) the date of each such disposition:
- i. APRIL 3, 2008
- ii. JANUARY 5, 2010
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- 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. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- 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) FACTS PREVIOUSLY NOT HEARD BY THE COURTS
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- DAVID S. CHAMBERLAIN 422 EAST MAIN STREET ROCKHILL SC 29730
 - DEANOR DUFFY CLEARY PO BOX 11589 COLUMBIA SC 29211-1589
 - M. CELIA ROSEN 1330 LLOYD STREET SUITE 401 PO BOX 11587 COLUMBIA SC 29211-1587
- (b) the proceedings at which each such attorney represented you:
- ARRAIGNMENT, TRIAL, SENTENCING
 - DIRECT APPEAL
 -

19. State clearly the relief you seek in filing this application:

REVERSE AND REMAND FOR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

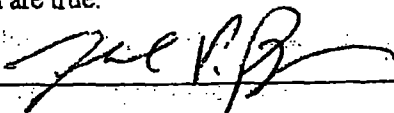
NO

STATE OF SOUTH CAROLINA)

County of McCormick)

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.



SWORN to and subscribed before me this 27
day of June, 2011.

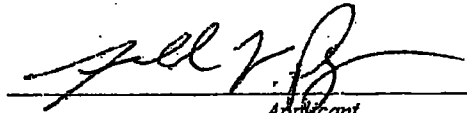
J C Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

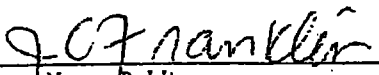
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

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.


Applicant

SWORN or affirmed to and subscribed before me this
27 day of June, 2011.


Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jaleel Page, #309433,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-2584

RETURN

(Appointment of Counsel Requested)

The Respondent, making its return to the application for post-conviction relief filed July 1, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the December 2004, term of the York County Grand Jury Grand for Attempted Armed Robbery (2004-GS-46-4004), Criminal Conspiracy (2004-GS-46-4005), Possession of a Weapon during the Commission of a Violent Crime (2004-GS-46-4006), and Possession of a Pistol by a Person Under 21 (2004-GS-46-4007). Derek S. Chiarenza, Esquire, represented the Applicant. On May 27, 2005, the Applicant proceeded to trial and was convicted as indicted. The Honorable Marc H. Westbrook sentenced him to confinement for a period of twenty (20) years for Attempted Armed Robbery, five (5) years consecutive for Criminal Conspiracy, five

(5) years concurrent for Possession of a Weapon during the Commission of a Violent Crime, and five (5) years consecutive for Possession of a Pistol by a Person Under 21.

The Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Page, Op. No. 08-4367 (S.C. Ct. App. Filed April 3, 2008). The Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on August 19, 2010. The Remittitur was sent on November 5, 2010.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "New Evidence"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors. he would not have pled guilty and would have insisted on going to trial.
Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

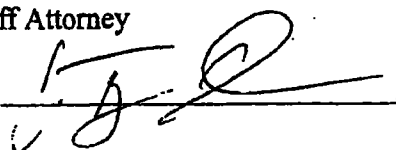
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Oct 14, 2011:

STATE OF SOUTH CAROLINA

COUNTY OF YORK

JALEEL PAGE,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

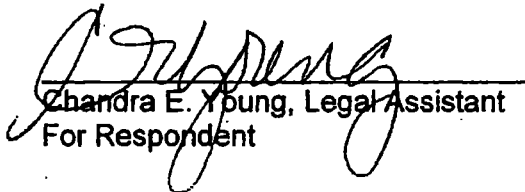
2011-CP-46-2584

AFFIDAVIT OF SERVICE BY MAIL

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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Debbie Sue Mollycheck, Esquire
P.O. Box 835
Rock Hill, SC 29731

DATED this 24th day of October, 2011.


Chandra E. Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3
4 JALEEL V. PAGE)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -VS-) 2011-CP-46-02584
7 STATE OF SOUTH) AUGUST 16, 2012
8 CAROLINA,) YORK, SOUTH CAROLINA
9 RESPONDENT.)

10
11 B E F O R E:

12 THE HONORABLE JOHN C. HAYES, III, JUDGE.
13
14

15 A P P E A R A N C E S:

16 BRIAN MURPHY, ESQUIRE
17 ATTORNEY FOR THE APPLICANT

18 J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20
21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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EXHIBITS

1				
2	NO.	DESCRIPTION	ID.	EV.
3	(NO EXHIBITS MARKED)			
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1 (PROCEEDINGS, AUGUST 16, 2012)

2 THE COURT: This is the case of Jaleel Page versus
3 the State of South Carolina.

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: May it please the court, Your Honor,
7 this is the case of Jaleel Page versus the State of South
8 Carolina, case number 2011-CP-46-2584.

9 Mr. Page was indicted in the December 2004 term of
10 the York County Grand Jury for attempted armed robbery,
11 criminal conspiracy, possession of a weapon during the
12 commission of a violent crime, and possession of a pistol by
13 a person under 21.

14 On May 25th, 2005, Mr. Page proceeded to trial,
15 which he was convicted of all charges as indicted.

16 I believe he was also indicted for murder, Your
17 Honor. He was found not guilty of the murder.

18 The Honorable Mark H. Westbrook sentenced him to
19 confinement for twenty years for attempted armed robbery,
20 five years consecutive for criminal conspiracy, five years
21 concurrent for possession of a weapon during the commission
22 of a violent crime, and five years consecutive for
23 possession of a pistol by a person under 21, for a grand
24 total of 30 years.

25 The applicant, thereafter, filed a timely notice

1 of appeal with the South Carolina Court of Appeals. The
2 Court of Appeals affirmed his conviction and sentence in a
3 published opinion, which I believe you have in your packet.

4 He then filed a petition for writ of certiorari in
5 the South Carolina Supreme Court.

6 The Supreme Court denied the petition, and
7 remittitur was issued on November 5th, 2010.

8 He thereafter filed a timely PCR application on
9 July the 1st, 2011.

10 The State filed its return October 25th, 2011, and
11 he is represented here today by Mr. Brian Murphy.

12 MR. MURPHY: Thank you, Your Honor.

13 May it please the court?

14 THE COURT: Yes, sir.

15 MR. MURPHY: I have a motion before we get into
16 the case.

17 THE COURT: All right.

18 MR. MURPHY: Your Honor, that is a motion for a
19 continuance. I know that we normally like to get these
20 motions in ahead of this week, and please accept my
21 apologies for not doing that. I would like to explain a
22 little bit about that.

23 This case was tried. There is about eight hundred
24 pages of transcript.

25 At the beginning of the case, when I first got on

1 the case, I sent out my letters to the trial counsel for a
2 copy of the case file. I did get ahold of trial counsel on
3 the phone. He told me that Appellate Defense had the file,
4 so I got on the phone with Appellate Defense and I said "can
5 you please send me a file."

6 They said "we will send it to you."

7 Not hearing anything after a couple of weeks I
8 called back. I spoke to Appellate Defense and I said "I
9 need the file."

10 They said "we will send it to you."

11 I said "okay."

12 After a little bit more time, Your Honor, I didn't
13 get the file, I called back and said "will you send me the
14 file?"

15 They said "we will send it to you."

16 After a little bit more time, Your Honor, I
17 started having my paralegal call. She called a few times
18 with no return phone calls.

19 By this time, Your Honor, the case had gotten on
20 this roster and so I sent a subpoena to the executive
21 director for the file.

22 We got that file, Your Honor, about the beginning
23 of October, when we got that right in end of July -- I'm
24 sorry, the end of July, beginning of August.

25 THE COURT: Okay.

1 MR. MURPHY: Your Honor, this file is -- the file
2 that I got was approximately half of a bankers file. I have
3 read it, Your Honor, and I have gone through that file and
4 gone through the transcript.

5 The other thing that we needed to get was the
6 investigative file from the private investigator, Mr.
7 Staffileno, AJS Investigations. I got that about two weeks
8 ago, Your Honor, and I have been through that.

9 The reason I'm bringing that is because we believe
10 that there is a statement, or there was a statement, made by
11 a co-defendant that exonerates Mr. Page. Of course, Your
12 Honor, I could not request an order to transport him here.
13 He is currently in the Department of Corrections, and I did
14 not feel in good faith that I could ask him to be
15 transported here and ask Your Honor to order him to be
16 transferred, without knowing what he is going to say. We
17 were searching for that statement. We thought the statement
18 was in the investigative file and it's not in the
19 investigative file.

20 So at this point, Your Honor, what we are asking
21 for a continuance is so that later on we can go get that
22 statement from the co-defendant and then be able to bring
23 him to testify at trial.

24 THE COURT: All right. Mr. Johnson?

25 MR. JOHNSON: Your Honor, I discussed it with

1 counsel. I oppose this continuance. This case has already
2 been continued per a consent order, but pursuant to Mr.
3 Murphy's request in January of this year.

4 We believe the -- the State's position is that the
5 applicant and his counsel have had plenty of time to get
6 this case prepared. I have got Mr. Chiarenza up here from
7 Columbia. I think Mr. Page's family is here. We are ready
8 to go forward and we would ask you to deny this continuance.

9 THE COURT: Who was the co-defendant in that?

10 MR. MURPHY: Mr. McCollum, Your Honor, is a
11 co-defendant.

12 Your Honor, he pled the day that the trial
13 started, Mr. McCollum. He's the shooter, Your Honor, the
14 main guy in this case.

15 There were two other co-defendants, A.J. Williams
16 and Terrance McKnight, so Mr. McCollum did not testify at
17 trial.

18 THE COURT: It doesn't look like any of them
19 testified.

20 MR. MURPHY: A.J. Williams testified, Your Honor.

21 THE COURT: Gaither Lee Williams?

22 MR. MURPHY: No, a different witness. Gaither
23 Williams is a witness, who is an older lady, who happened to
24 be --

25 THE COURT: Oh, I see, Antonio Javar Williams.

1 MR. MURPHY: Yes.

2 THE COURT: He did testify. I see that now.

3 MR. JOHNSON: Yes, sir.

4 MR. MURPHY: Yes, sir.

5 THE COURT: What prejudice would work for the
6 State, other than the one we discussed earlier in the week
7 as to scheduling and the fact that the State has got a heavy
8 burden of cases and needs to get cases moved?

9 MR. JOHNSON: That's the main one, Your Honor, but
10 we just feel like he's had -- this has been continued
11 before. It's time for this case to go forward, and I have
12 talked to counsel. There are not many issues in this case,
13 Your Honor. This case should be heard today.

14 THE COURT: Mr. Murphy?

15 MR. MURPHY: Thank you, Your Honor, and we did
16 continue it before. The reason for that is I didn't
17 have the -- as we discussed the file issue. I didn't have
18 the file, and so I thought trying to work through that with
19 the appellate record -- I didn't have anything to go on that
20 I was not -- I was not able to prepare for that, because I
21 didn't have the file. Now I do have the file. I got it
22 right at the end of July, beginning of August, Your Honor.

23 THE COURT: And what is the basis for why, and
24 you, of course, believing there is a statement by a
25 co-defendant exonerating Mr. Page?

1 MR. MURPHY: Well, it's -- it's communications
2 that we have had that that defendant, that Mr. McCollum, has
3 said "yes, I'm going to say this."

4 I haven't been able to verify that and I haven't
5 been able to find that statement. Originally we thought
6 there was a statement out there, and so that's what I went
7 to try to find, and I have looked through this file and I
8 looked through the investigative file. When I didn't see
9 that, I did arrange for a phone conference with Mr. Page
10 earlier this week, and so I need a little bit more to go on,
11 I think, to use the resources of the State to bring the
12 witness here and have him here and testify and get that
13 order in place, Your Honor.

14 THE COURT: All right.

15 MR. JOHNSON: Your Honor, I don't want to argue
16 the case right now, but once you read this record, you will
17 see that it's not just Mr. McCollum could have said he
18 wasn't there, but there are four other witnesses that puts
19 Mr. Page at the scene of the crime. And, you know, I guess
20 it's irrelevant to what Mr. McCollum has to say. He did not
21 argue -- no alibi was argued in the case and I don't find
22 that as relevant to this case, and if you will read the
23 transcript and go forward with the case today, you will hear
24 that.

25 MR. MURPHY: Your Honor, what I suggest to the

1 court is that we think we know what Mr. McCollum said. We
2 don't know, and I think it's premature to base the case on
3 what we don't know for sure and we don't know what he would
4 testify to.

5 THE COURT: Well, what -- I'm talking about a
6 little bit on Mr. Johnson said. What if you have a
7 statement that a co-defendant exonerates Mr. Page, and you
8 have several apparently co-defendants, at least one who --
9 and some other witnesses who put him there. What -- you
10 know, some -- how many years later, six, seven years later
11 you have somebody saying -- giving a statement.

12 MR. MURPHY: Thank you, Your Honor.

13 The larger witness for the State's case is Mr.
14 A.J. Williams, who changed his statement three times.

15 The other person who testified that put Mr. Page
16 at the scene was Mr. McCollum's girlfriend. And by all
17 accounts she was not credible. If you read the transcript,
18 Your Honor, it was -- her statement was completely different
19 than anybody else's statement.

20 The only other statement they had was -- as far as
21 witnesses are concerned at the trial is Mr. McKnight's
22 statement. And originally that statement was redacted for
23 any mention of Mr. Page, because he couldn't cross-examine
24 Mr. McKnight. They were being tried together.

25 On aggressive cross-examination, the State moved

1 to un-redact that McKnight statement and the judge granted
2 that motion. The Court of Appeals says that shouldn't have
3 happened, that the statement should have remained redacted,
4 and basically the statement of McKnight did say that Mr.
5 Page was there.

6 So once you take that error out of the equation --
7 and that does go to another issue we have to grant Mr.
8 Page's PCR regarding that statement is now you are left with
9 two; one who changed his story three times during the course
10 of the investigation, and one, who by all accounts, was
11 completely un-credible.

12 MR. JOHNSON: Your Honor, just to add to that
13 about the McKnight statement, the Court of Appeals has
14 disposed of that issue and it's not proper here for the PCR
15 court to hear. They say while that judge erred in allowing
16 that redacted statement to become un-redacted, it was a
17 harmless error, and I have the opinion in your packet, I do
18 believe, so that's a direct appeal issue.

19 Secondly, you asked me earlier what prejudice this
20 may have on the State. Well, the longer this goes on, if he
21 were able to find Mr. McCollum and he has a statement that
22 does not put Mr. -- or exonerates Mr. Page, there might be
23 other witnesses out there that the State, the longer it goes
24 on, we don't have a chance to get to. So that's prejudice
25 to our case as well, not only the intense course load that I

1 get to deal with, but --

2 THE COURT: Well, I'm not sure I'm following you.
3 Are you saying that if you went back to trial, you wouldn't
4 have these witnesses --

5 MR. JOHNSON: Right.

6 THE COURT: -- you might my be able to get to?

7 MR. JOHNSON: Right, we don't know that yet, but
8 that's just a possibility of prejudice, Your Honor.

9 But as for right now, I just feel this case should
10 go forward and there is no reason to continue it yet again.

11 THE COURT: Is your case -- are you filled up with
12 cases for October?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: So it would be next year?

15 MR. JOHNSON: It would be next year.

16 THE COURT: Well, I hate to continue these, but he
17 is serving twenty years and he's not going anywhere.

18 MR. JOHNSON: I believe I have talked to counsel
19 that his biggest gripe is the redacted, un-redacted,
20 statement of Mr. McKnight, which our argument is that the
21 Court of Appeals has already disposed of this and it's not
22 even proper for this court to hear.

23 MR. MURPHY: If I may, Your Honor?

24 THE COURT: Yes.

25 MR. MURPHY: The Court of Appeals did hold that

1 the statement should have been -- should not have been
2 un-redacted. I know that's a double negative, but it should
3 have left the redacted statement in place.

4 What that issue -- what we are bringing is not the
5 counsel's argument over whether that -- I mean, he did not
6 make an error in arguing that issue. However, there was
7 testimony that was not objected to prior to that issue that
8 basically allowed the detective to testify regarding the
9 McKnight statement and what it said, and that was not
10 objected to. So the issue that we are talking about is not
11 regarding that un-redacted statement, but its's prior in the
12 case, where basically the Court of Appeals said, yeah, it
13 shouldn't have happened, but it's harmless, because it's
14 already in testimony. So the issue is the already in
15 testimony, not the un-redacted statement.

16 THE COURT: What about hearing what you have now
17 and continuing the case and giving you time to get that
18 statement and then leave the record open, giving you sixty
19 days, ninety days, to see whether you can get that statement
20 or not? And if you get it, whether it's something that you
21 want to proceed, and leaving the record open for that, with
22 the option of having a -- continuing the hearing at a later
23 time, if you need it? I mean, you are ready to go forward
24 on everything but that statement?

25 MR. MURPHY: Yes, Your Honor. And --

1 THE COURT: And the statement, to be very blunt,
2 is sort of iffy at this point? It may be out there and it
3 may not be?

4 MR. MURPHY: That's correct, Your Honor.

5 Well -- and I don't think we are going to go find
6 a statement, a prior statement. I think we are going to go
7 interview Mr. McCollum.

8 THE COURT: And he may or may not say what you
9 think he says?

10 MR. MURPHY: Correct.

11 THE COURT: Because you hadn't talked to him?

12 MR. MURPHY: Correct.

13 THE COURT: All right. Let's go forward today and
14 I'll leave the record open.

15 MR. MURPHY: Thank you, Your Honor.

16 THE COURT: I think that's the best thing to do.
17 We -- you know, somebody that's subjected to twenty years, I
18 don't want to rush to judgment, so to speak, but, on the
19 other hand, this case is over a year old and has been
20 continued once, and the more these get backed up, the harder
21 it is to move everything along, so we will hear what you
22 have got today and leave the record open.

23 MR. MURPHY: Thank you, Your Honor.

24 And along with going to get that statement, Your
25 Honor, I would like to make a -- usually that's an ex parte

1 motion, Your Honor. However, we -- everybody knows what we
2 are going to go do, so I'm not sure that it necessarily
3 needs to be ex parte.

4 Would Your Honor prefer that I make this motion ex
5 parte, or go ahead and make the motion?

6 THE COURT: Motion to do what?

7 MR. MURPHY: It would be on the investigator fees.

8 THE COURT: No, I'll allow that. I'll grant that.
9 I mean, I'm sort of telling you to do it, so I guess I ought
10 to tell you who will pay for it.

11 MR. MURPHY: There would also be a small matter of
12 copying fees, Your Honor, and getting -- basically Mr. Page
13 is requesting his file, and it's voluminous, Your Honor, so
14 what I would like to do is get it to a copy place and send
15 it down to him, so he can have a complete copy of the file.

16 THE COURT: To hand to who, Mr. Page?

17 MR. MURPHY: Yes, Your Honor.

18 THE COURT: I don't see why he shouldn't have his
19 file.

20 MR. MURPHY: Thank you, Your Honor.

21 THE COURT: I don't know when the package gets
22 there, how much they are allowed to have in their cell and
23 things like that, but I can't -- I'm not ordering that SCDC
24 go dump them in his cell for him, because I don't know what
25 they allow. I don't know how that works, but certainly I'll

1 sign an order defraying the costs -- not defraying the
2 costs, but having ODC pick up the costs for the copying and
3 postage to get it down there.

4 MR. MURPHY: Thank you, Your Honor. I'll just
5 send it over to Kinko's.

6 THE COURT: Call your first witness.

7 MR. MURPHY: Mr. Derek Chiarenza.

8 DEREK CHIARENZA, ESQUIRE, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. MURPHY:

11 Q. Thank you. What's your name?

12 A. Derek Chiarenza.

13 Q. And where do you work?

14 A. I have a criminal law practice that -- my cases are
15 primarily York County, Chester County, Richland County, and
16 Lexington County.

17 Q. And did you represent Mr. Page in the State of South
18 Carolina versus Jaleel Page, May 23rd to 27th, 2005?

19 A. Yes, I did.

20 Q. Can you tell me a little bit about the charge Mr. Page
21 faced?

22 A. He was accused of conspiring with one or more
23 co-defendants to rob someone at their home and was charged

24 with a number of charges along those lines, the most serious
25 being murder, because they -- they went to the home, the --

1 not someone -- I believe it was the uncle of the targeted
2 individual came to the door and was subsequently shot and
3 murdered in the attempt to rob or confront the intended
4 victim, who ultimately wasn't there at the time. So he was
5 charged with a number of things. Murder, possession of a
6 firearm, conspiracy, unlawful possession of a firearm under
7 a person under 21. I think maybe an attempted armed
8 robbery, or something of that nature.

9 Q. What was the outcome?

10 A. He was found guilty I think on everything except the
11 murder.

12 Q. Do you know what his sentence was?

13 A. I don't recall off the top of my head, and I'll tell
14 you I have not reviewed this transcript in well over --
15 well, since the time that I have handed over all my material
16 to the appellate defender.

17 Q. Tell me a little bit about how you prepared for the
18 case for trial.

19 A. We met on numerous occasions. He was -- he was not out
20 on bond. He was in the detention center, so we met on
21 numerous occasions in the detention center.

22 I also had fees approved for a private investigator, so
23 I met with Mr. Staffileno, who was the investigator, on a
24 number of occasions, and I viewed the crime scene in York.

25 I met with the solicitor. I believe the case was

1 prosecuted by -- in addition to Tommy Pope, the solicitor,
2 Willy Thompson, deputy solicitor, and reviewed their
3 evidence and materials.

4 I also conferred with co-counsel. I believe Jim Boyd
5 represented Mr. McKnight, and I'm pretty sure Theresa Johns
6 from Columbia represented the cooperating co-defendant, who
7 up until the day of trial we had what I believe was sort of
8 a -- we were on the same page from a defense standpoint, and
9 then on the morning of trial Ms. Johns client, unbeknownst
10 to us, had made a deal with the solicitor's office at the
11 eleventh hour, and I was advised that morning by her that
12 her client was going to plead guilty. And I believe he pled
13 just prior to us picking a jury, or maybe it was after we
14 picked a jury, but I'm pretty sure it was the day we started
15 the trial that he pled guilty.

16 Q. Was that Mr. McCollum, the shooter?

17 A. Yes.

18 Q. And everything points to him being the shooter?

19 A. I think that's what the -- I think what's what the
20 facts showed. And probably -- again, I apologize for not
21 being all that up on the facts, but, yeah, I think in a
22 nutshell, from an evidentiary standpoint, because there were
23 alleged to have been -- each individual is alleged to have
24 had a firearm, but I think from an evidentiary standpoint it
25 was fairly obvious that Mr. McCollum was the shooter.

1 Q. Tell me about your -- or Mr. Page's assistance with the
2 defense.

3 A. Well, we had kind of an adversarial relationship, to be
4 honest with you. In fact, at one point he wanted me -- he
5 didn't want me to represent him any more, and I believe we
6 went before Judge Alford. I made a motion to be relieved.
7 At some point in the midst of -- I believe it was right --
8 we were actually on the record. I'm pretty sure we were in
9 front of the judge and getting ready to go through the
10 motion to be relieved and Mr. Page pulled me aside and
11 advised me that he had changed his mind and wanted me to
12 continue representing him. It's my recollection our
13 relationship got a little bit better after that.

14 You know, I think -- you know, I think he was just
15 frustrated, you know, being in the jail and charged with a
16 lot of serious charges, you know. But once we got -- once
17 we got into court in front of Judge Alford, and I don't know
18 if it was something I said or the way I presented myself,
19 but something must have inspired him to stay with me and he
20 asked that I not get off of his case, and so I stayed.
21 There were no problems that I recall after that. And,
22 again, we would have met on some other occasions in the
23 detention center and gone from there.

24 And quite honestly I don't recall as what he may have
25 asserted, that his defense was he simply was not there,

1 wasn't involved at all, or that he was kind of an unwilling
2 participant, wasn't quite sure what all was going to occur
3 on that day. I can't -- I can't say with any certainty
4 which tact he took, but he was just the wrong guy, you know,
5 had absolutely nothing to do with this thing, but that, you
6 know, he may have been there, but was -- you know, had much
7 less of an involvement than the State was alleging.

8 Q. In preparing for his defense, do you know how many
9 documents he would have had out of your file?

10 A. It's typically my practice to provide a client with,
11 you know, all the meat of the discoverable prosecution's
12 file; I mean, that's to say, you know, the summaries, any
13 statements, any co-defendant's statements, any interviews,
14 certainly any statements of his own that he would have made.
15 And I suspect that if Mr. Staffileno reduced his
16 investigation down, or a report, we would have made that
17 available or reviewed that with Mr. Page as well.

18 Q. So you would have reviewed not only the investigation,
19 but also all discoverable information received from the
20 State with Mr. Page?

21 A. Yes. You know, I want to hear what he's got to say
22 about it.

23 Q. Tell me about the State's case as they were going
24 through their main fact witnesses that put Mr. Page at the
25 scene.

1 A. I'm not sure I understand what you want me to tell you.

2 Q. Do you remember Katrina Howard?

3 A. I'm going to have a hard time recalling any specific
4 witnesses in this case.

5 I know that the State -- there was a girlfriend of the
6 co-defendant. There were a couple other co-defendants.

7 There were -- I believe there were a number of people in the
8 community, just regular citizen witnesses, who testified to
9 seeing a number of young men hanging out that day, I think
10 it was like under a tree or in a specific area. They may
11 have alleged that they were all getting high, smoking pot,
12 maybe drinking beer under this tree, and so some people were
13 seen coming and going. So a number of those neighborhood
14 witnesses I believe were called.

15 There was a woman. I believe I recall there was maybe
16 an older woman, Mary something or other.

17 Q. Tell me about the girlfriend.

18 A. I do recall that -- yeah, her -- there were some issues
19 with her testimony, as far as -- it just -- it did not
20 corroborate any of the other versions of anything.

21 Something having to do with her vehicle, either she came in
22 a car or left in a car. The --

23 Again, you know, I apologize, but this case was six or
24 seven years ago and I did not review the transcript
25 recently, but I -- I wouldn't have much more insight than

1 what is actually in the transcript itself. So if you have
2 got it, if you want to ask me any questions out of the
3 transcript, I'll try and shed some light on them, but I can
4 only tell you, you know, the State's case was whatever it
5 shows itself to be in the trial transcript.

6 Q. What about A.J. Williams?

7 A. My recollection is that he was a defendant who was also
8 in the detention center pretrial and that at some point
9 either he had like a -- there was something to do with a
10 jail -- you know, another inmate snitching; you know, either
11 getting a statement from Williams, or Williams got a
12 statement from somebody, but that's -- again, I'm a little
13 vague on the details there.

14 Q. Okay. And he gave what -- he gave three different
15 statements to investigators. Does that sound --

16 A. I have a recollection of him changing -- yeah, him
17 changing the version of things from time to time. If you
18 say it's three, then I wouldn't argue with that. I don't
19 have independent recollection of him giving three, though.

20 Q. During the course of the trial you basically got two
21 people saying Mr. Page was there; Katrina Howard, which is
22 the girlfriend, and A.J. Williams, which is a co-defendant
23 who pled prior to trial?

24 A. And to whatever extent any of those other citizen
25 witnesses may have given a description that, you know,

1 seemed to match Mr. Page. And, again, I don't know to what
2 extent there is testimony along those lines, but -- yeah,
3 I'm certain that Katrina Howard testified that Mr. Page was
4 there.

5 And in regard to Mr. McCollum, I have been told that he
6 was not called as a witness in the trial. I don't
7 personally recall that, but he did plead guilty prior to the
8 trial and was questioned extensively during his guilty plea
9 by the solicitor as to facts and occurrences that day. And
10 it's not my recollection that he made any statements that
11 would have exonerated Mr. Page during that plea, but, again,
12 there ought to be a transcript of his guilty plea and it
13 would speak for itself.

14 Q. One of the last witnesses was Sara Robbins. Sara
15 Robbins was the lead detective. Does that --

16 A. I recall Sara Robbins being the lead detective in this
17 case.

18 Q. You have got Katrina Howard, who with un-credible; and
19 then you got A.J. Williams, who gave multiple statements up
20 and to that point?

21 A. And whoever else.

22 Q. And Mr. McKnight was also at trial at the same time,
23 correct?

24 A. Yeah, represented by Jim Boyd, as I recall. I don't
25 recall whether -- I don't believe Mr. McKnight testified

1 during this trial, is my recollection.

2 Q. And there was a statement from Mr. McKnight that also
3 said Mr. Page was at the scene?

4 A. Yes, there was a co-defendant's statement, which raised
5 the Bruton issue, which we addressed with the court,
6 regarding how much of that should or shouldn't be let in
7 against Mr. Page.

8 Q. And, in fact, the judge agreed with you and the
9 statement was instead of saying Page, it said "the other
10 guy"?

11 A. Yeah. Yes, it was one of the -- one of the options the
12 trial court has in dealing with a co-defendant's statement
13 is they can -- my understanding of the law is that they can
14 either just black it out or make some sort of a vague
15 reference to an anonymous-type person.

16 In this case, yeah, I believe it was "that guy," or
17 "the other guy" was the language that was used.

18 In the original statement it would have said Page, or,
19 you know, whatever the co-defendant may have been calling
20 Mr. Page. They removed his specific identifying
21 characteristics and used the phrase "that guy", or "the
22 other guy".

23 Q. So at that point in the trial judge said that cannot
24 be -- the reference to Page cannot be admitted at the trial?

25 A. Yes, and I believe that was the -- that was the status

1 of the law at the time of the case.

2 Q. And you, I think it's been characterized as,
3 aggressively cross-examined Detective Robbins at the trial?

4 A. Yes, because -- I agree that there was little
5 corroborating some of the statements that had been made in
6 this case, particularly co-defendants statements.

7 And, you know, at some point during my questioning of
8 the detective I think I wanted to point out that there was
9 little corroboration and no credible corroboration of Mr.
10 McKnight's statement. That's -- again, my recollection is
11 then that's when the detective said that, you know,
12 ultimately they corroborated it. They corroborated A.J.
13 Williams statement through Mr. McKnight's statement.

14 And I -- I'm making an assumption here, but I think
15 what happened then was that either the solicitor, or the
16 judge sua sponte, but in all likelihood was the solicitor
17 probably argued then that the door had been opened on that
18 statement and moved to un-redact the statement, if my
19 recollection serves correct.

20 Q. And let me take you through that.

21 MR. MURPHY: Your Honor, for the record I'm
22 looking at page 439, and I'm going to begin at line 20.

23 THE COURT: Okay.

24 BY MR. MURPHY:

25 Q. And your question -- this is the testimony of Sara

1 Robbins.

2 Your question was, "answer my question, please
3 detective. Did you corroborate Mr. Williams statement given
4 to you on December 31, 2004 -- 2003?

5 After that statement was given to you, did you then go
6 back to the trailer park where this crime occurred to
7 corroborate the details he had given you?"

8 Sara Robbins answered, "we did talk to other people and
9 were unable to corroborate it until we corroborated it
10 through Terrence McKnight's statement.

11 Q. Another co-defendant?

12 A. Yes."

13 Does that sound familiar with that?

14 A. I have no reason to believe that the court reporter
15 inaccurately preserved the record, so --

16 Q. Thank you.

17 A. So, yes, I was -- it appears that perhaps she was un --
18 her answer was unresponsive to my question, because I asked
19 her specifically whether she corroborated it through other
20 individuals at the trailer park, and she chose to elaborate
21 and blurt out that she corroborated it through Mr.
22 McKnight's statement.

23 Q. Which was inadmissible? The judge had already ruled on
24 that.

25 Do you recall any objection or motion for a mistrial at

1 that point?

2 A. Apparently I did not make an objection at that point,
3 or make a motion for a mistrial at that point.

4 Q. Would you agree with me that that would have been
5 appropriate at that point?

6 A. If I had it to do over again, and, yeah, I think that
7 would -- I would want to make that -- I would want to make
8 that objection at that point, either that she was -- her
9 answer was nonresponsive, or that the court had already
10 ruled on the admissibility.

11 I would point out, though, that the whole -- the way --
12 and this is my own personal editorial, but the way that we
13 deal with Bruton issues are really -- it's a fantasy to
14 think that, you know, the jury is not coming to some
15 conclusion as to who that "the other guy" or the blacked out
16 person is, so I don't know what ultimately the big harm is
17 there. I don't know that if that by my not objecting to
18 what she said at that point really was any sort of great
19 watershed in opening up the jury's eyes, but we will never
20 know.

21 But to be fair, to answer your question, yes. I mean,
22 if I was trying this case today and was on my toes for that
23 particular answer, I think the proper thing to do would have
24 been to make an objection to her answer.

25 Q. And the judge actually relied on that exchange on his

1 ruling for un-redacting McKnight's statement?

2 A. Yes, which ultimately the Court of Appeals said he
3 should not have done.

4 MR. MURPHY: And, Your Honor, for the record that
5 page's 494, starting at line three. There is an exchange.
6 I won't read it into the record, because Your Honor has
7 already seen it.

8 THE COURT: All right.

9 BY MR. MURPHY:

10 Q. And, in fact, you told the judge, "judge," and I'm
11 reading at 494, line 23, "perhaps I missed an opportunity to
12 move for a mistrial at that point, because the court has
13 already ruled that that statement is inadmissible to my
14 client."

15 And after that, there was a -- there was actually a
16 good bit of spirited conversation about whether the
17 statement was going to come in -- whether the redacted
18 statement was going to be un-redacted or not, correct?

19 A. I imagine there was, yes.

20 Q. And the statement ultimately came in, one on the basis
21 of your rigorous cross-examination, and the other basis was
22 that it was already in the record?

23 A. Yeah, I think there is a certain degree of circular

24 reasoning going on, you know, for lack of a better word,

25 which came first type argument, but ultimately, you know, as

1 I mentioned, the Court of Appeals said that, you know,
2 regardless of my cross-examination, the statement still
3 should not have been un-redacted and should not have come
4 back in.

5 Q. The Court of Appeals said you are right?

6 A. Yes.

7 Q. But they did not order a new trial?

8 A. No, they -- they deemed it harmless error, and -- I
9 don't know if that harmless error, in light of all the other
10 evidence not related to that statement, or harmless error in
11 light of my -- I guess that's why they would deem it to be
12 harmless error.

13 Q. In fact, the reasoning was it's harmless because this
14 was already in testimony and it was not objected to?

15 A. If that's what they said, that's what they said.
16 Whatever is in the record of the Court of Appeals.

17 MR. JOHNSON: Your Honor, just to clarify that
18 what Mr. Murphy just said, it says it was harmless because
19 it was cumulative or corroborated by other evidence, not
20 that it wasn't objected to. I guess that's my reading of
21 the Court of Appeals.

22 THE COURT: I have got it in my hand right now. I
23 haven't had time to read it all while I have been listening
24 to the testimony, but I'll certainly look at.

25 MR. JOHNSON: Okay. I just wanted to clarify.

1 Thank you, Your Honor.

2 MR. MURPHY: Thank you, Your Honor.

3 I would point, Your Honor, to the whole opinion,
4 and then without that just the paragraph above the
5 conclusion.

6 MR. MURPHY: May I beg the court for a second?

7 THE COURT: Yes.

8 (Off the record)

9 (Back on the record)

10 MR. MURPHY: Your Honor, that's all I have,
11 subject to recall, based on McCollum.

12 THE COURT: Cross?

13 MR. JOHNSON: Just briefly, Your Honor.

14 CROSS EXAMINATION BY MR. JOHNSON:

15 Q. Mr. Chiarenza, I know that you had testified that there
16 was somewhat of an adversarial relationship between you and
17 Mr. Page and that he claims he wasn't there, or wasn't
18 involved, or maybe an unwilling participant, but will you
19 agree with me that the testimony at trial showed that Mr.
20 Page was -- that a co-defendant testified, I think Mr.
21 Williams testified, that Mr. Page was flashing some type of
22 pistol before this event ever occurred?

23 A. I believe that's in the transcript, yes.

24 Q. Okay. And concerning I guess Mr. McKnight's statement,
25 would you also agree with me that there was a Jackson v.

1 Denno Hearing and that the court deemed that was admissible
2 before, I guess, your cross-examination of Detective
3 Robbins?

4 A. I have no reason to take any issue with that. I would
5 agree, yes.

6 Q. Is there any reason, and maybe my -- correct me if I'm
7 wrong, do you see a reason to object to that statement, if
8 it's already admissible?

9 A. Object to McKnight's statement?

10 Q. Yes.

11 A. I mean, sometimes you renew an objection, but, no, I
12 mean, I think that that ground was covered and ruled on.

13 Q. And I know Mr. Murphy has brought up the fact that Mr.
14 Williams had conflicting statements, but would you also
15 agree with me that you cross-examined Mr. Williams
16 concerning his conflicting statements?

17 A. If he took the stand, I'm certain I cross-examined him.

18 Q. He also brings up, and I guess his big issue is, that
19 you didn't object or move for a mistrial concerning
20 Detective Robbins answer.

21 In your professional opinion, does that prejudice this
22 case, or was there enough evidence to convict Mr. Page -- or
23 a jury to convict Mr. Page, based on the statements and
24 evidence presented at trial?

25 A. I can only speculate, but I have tried a number of

1 cases. It would -- it would have really surprised me to,
2 one, been granted a mistrial based on that.

3 Two, I just think in light of, one, my position that I
4 previously stated about the way these Bruton issues are
5 dealt with, you know, and you had Williams statement as
6 well, I think McKnight's statement, it's fairly obvious
7 where he's getting at.

8 My recollection also is that the -- I believe that the
9 intended victim in this case -- I may be getting this
10 confused with another case, but I'm pretty sure the intended
11 victim in this case testified to seeing the co-defendant or
12 all the defendants in the area, including my client, either
13 prior to, or immediately after the murder. So I don't -- I
14 just honestly don't know that it made much difference one
15 way or another.

16 My big concern in cross-examining Detective Robbins was
17 I just wanted to -- I wanted to shake the credibility of Mr.
18 Williams through her, showing that, you know, Williams had
19 said a lot of different things and nobody -- none of the
20 citizen witnesses, the people without a dog in this fight,
21 corroborated Williams statement. So when she came back and
22 slipped in the fact that a co-defendant corroborated it
23 later, you know, I think in light of the fact that you had a
24 lot of these co-defendants pointing fingers in different
25 directions and changing their statements, or whatnot, I

1 really just don't know how damaging that is, so I still feel
2 like the points were scored in getting her to admit that she
3 was unable to corroborate Williams statement through the
4 community.

5 And, yes, she went outside the lines and, you know, I
6 don't want to be disingenuous or claim that it was some sort
7 of trial strategy to not object, you know, I just -- I think
8 I was so passionately getting into her at that time that
9 honestly I missed that objection.

10 My personal opinion is that I don't know that -- I
11 highly doubt and don't really believe that it would have
12 changed the outcome of the case. I don't think a mistrial
13 would have been granted.

14 I think the proper ruling would have been to tell --
15 for the court to tell the witness, you know, "don't comment
16 on that statement," you know, but we all know you can't
17 unring a bell. I had no control over what she was going to
18 say in response to my question, because I specifically asked
19 her about corroborating it in the trailer park. And, again,
20 it may have been an honest mistake on her part, or a
21 calculated answer to get in something she wasn't supposed to
22 get in. But, at any rate, she said it. It was out there.
23 I don't know that an objection really in the greater scheme
24 of things would have made any difference whatsoever.

25 Q. Thank you.

1 MR. JOHNSON: That's all I have at this time, Your
2 Honor.

3 THE COURT: Redirect?

4 MR. MURPHY: Thank you, Your Honor.

5 REDIRECT EXAMINATION BY MR. MURPHY:

6 Q. Let's go through the order of events for the McKnight's
7 statement.

8 There was a Jackson v. Denno hearing. The judge
9 ordered it to be redacted, correct?

10 A. Yes.

11 Q. It came in through Detective Robbins redacted, correct?

12 MR. JOHNSON: Your Honor, he's using leading
13 questions. It's his redirect.

14 THE COURT: Well, I don't know whether he's an
15 adverse witness or not under the circumstances, but I'll
16 allow some leeway. There is no jury involved.

17 MR. MURPHY: Thank you, Your Honor.

18 BY MR. MURPHY:

19 Q. The statement came in through Detective Robbins or
20 another witness?

21 A. It certainly didn't come in through Mr. McKnight.
22 He -- he didn't testify.

23 So the Denno Hearing would have been, I guess,
24 something that Mr. Boyd had, because I don't believe I would
25 have had standing to make a Denno -- to ask for a Denno

1 Hearing on a statement by a co-defendant, but our hearing
2 would have been a Bruton Hearing, and so I'm sure we had a
3 Bruton Hearing where I asserted that I didn't believe that
4 that statement could be used against my client, that my
5 client couldn't cross-examine the declarant. And so the
6 judge, Judge Westbrook, ruled that the portion of that
7 statement that named my client would be redacted to not
8 reflect his name.

9 Q. And that was -- that statement was introduced on or
10 before Sara -- Detective Robbins testified, the redacted
11 statement?

12 A. I would -- I would certainly come to that conclusion
13 now, yes, based on everything that we have been discussing.

14 Q. And then after -- after your cross-examination the
15 un-redacted statement came in?

16 A. Yes.

17 Q. Now, before -- the redacted statement said some -- "I
18 was with some other guy," correct?

19 A. Yes.

20 Q. Now, the jury up to that point would have heard that
21 there were four main individuals involved?

22 A. Yeah, the four co-defendants.

23 Q. And the only two that put Mr. Page on the porch, and
24 the porch is where the --

25 A. That's where the shooting took place. That's where the

1 victim was killed.

2 Q. And so the only two people that put Mr. Page on the
3 porch were the girlfriend, A.J. Williams, and McKnight?

4 A. Again, if you say so, I'm not going to take issue with
5 that. I don't recall all the witnesses testimony, no, sir.

6 Q. So you say that the jury could fantasize about who is
7 the other guy, but at that point they could have thought
8 that it could have been any one of four co-defendants?

9 A. That certainly -- well, other than Mr. McKnight,
10 because he is one of the co-defendants, so --

11 Q. So you got one of three?

12 A. Yeah, and is that possible, yes? Again, I don't know
13 if there were certain circumstances relating to Mr.
14 McKnight's statement that would have made it -- that would
15 have eliminated Williams or Mr. McCollum, because he
16 potentially indicated that they were somewhere else. I
17 don't know, but, yes, in an -- on an even playing field, if
18 it could have been any of them, yeah.

19 I don't know who the jury might have ultimately
20 presumed that to have been, but I seem to recall that just
21 at the time, just being -- just feeling that the remedy was
22 unsatisfactory in just calling him "that guy," and that may
23 just be how I typically feel on Bruton issues, and a lot of
24 times in Bruton you are only dealing with the only other guy
25 sitting there at trial that day, and that was the case we

1 had at trial. I mean, there were -- there were two
2 individuals here facing the jury, and one was Mr. McKnight
3 and it was his statement, and the other was my client and
4 you have got a statement referring to "that guy." Clearly
5 the State wants that statement to come in, and -- you know,
6 I -- I just think in that atmosphere, unless the jury is
7 asleep, I tend to believe that they come to the conclusion
8 that the mystery man is the guy sitting in the defendant's
9 chair. Can I be a hundred percent certain of that? No.

10 Q. After the full statement -- the redaction was removed
11 from the statement, it was certainly clear to the jury?

12 A. Yeah. I mean, it would have left no doubt at that
13 point, so that would have either confirmed their suspicions
14 or altered their position, once it was let in.

15 I think, again, that is a ruling that should not have
16 come in as un-redacted.

17 Q. Did you do any post-trial interviews with any jurors
18 questioning them about the --

19 A. No, I did not. That's not my practice to speak to
20 jurors post-trial. I think that that's -- attorneys have
21 gotten in trouble for that. It's just something that I
22 don't do.

23 Q. Thank you.

24 MR. JOHNSON: Just two followup questions.

25

1 RECROSS EXAMINATION BY MR. MURPHY:

2 Q. Mr. Chiarenza, during jury instructions, would you
3 agree with me that the judge instructed to the jury that Mr.
4 McKnight's statement couldn't be used against Mr. Page?

5 A. That it could, or could not?

6 Q. Could not. It could only be used to attack Detective
7 Robbins.

8 A. I believe that that would have been a proper
9 instruction, you know, in this case, so I can't -- I'm not
10 certain that it's in there, but it should have been.

11 Q. And isn't the law in South Carolina that the juries are
12 presumed to take the judge's instructions and use them
13 accordingly?

14 A. I don't know if that's the law, but we would hope that
15 they would. I mean, it's the whole point.

16 Q. But would he agree it's --

17 A. Instructing the juries.

18 Yes, they ought to listen to the court's instructions.

19 Q. Okay. Thank you.

20 THE COURT: You can step down. Thank you.

21 THE WITNESS: Thank you.

22 MR. MURPHY: Your Honor, that's all the witnesses
23 that we have.

24 I would like to point Your Honor to a couple of
25 things in the record, whatever time that Your Honor feels

1 appropriate.

2 THE COURT: Any other?

3 MR. JOHNSON: No.

4 THE COURT: Now would be as good as any.

5 MR. MURPHY: Thank you, Your Honor.

6 Basically what we have is if you look at the
7 chronology of the transcript, you have really two witnesses
8 whose credibility is shaky, at best, that put Mr. Page on
9 the porch. There are some other witnesses, Your Honor, that
10 will say well, maybe he was around that day, but not on the
11 porch, and the porch is where everything happened.

12 So you go into Detective Robbins testimony with
13 that information also with the statement of Mr. McKnight,
14 and then you have the testimony that she corroborated A.J.
15 Williams statement with Mr. McKnight, the co-defendant's
16 statement, regarding Mr. Page's involvement, which was at
17 that point the judge already said that that should not come
18 in, and that was not objected to and there wasn't a motion.

19 The reason that this is proper for a PCR and not
20 for appeal is because the appellate court clearly believed
21 that this was already in evidence; therefore, that's why
22 it's harmless error.

23 And that the last -- basically the last paragraph
24 before the conclusion, "moreover, prior to the admission of
25 the un-redacted statement, the detective was asked to

1 respond to a question on cross-examination," and it goes on
2 to say that that was not objected to. And so that's the
3 primary motivator behind harmless error, so we will -- the
4 testimony was already in the -- was already in the record.
5 So once you have that, it certainly brings that home to the
6 jury about what's going on here about evidence that
7 shouldn't have been in this trial in the first place, and so
8 certainly there is some prejudice there.

9 Regarding whether or not the jury thought it was
10 Mr. Page in the un-redacted statement, it's not something
11 that we can speculate on and it's pure speculation, and we
12 don't know what the jury was thinking. There's four
13 different co-defendants.

14 So, Your Honor, because that testimony came in
15 that was not objected to and there wasn't a motion for
16 mistrial, that is why Mr. Page should get a new trial.

17 Your Honor, I will also state for the record that
18 when we first started looking into this case, the SCDC had
19 incorrectly calculated Mr. Page's sentence. It should have
20 been thirty years; at five for conspiracy, twenty for
21 attempted armed robbery, with a consecutive firearms five.
22 So you should get twenty-five, and then a subsequent firearm
23 conviction, five, which makes a total of thirty. They had
24 it listed as thirty-five. I called down to SCDC and asked
25 them "could you please tell me about why it's thirty-five

1 instead of thirty?" They looked at it and they have
2 properly dated now, so that has been corrected, Your Honor.
3 Thank you.

4 MR. JOHNSON: Just briefly, Your Honor, just a
5 couple of points here.

6 The State's position is that if you will read the
7 Court of Appeals argument, I made this beforehand, that the
8 Court of Appeals have already dealt with this un-redacted or
9 redacted statement issue, and, therefore, it's not properly
10 before the court.

11 And also the Court of Appeals, in their opinion,
12 say that it is harmless because it's cumulative to the
13 evidence that's already presented. And since that, there is
14 already other evidence, there can be no prejudice.

15 And they also on that point, once you review the
16 record in total, you will find there is sufficient evidence
17 to put Mr. Page at the scene of the crime, and, therefore,
18 there can be no prejudice when there is evidence of his
19 guilt, or overwhelming evidence of his guilt. Once you
20 review that, the file, you will see that. So that's the
21 State's argument.

22 There is no ineffective assistance of counsel. If
23 there is, there is no prejudice to Mr. Page. Thank you.

24 THE COURT: How long do you think that you need to
25 do this, affect what you need to affect, as far as talking

1 to and obtaining anything from Mr. McKnight?

2 MR. MURPHY: McCollum.

3 THE COURT: McCollum.

4 (Off the record)

5 (Back on the record)

6 MR. MURPHY: Ones we get the order, we should be
7 able to get that done in sixty days, I would imagine.

8 THE COURT: We will --

9 MR. JOHNSON: And, Your Honor, I don't know if you
10 can order this, just to preserve whatever Mr. McCollum may
11 have to say, and correct me if I'm wrong, that you can order
12 Mr. Page not to communicate with Mr. McCollum.

13 THE COURT: Well, I don't know if I can order him
14 not to communicate with Mr. McCollum.

15 Where is -- where is Mr. Page housed?

16 MR. MURPHY: McCormick, Your Honor.

17 THE COURT: Where?

18 MR. MURPHY: McCormick, the same institution, Your
19 Honor.

20 MR. JOHNSON: Do you understand my concern, Your
21 Honor?

22 THE COURT: Yeah, I understand your concern. I
23 just don't know that I can order that. It's not like a lay
24 witness and sequestering witnesses and all that.

25 I'm not going to issue that order.

1 I will say that if Mr. Page does talk to Mr.
2 McCollum, then that certainly can be examined through
3 cross-examination of Mr. McCollum, if he testifies.

4 Now, along those lines, I understand and recall
5 from the Post Conviction Relief Act that testimony can be
6 taken by way of affidavit or depositions, but in this
7 particular case, if we reconvene, I will order that we have
8 live testimony from Mr. McCollum as opposed to an affidavit.
9 I certainly think the State has the right to cross-examine
10 him. Depositions are rather cumbersome in these
11 proceedings, so what I'm thinking -- I don't have my
12 schedule in front of me, is that some -- we may not have to
13 wait. After sixty days, if we find out where we are, we may
14 can carve out a block of time somewhere to not wait until
15 the next PCR term.

16 MR. JOHNSON: That's fine.

17 Your Honor, just one concern. Who should order --
18 the transcript of Mr. McCollum's plea, guilty plea, needs to
19 be ordered. Is it our burden or should Mr. Murphy --

20 THE COURT: I think we ought to have it, so I will
21 order the -- if you get it, I can't order it to be paid for
22 by ODC. It shouldn't be that long and that expensive.

23 Ms. Barrett was the -- who was the court reporter?

24 Mike Watkins. Not this Mike. It was Mike
25 Watkins.

1 I'll issue an order for the court reporter to
2 provide it as a Court's Exhibit.

3 MR. JOHNSON: You know, Your Honor, it just came
4 to my attention. This case was tried in 2005. That
5 transcript may not exists.

6 THE COURT: If it exists --

7 I tell you this, so I can make sure Mr. Watkins
8 gets paid. We are going to need that, so I'm going to ask
9 Mr. Murphy, if you will order it and I'll issue an order and
10 we will have ODC pay for it. It can't be that much.

11 MR. MURPHY: Your Honor, just to recap, I'm
12 drafting an order for Your Honor's consideration, which
13 would allow investigation fees to go down to McCormick, get
14 a statement, interview, come back. Perhaps I can get an
15 investigator in the area, so my --

16 THE COURT: And put in that order also that
17 counsel, you, for Mr. Page is to contact Mr. Watkins, or
18 whoever the court reporter was. It looks like it was Mr.
19 Watkins, although the record is -- the General Sessions case
20 file will show who the reporter was and order it, and I'm
21 going to order that to be paid for also through ODC.

22 MR. MURPHY: And also the copying and shipping
23 fees in this case?

24 THE COURT: Yes.

25 MR. MURPHY: Thank you, Your Honor.

1 MR. JOHNSON: In the event it's not available, how
2 should we proceed, Your Honor?

3 THE COURT: Well, if we don't end up with a
4 statement, or if the statement -- if Mr. McCollum provides
5 that he is not going to be helpful and the statement says
6 something Mr. Murphy doesn't like, Mr. Page doesn't like,
7 then I will rule on the record I have. I'm just leaving it
8 open for that.

9 MR. JOHNSON: Okay.

10 THE COURT: It's not a requirement that we call
11 Mr. McCollum up here. If he says "I never gave a
12 statement," or, "the only statement I gave was that Mr. Page
13 was right there beside me when all this happened," then I
14 don't know we can -- I don't think we need another hearing.
15 We can just go forward on the record I have got now.

16 MR. MURPHY: Thank you, Your Honor.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: All right.

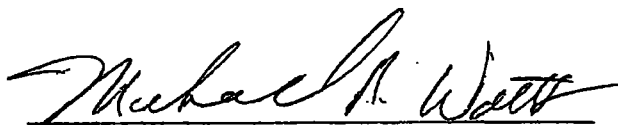
19 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 16th day of August, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JULY 5, 2013



Michael R. Watts
Circuit Court Reporter

State of South Carolina.,) In the Common Pleas
) Court of York
)
) Case No. 2011-CP-46-02584
 County of York.)

Jaleel Page.,)
)
 Applicant.,)
)
 -v-) Transcript of Record
)
 State of South Carolina.,)
)
 Respondent.)

May 13, 2013
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge.

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COPY

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

Andrew Joseph Staffileno

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Mr. McCullum

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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
AP.1	Handwritten Statement		
	McCullum/Investigative		
	Notes		P.8

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION MONDAY, MAY 13, 2013 AT 03:15 P.M..)

2 THE COURT: All right, Jaleel Page. I see Mr. Murphy
3 here and tell me about that one.

4 MR. JOHNSON: Yes, sir. May it please the Court, Your
5 Honor. Jaleel Page versus the State of South Carolina Case
6 Number 2011-CP-46-2584. Mr. Page was indicted at the
7 December 2004 term of the York County Grand Jury for
8 attempted armed robbery, criminal conspiracy, possession of
9 a weapon during the commission of a violent crime and
10 possession of a pistol by a person under twenty-one.

11 On May 27th, 2005 he proceeded to trial and was
12 convicted of all counts as indicted. The Honorable Mark H.
13 Westbrook sentenced him to confinement for twenty years for
14 attempted armed robbery, five years consecutive for
15 conspiracy, five years concurrent for the possession charge
16 and five years consecutive for possession of a pistol by a
17 person under twenty-one.

18 He filed a Notice of Appeal and the appeal was filed
19 in his behalf, the South Carolina Court of Appeals
20 confirmed his conviction and sentence. He then filed a
21 petition for Writ of Certiorari which was denied on August
22 19th, 2010. The remittitur was sent on November 5th, 2010.
23 Hereafter filed a PCR July 1st, 2011 and the State filed
24 it's return on October 25th, 2011.

25 This case was called for a evidentiary hearing last

-5-

1 August and I believe it was before Your Honor but he is
2 represented here today by Brian Murphy who has a matter
3 before the Court. And I believe it's based on the co-
4 defendant's possible - Yeah, the co-defendant's testimony
5 but we're not here to rehash all of the evidentiary hearing
6 just one matter.

7 THE COURT: Okay.

8 MR. MURPHY: Thank you, Your Honor.

9 As he said Your Honor did hear this matter in August.
10 It - There was two things. One that's corrected before the
11 trial was, the sentencing sheets were incorrect, we got
12 that corrected through the Department of Corrections.

13 The second one was that we are here to prove that
14 trial counsel allowed the detective to testify regarding a
15 corroborating statement of a co-defendant that was tried at
16 the same time so that was what we discussed in August.
17 We're here today to discuss a statement of a co-defendant
18 who pled guilty before the trial so this is not - In other
19 words that was taken care of I think the week prior to Mr.
20 Page. And Mr. McKnight went to trial the following week.

21 We're here today, Your Honor, to discuss a statement
22 that Mr. Staffileno took of the co-defendant and also to
23 hear from the co-defendant himself, Your Honor.

24 THE COURT: Okay.

25 MR. MURPHY: May it please the Court. We call Andrew

ANDREW STAFFILENO: DIRECT BY MR. MURPHY

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1 Staffileno.

2 THE COURT: Put your left hand on the Bible and raise
3 your right.

4 (WHEREUPON: ANDREW JOSEPH
5 STAFFILENO, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 MADAME CLERK: Have a seat.

8 DIRECT EXAMINATION

9 ANDREW JOSEPH STAFFILENO BY MR. MURPHY:

10 Q. Good morning. What is your name?

11 A. Andrew Joseph Staffileno.

12 Q. And how are you connected with Mr. Page?

13 A. I worked as a investigator with Attorney Derek
14 Chiarenza during this the first part of the case.

15 Q. Did you keep a complete file?

16 A. Yes I did.

17 Q. Did you keep in contact with trial counsel?

18 A. Yes.

19 Q. Did you provide a complete file to trial counsel?

20 A. Yes I did.

21 MR. MURPHY: Permission to approach the witness, Your
22 Honor?

23 THE COURT: Yes, sir, you may.

24 MR. MURPHY: Your Honor, I'm handing the witness

25 Applicant's Number One. Your Honor, if I may, I also have

ANDREW STAFFILENO: DIRECT BY MR. MURPHY

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1 another copy of Applicant's Number One.

2 (EXHIBIT RECEIVED UP BY THE COURT.)

3 MR. MURPHY: Thank you, Your Honor.

4 Q. Mr. Staffileno, do you recognize Applicant's Number
5 One?

6 A. Yes I do.

7 Q. What is it?

8 A. This is a handwritten statement with - from my
9 interview with Mr. McCullum.

10 Q. You interviewed Mr. McCullum?

11 A. Yes I did.

12 Q. Tell me how that came about.

13 A. Well he had already - His case had already been
14 concluded and we approached him - I don't - This has been a
15 while back so I'm not exactly sure exactly where that -
16 where I had met with him at but I know that I had sat down
17 with him and went over the events of - events of that case
18 and he had given me the information. I wrote it down for
19 him and allowed him to read back over it and read it back
20 over - went over it with him. In fact there is some
21 scratch outs on here that he was - that I had him initial
22 and at the end he had signed it and I had signed it as a
23 witness.

24 Q. What page did he sign it at?

25 A. Page 4 of 4.

1 Q. And who witnessed that?

2 A. That's my signature. It's at 4:45 p.m..

3 Q. When you saw Mr. McCullum sign?

4 A. Yes.

5 Q. There is some scratch outs and some initials. What
6 are those?

7 A. Those are when I was taking down the information, the
8 written statement, those were mistakes that I had made and
9 I had him put his initials over the top. This is a pretty
10 early statement from when I first stated out so I tend to
11 do them a little bit different now. I scratch the lines
12 through them instead of the scribble marks through it so I
13 know this was a while back.

14 MR. MURPHY: Your Honor, at this time I will offer
15 Applicant's One into evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No, Your Honor.

18 THE COURT: All right, in without objection.

19 (WHEREUPON, APPLICANT'S EXHIBIT NUMBER ONE IDENTIFIED
20 AND MARKED, RECEIVED INTO EVIDENCE.)

21 BY MR. MURPHY:

22 Q. And you provided - Was it part of your files?

23 A. It should have been - I haven't seen my file for a
24 while but it should have been included in my product that I
25 turned over to the attorney through - with my final report.

ANDREW STAFFILENO: DIRECT BY MR. MURPHY

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1 Q. And trial counsel had a copy?

2 A. Yeah whenever I take a copy - When ever I take any
3 kind of signed statement especially the - my client gets a
4 copy of it, the attorney.

5 Q. In regards to Mr. Page what was interesting about Mr.
6 McCullum's testimony or statement? In regards to Mr. Page
7 what did Mr. McCullum have to say, and it's in your
8 statement on Page 2 about Mr. Page's involvement?

9 A. Give me a second to read over this.

10 Q. About three quarters of the way down the page.

11 (PAUSE.)

12 A. He claims that Mr. Page was definitely not there that
13 day.

14 Q. And what does he mean by - What does that mean by
15 that day?

16 A. The day of the incident. The day that the shooting
17 took place.

18 Q. Do you remember discussing the statement with anybody?
19 Trial counsel or Mr. Page?

20 A. I can't say that I absolutely do remember discussing
21 it. That's such a long time ago. This is the first time
22 I've seen this in a while but I would have - I keep in
23 direct contact with the attorneys that I work for on cases
24 so if I'm gonna take - If I've taken a statement that
25 basically states that the client was not there at the time

ANDREW STAFFILENO: DIRECT BY MR. MURPHY
CROSS BY MR. JOHNSON

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1 I'm going to discuss that with the attorney.

2 Q. Do you know if Mr. McCullum testified at the trial?

3 A. I don't recall.

4 Q. The record shows that it doesn't you wouldn't - You
5 don't recall Mr. McCullum testifying?

6 A. No I don't recall.

7 Q. Okay.

8 MR. MURPHY: Please answer any questions the Attorney
9 General's Office may have.

10 MR. JOHNSON: Just a few.

11 CROSS EXAMINATION

12 ANDREW STAFFILENO BY MR. JOHNSON:

13 Q. Mr. Staffileno, why did you take this statement?

14 Did somebody request you to take the statement?

15 A. I can't recall that at this time. I believe that
16 there was - Honestly I really can't - I can't recall that.

17 Q. Would you do it on your own, you know, initiative?

18 A. I'd like to investigate - Whenever I'm doing an
19 investigation a thorough investigation would be to
20 interview all parties involved. Sometimes you can't
21 interview co-defendants because they're represented and if
22 their counsel won't let you talk to them normally I try to

23 - I approach the counsel to ask them but just as a matter
24 of exhausting that avenue of investigation. I believe in
25 this case it would have been - I probably found out that he

ANDREW STAFFILENO: CROSS BY MR. JOHNSON

-11-

1 had already been - had agreed to a sentence or had made
2 some type of a deal when he was no longer represented by
3 counsel. I don't have my notes in front of me to see
4 exactly how I came upon the information. But my best
5 recollection would be that he - we knew that he was no
6 longer represented or that counsel would not - We didn't
7 have to go through counsel to interview him because his
8 case was over with so we approached him and interviewed
9 him.

10 Q. Did Mr. Chiarenza ask you to take the statement?

11 A. I can't remember. I can't recall whether he ask me to
12 take the statement or if it was something that we came upon
13 after finding out that somebody said hey I think we call
14 'em. He's claiming that Jaleel wasn't there at all so we
15 followed up with a statement. I apologize it's been --

16 Q. I understand it's a while ago. Was an attorney
17 present when you took the statement from Mr. McCullum?

18 A. Not to my recollection.

19 Q. And are you aware that the trial of Mr. Page was May
20 the 23rd through 27th, 2005 and Mr. McCullum's guilty plea
21 was May 23rd and 27th, 2005 so he should have been
22 represented by counsel?

23 A. His guilty plea was when? I'm sorry.

24 Q. 23rd and 27th, 2005 which would have been the first
25 and last days of Mr. Pages' trial.

1 A. No. I thought that he was - He had already - To my
2 knowledge he was already - He had already accepted a plea
3 and was not represented by counsel on the 25th.

4 Q. So no counsel was there when you interviewed him?

5 A. No.

6 Q. Okay. And you don't remember who ask you to interview
7 him?

8 A. No not without going back over my file and looking
9 at the notes.

10 MR. JOHNSON: Your Honor, if you will take judicial
11 notice that Mr. McCullum pled on the 23rd right before Mr.
12 Page's trial and then sentenced on the 27th. If you would
13 like to have a copy I can furnish you one.

14 THE COURT: That would be good yes. Make it a Court's
15 Exhibit. And I don't have the transcript but I got a CD.

16 MR. JOHNSON: Okay. I actually have - I think I have
17 an extra transcript for you in my car so I will bring that
18 to you.

19 THE COURT: Okay.

20 MR. JOHNSON: And then if Mr. Staffileno - -

21 THE COURT: Well I say that. Let me look at this.

22 MR. JOHNSON: I think I may have - -

23 THE COURT: No I've got it. No I do have it. I'm
24 sorry. There's a two volume set?

25 MR. JOHNSON: Yes, sir.

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1 THE COURT: I got it.

2 MR. JOHNSON: All right. No further questions.

3 Thank you, Mr. Staffileno.

4 MR. MURPHY: No further questions, Your Honor. I ask
5 that the witness be excused?

6 THE COURT: He can be excused. Thank you, appreciate
7 your time.

8 MR. STAFFILENO: Thank you.

9 (WITNESS LEAVING WITNESS STAND.)

10 MR. MURPHY: The Applicant calls McCullum.

11 THE COURT: All right.

12 MR. JOHNSON: Your Honor, may we approach?

13 THE COURT: Yes, sir.

14 (BENCH CONFERENCE OFF THE RECORD AT 03:18 P.M..)

15 (WITNESS, BLACK MALE, ENTERS COURTROOM.)

16 (WHEREUPON, ----- MCCULLUM,

17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 THE COURT: Mr. McCullum, I am Judge Hayes, John Hayes

19 ---

20 MR. MCCULLUM: Yeah.

21 THE COURT: --- and you've been called by Mr. Page as
22 a witness in this Post Conviction Application. Do you
23 understand that everything you say is being taken down in
24 here today?

25 MR. MCCULLUM: Yeah but I need to understand what's

1 my rights. I mean I don't know what's going on. They
2 called me in here but I want to know why I'm being called
3 in.

4 THE COURT: Well that's kind of -

5 MR. MCCULLUM: I need to know what my rights is cause
6 I don't really want to be here.

7 THE COURT: Well you're not represented by an attorney
8 today are you?

9 MR. MCCULLUM: No I ain't got no counsel or nothing.
10 I haven't spoke to nobody or nothing. I mean I don't know
11 what's going on.

12 THE COURT: Well you've been called here by Mr. Page's
13 attorney ---

14 MR. MCCULLUM: Yeah.

15 THE COURT: --- who intends to ask you questions about
16 an event that you - the event that you're serving time for.
17 The event that you already pled guilty to.

18 MR. MCCULLUM: Yeah but that's why I'm saying why
19 would I talk about something that I already done?

20 THE COURT: Well you have the right to remain silent.

21 MR. MCCULLUM: That's what I want to do. I want to
22 remain silent. That's what I want to do. I don't - I want
23 to remain silent. That's what I want to do. That's what
24 I'm asking.

25 THE COURT: Well you can --

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1 MR. MCCULLUM: I want to exercise my right to
2 remain silent in here.

3 THE COURT: Do you have any applications or anything
4 pending regarding the charge that you're already serving
5 time for?

6 MR. MCCULLUM: What you mean? Pending charges or -

7 THE COURT: No. I mean you pled guilty back in May of
8 2005. Do you have anything - Do you have an appeal on
9 that?

10 MR. MCCULLUM: Yeah I'm trying to appeal. I'm trying
11 to get a PCR and everything like that.

12 THE COURT: You intend to have a PCR?

13 MR. MCCULLUM: Yeah. Right. I should be in the
14 stage of it.

15 MR. JOHNSON: Your Honor, he's already had a PCR and
16 a PCR appeal that I - My records indicate they are both
17 closed.

18 MR. MCCULLUM: I ain't heard nothing about that. I
19 ain't heard anything about that.

20 THE COURT: Well, Counsel, it's a little - kind of a
21 little sticky situation in my opinion because if there is
22 no jeopardy it could be - Mr. McCullum can be made to
23 answer questions but just serving time for an offense and
24 we all know that door being that it's slammed it sometimes
25 unslams so I don't feel like I'm in a position to force Mr.

MR. MCCULLUM: DIRECT BY MR. MURPHY

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1 McCullum to testify because he believes he still has
2 avenues open and he may. I don't know. There may be some
3 other matters.

4 So, Mr. McCullum, I'm not gonna require you to testify
5 and you have a right to testify and you also have the right
6 to not answer any questions. Mr. Page's attorney has
7 called and ask - and you're under oath and on the stand and
8 so I'm gonna allow him to ask you questions but you only
9 need to answer those you feel compelled to answer.

10 MR. MCCULLUM: I mean I don't - You said I had the
11 right to remain silent. That's what I want to do. I want
12 to exercise that right and remain silent and I want to.

13 THE COURT: Mr. Murphy, anything you want to -

14 MR. MURPHY: Yes, Your Honor. See how far it goes.

15 Thank you, Your Honor. May it please the Court.

16 Has the witness been sworn?

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 MR. MCCULLUM BY MR. MURPHY:

20 Q. Mr. McCullum, my name is Brian Murphy. Mr. Page's
21 attorney in this PCR. I'm showing that you pled guilty in
22 2005; is that correct, to various charges?

23 THE COURT: Do you exercise your right to remain
24 silent?

25 MR. MCCULLUM: Yes, sir.

MR. MCCULLUM: DIRECT BY MR. MURPHY

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1 BY MR. MURPHY:

2 Q. Is there anything you can tell me about that shooting,
3 Mr. McCullum?

4 A. No, sir.

5 Q. Thank you.

6 MR. MURPHY: Permission to approach the witness, Your
7 Honor.

8 Q. Mr. McCullum, I'm gonna show you Applicant's
9 Exhibit Number One. I'm gonna turn to the fourth page.

10 I'll let you know Mr. Staffileno testified that that
11 was your signature on page number four. Can you let me
12 know if that is your signature?

13 A. I don't have nothing to say, sir. I exercise my right
14 to remain silent.

15 Q. Mr. McCullum, was Mr. Page present the day of the
16 shooting?

17 A. I exercise my right to remain silent.

18 MR. MURPHY: Please answer any questions the Attorney
19 General's Office may have.

20 MR. JOHNSON: No questions for this witness.

21 THE COURT: Take him back. Take Mr. McCullum back
22 to the holding cell.

23 Thank you, sir.

24 (WITNESS LEAVING WITNESS STAND.)

25 MR. MURPHY: Your Honor, I call Mr. Page.

JALEEL PAGE: DIRECT BY MR. MURPHY

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1 THE COURT: All right, Mr. Page, please come up and
2 be sworn.

3 I'm looking at the transcript. Mr. McCullum did not
4 testify at the trial?

5 MR. MURPHY: Mr. McCullum did not testify at trial.

6 MADAME CLERK: Mr. Page, place your left hand on the
7 Bible and raise your right as far as you can.

8 (WHEREUPON, JALEEL PAGE,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 MADAME CLERK: Thank you. Come around and have a
11 seat.

12 DIRECT EXAMINATION

13 JALEEL PAGE BY MR. MURPHY:

14 Q. What is your name?

15 A. Jaleel Vaughn Page.

16 Q. Mr. Page, you had a trial and were convicted of
17 everything but murder; is that correct? All charges
18 except murder.

19 A. That's right.

20 Q. You got sentenced to about twenty-five years; is that
21 right?

22 A. Total was thirty-five.

23 Q. Thirty-five. You didn't testify at your trial did
24 you?

25 A. No, sir.

JALEEL PAGE: DIRECT BY MR. MURPHY

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1 Q. You were questioned by the judge if you were gonna
2 testify and you chose not to. Correct?

3 A. Yes.

4 Q. You were also questioned by the trial judge about
5 whether you were going to put up any witnesses' at your
6 trial; is that correct?

7 A. Yes.

8 Q. And at that time what was your answer?

9 A. No I wasn't gonna put any on. Witnesses or anything
10 up.

11 Q. I'm gonna show you -

12 MR. MURPHY: Your Honor, permission to approach the
13 witness?

14 Q. I'm gonna show you what's been marked as Applicant's
15 Exhibit Number One. Do you know what that is?

16 A. Yes.

17 Q. What do you think that document is?

18 A. It's a statement from my co-defendant.

19 Q. And what's the gist of it for you? What's in it for
20 you?

21 MR. JOHNSON: Your Honor, he's not a party to this
22 statement. This is maybe between Mr. McCullum and Mr.
23 Staffileno. I don't think he can testify to this.

24 THE COURT: Well I'll - I understand that but I'll
25 allow him to testify as to what his thoughts are.

1 A. It just basically explained that he committed the
2 crime and I didn't have anything to do with it. Everybody
3 else was part of the crime of what happened that day, the
4 events that day.

5 Q. When you gave your answer to the Court about not
6 testifying and not calling any witnesses' did you trial
7 counsel talk to you about this document?

8 A. No he didn't never tell me this was in or in or about
9 or - I never knew anything about this until I got a Motion
10 of Discovery through you.

11 Q. And when was that?

12 A. Two to three weeks ago.

13 Q. A pile of documents?

14 A. A thousand page - a thousand and fifty-two pages and
15 this was the forth page in the Motion of Discovery.

16 Q. So had you known of that, of Mr. McCullum's
17 statement, what would have been your answer upon
18 questioning whether you wanted to call any witnesses?

19 A. I would have called him as a witness to testify
20 towards this. That's what I would a did. I would use him.

21 Q. Is there anything else that you think I should ask you
22 that you haven't testified to here today?

23 A. No.

24 Q Please answer any questions the Attorney General's
25 Office may have.

-21-

1 MR. JOHNSON: Your Honor, I don't have any questions
2 about the statement or what not. I just would like for the
3 record from August to stand for itself and also leave the
4 record open for Mr. Chiarenza to come in and explain if he
5 did or did not present this and why.

6 THE COURT: All right.

7 MR. MURPHY: Without objection.

8 THE COURT: You can step down and have a seat with
9 your attorney.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: We will leave the record open and I will
12 leave it up to counsel to try to decide what way best to
13 handle it. It could be by a deposition, Mr. Chiarenza, or
14 we could at the next time we have Post Conviction week we
15 could work it in at that time.

16 MR. JOHNSON: I do believe, Your Honor, that you may
17 have one more term this year. Maybe later like November or
18 December if I remember correctly so it would be a little
19 bit.

20 MR. MURPHY: I'll defer to whatever - -

21 MR. JOHNSON: So he can be here. If that's all right
22 with you, Judge?

23 THE COURT: That's fine. Refresh my memory since we
24 are doing this piece meal. What issues were raised back in
25 August?

1 MR. MURPHY: It was the issue of the - allowing the
2 detective to testify regarding - The defendant did not.
3 There was ultimately four defendant's in this case. Two of
4 them were tried together, Mr. Page and Mr. McKnight, and
5 trial counsel allowed a detective to testify in regard to
6 Mr. McKnight's statement and that was improper. And that
7 was also subject to the appeal so that was the main issue
8 there, Your Honor.

9 And then the issue today regarding Mr. McCullum's
10 testimony.

11 MR. JOHNSON: Your Honor, that was a direct appeal
12 issue - the detective. And I have the appeal opinion if
13 you would like a copy.

14 THE COURT: That might be good.

15 MR. JOHNSON: It may be in your packet.

16 Let me get a redacted version, Your Honor, unless
17 you have one.

18 THE COURT: I've got it.

19 MR. JOHNSON: Okay.

20 THE COURT: No this is just the brief, return. I
21 don't see the opinion.

22 MR. JOHNSON: May we approach, Your Honor?

23 THE COURT: Yes, sir.

24 (BENCH CONFERENCE OFF THE RECORD.)

25 THE COURT: We'll have a transcript of the August

1 hearing and leave the record open for Mr. Chiarenza.

2 MR. JOHNSON: Thank you, Your Honor.

3 MR. MURPHY: Thank you, Your Honor.

4 MR. JOHNSON: That's it for today.

5 THE COURT: That finishes up for the day?

6 What happened to Gonzales?

7 MR. JOHNSON: Oh no, that settled last week.

8 THE COURT: Okay. . . . Let's say 9:30.

9 (END OF TRANSCRIPT OF RECORD.)

10 (COURT IN RECESS AT 03:45 P.M..)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

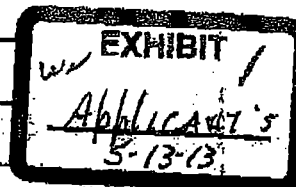
I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court for York County, South Carolina, on the 13th day of May, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: _____/_____/_____

INVESTIGATIVE NOTESDate: May 25, 2005Case: PageTime: 11:10pmOut @ Court 12:50 - 1:30pm2:50 pm - 4:15 pm"Stunting"32 oz Bottles of Milwaukee's Best, "The Beast"Smoking weed.

On the day of the incident Katrina Howard drove McCollum to Hall Street Apt 3. He was going there to see his friend Lorton Gervin. Katrina left after dropping him off & he never saw her again that day. The next time he talked to her was about 2 or 3 weeks later. It was around 9 to 10 am & Lorton was outside standing in the parking lot. An older guy from the neighborhood went to the "hastlebar" for them to get the beer. McCollum got 6 32 oz bottles of Milwaukee's Best & he already had some weed w/ him. He stayed there & started drinking & smoking. AS Williams was out there drinking & smoking weed too. Lorton was there but he was in & out of the house. At one time he went inside & never came back out. There were other people out there drinking but he did not know them. AS approached McCollum & told him that earlier that morning before McCollum arrived Rashad was around down there "stunting" or "showboating" flashing around \$3,000 & was wearing a lot of gold jewelry. AS made the proposal that they rob Rashad. McCollum advised he never saw Rashad before & didn't know him. The 1st time he ever saw Rashad was when he & AS walked up to

Page 1 of 4

INVESTIGATIVE NOTESDate: May 25, 2005Case: Page

Time: _____



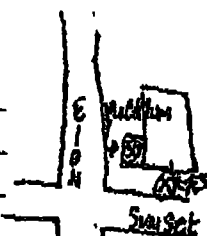
INVESTIGATIONS

the trailers to rob him & they saw him walking on Sunset and AS pointed
 L.M. Rashad out to McCollum. Before they went up to the trailer park
 the 1st time they were sitting in a blue car in the Hall Street apt
 parking lot smoking weed w/ 2 white males that AS knew. The w/m's
 were in the front seat & he & AS were in the back. After that the
 white guys left they stay @ the apt's under the tree drinking. McCollum
 advised that he had no intentions of robbing Rashad until AS put
 the "bug in his ear" about it. He advised that he had been drinking &
 smoking all morning & decided to go w/ AS & rob Rashad. When he &
 AS talked about robbing Rashad they talked about it between themselves &
 did not include anyone else. Lofton ~~was not around~~ ^{was not around} when they talked about robbing Rashad. ~~McCollum~~ ^{McCollum} He
 does remember ^{McCollum} being @ the Hall Street apt's that morning or @ the
 time of the incident. ~~Jaleel~~ ^{Jaleel} was definitely not there that day.
 The last time ^{McCollum} saw Jaleel was May 6, 2002 before Jaleel
 left for Job Corp. This was the day before ^{McCollum} McCollum's B-day.
 McCollum & AS left Hall Street Apts & walked up Elton toward Sunset
 where Rashad lived to rob him. When they got to Sunset AS
 pointed out Rashad, who ~~was~~ ^{was} @ the time was walking down Sunset
 toward ~~McCollum~~ ^{McCollum} Ambassador. McCollum tried to get Rashad to
 stop & yelled to him "Hey yo, Do you know where the woods @?"

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INVESTIGATIVE NOTESDate: May 25, 2005Case: Page

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**AJS**

INVESTIGATIONS

Rashad slowed down + told him no + kept walking. After that AS + McCollum went back down to the Hall Street Apts. AS hung out about 10 or 15 minutes + left. AS returned about ^{LM}45 minutes later he came back. AS told McCollum that Rashad was back @ the house + was alone. AS + McCollum left + went back to Sunset. AS had a black trash bag with him ^{LM} + he was standing in ^{LM}front of ^{LM}Sunset on the Sunset ^{LM}Drive side looking around the corner. McCollum ^{LM}went to the door + had his gun out + pointed down in front of him. ~~McCollum~~ The plan was to hold the gun ^{LM}on Rashad while AS went inside to get the goods. McCollum knelt on the door + when the victim opened the door McCollum pulled up the gun + pointed it @ the victim's face. At this time he noticed it was not Rashad + he got nervous. ^{LM}McCollum asked "Where is Rashad at?" The victim said "what's going on and he grabbed the gun. The gun was turned to the side + pointed down. McCollum pulled back with the gun + it went off twice. He then took off running. He did not notice where AS went. The victim ran after him. McCollum ran across Elan + Sunset toward Woods Street. He called ^{LM}a friend from his cellphone + they picked him up he thinks near the graveyard + took him to Rock Hill. He will not say who picked him up but it was not Kabrina.

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INVESTIGATIVE NOTES

Date: May 25, 2005
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AS may have included Seel because he was trying to get as many people as he could to go down with him.

Katrina could have been making up a story to help McCallum out.

McCallum drank 1/2 of the 16 oz Bottles in addition to ^{LM} ~~the~~ Smoking Weed. He had the gun w/ him when arrived there that morning. He was carrying for protection. He the gun for about 2 weeks. He bought it off someone in Gastonia NC for \$20 ^{LM} from some crack head. After the incident he lost it. He ^{LM} never sold it or threw it away. He may have lost it @ a party.

^{LM}
Witnessed By: James D. McCallum 5/25/05
CL [Signature] 5-25-05 4:45pm

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jaleel Page, #309433,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-46-2584

ORDER

2014 APR 21 AM 9:30
CLERK OF COURT
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 1, 2011. The Respondent made its' Return on October 25, 2011. An evidentiary hearing into the matter was convened on August 16, 2012, at the Moss Justice Center in York, South Carolina. Brian R. Murphy, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, represented the Respondent. At the hearing, the Applicant testified on his own behalf. Derek S. Chiarenza, Esquire, also testified.

Another hearing was held on May 13, 2013 to take the testimony of Lamont McCollum, Applicant's co-defendant, because Applicant believed McCollum would testify that Applicant was not involved in this crime. However, Mr. McCollum exercised his Fifth Amendment right to remain silent. Andrew Staffalino also testified at this hearing.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the December 2004 term of the York County Grand Jury for Attempted Armed Robbery (2004-GS-46-4004), Criminal Conspiracy (2004-GS-46-4005), Possession of a Weapon during the Commission of a Violent Crime (2004-GS-46-4006), and Possession of a Pistol by a Person Under 21 (2004-GS-46-4007). Derek S. Chiarenza, Esquire, represented Applicant. On May 27, 2005, Applicant proceeded to trial and was convicted as indicted. The Honorable Marc H. Westbrook sentenced him to confinement for a period of

twenty (20) years for Attempted Armed Robbery, five (5) years consecutive for Criminal Conspiracy, five (5) years, concurrent, for Possession of a Weapon during the Commission of a Violent Crime, and five (5) years, consecutive, for Possession of a Pistol by a Person under 21.

Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Page, Op. No. 08-4367 (S.C. Ct. App. Filed April 3, 2008). Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on August 19, 2010. The Remittitur was sent on November 5, 2010.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 334 S.E.2d 813 (S.C. 1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, Id.

The proper measure of performance is whether the attorney provides representation within the range of competence required in criminal cases. The courts presume that counsel Rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the

Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Additionally, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 449 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Moreover, post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d (1973). Error is harmless where it could not reasonably have affected the trial's outcome. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Cl. App. 2008). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Id. In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Id. at 484, 663 S.E.2d at 360.

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Further, where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *See also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). As seen below, this rubric here applies.

During Applicant's trial, no defense witnesses were called on Applicant's behalf. Applicant claims trial counsel was deficient for failing to call Lamont McCollum, his co-defendant, on his behalf, at trial. However, it is complete speculation for Applicant to claim McCollum would have exonerated him at trial.

Had trial counsel put a witness on the stand without knowledge of what the witness would testify to, this would not only be foolhardy, but also pretty good evidence of incompetent representation.

At McCollum's guilty plea, which took place on the same day as Applicant's trial began (May 23, 2006), the solicitor recited the following summary of facts:

On March 16, 2003, McCollum, along with Applicant, A.J. Williams and Terrance McKnight, was (sic) hanging out together early Sunday morning. McCollum had a .25 revolver on his person and Applicant had a .32 revolver on his person, each of which was shown to co-defendants. They had been discussing a robbery. Specifically, co-defendants devised a plan to rob Rashad Simpson, nephew of Victim (Willie Cunningham), whom co-defendants believed to have drugs or money. Earlier that day, Applicant approached Simpson, asking if Simpson had any drugs or knew where Applicant could obtain drugs. Applicant reported back to his co-defendants and all decided to rob the trailer in which Victim and Simpson lived, with Williams and McKnight serving as look-outs. When he heard a knock on the door of his trailer, Victim opened the door. Standing in the doorway was Applicant and McCollum. According to Williams, both Applicant and McCollum had their hands in their pockets on their guns. McCollum pulled his gun out and pointed it at Victim. When Victim grabbed for the gun, McCollum shot him twice, once in the chest and once in the groin. All co-defendants fled the scene. (McCollum TR. p. 14, line 24-p. 18, line 15)

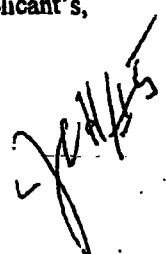
McCollum, when asked by the plea court if he agreed with the facts as stated by the solicitor, responded, under oath: "Yes, sir." (McCollum TR. p. 22, line. 1). The plea court then asked, "Are

those facts correct?" and McCollum answered, "Yes, sir." (McCollum TR. p. 22, lines 2-3). The plea court further asked, "Do you dispute any of them at all?" to which McCollum responded, "No, sir." (McCollum TR. p. 22, lines 4-5). When given a chance to speak at the plea, all McCollum said was that he apologized and asked for forgiveness. (McCollum TR. p. 33, lines 18-21). McCollum did not correct the facts or explain to the plea judge that Applicant was not a part of the crime, as Applicant now claims.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

McCollum's guilty plea clearly stated that he and Applicant were the main actors in this crime with both McCollum and Page possessing firearms. Since it is Applicant challenging McCollum's statements under oath during his guilty plea, and not McCollum himself, McCollum's statements stand as truthful and correct absent proof otherwise.

Applicant presented at the PCR hearing a written statement allegedly signed by McCollum. This statement was introduced at the PCR hearing through Mr. Staffalino, although he testified he did not know who asked him to get the statement from McCollum and did not know if McCollum was represented by an attorney at the time. The interplay of the McCollum statement and trial counsel's representation in this case is somewhat of an enigma. The date on the statement is a date during Applicant's trial. At the time the statement was made, Mr. McCollum, a co-defendant of Applicant's, had pled guilty, but had not been sentenced. (May 13, 2013 TR. p. 11, line 19 to p. 1, line 3.)



Therefore, at the time the statement was taken, McCollum was represented by counsel and should not have been interviewed by anyone without his counsel's consent.

The investigator that took the statement, Andrew Joseph Staffalino, who was retained by Applicant's trial counsel in Applicant's case, testified that he kept a complete file on his investigation, kept in contact with trial counsel and provided trial counsel with a complete file. However, Mr. Staffalino equivocates as to whether or not the statement at issue was included in the file he provided trial counsel (May 13, 2013 TR p. 8, line 2 to p. 9, line 4). He also equivocates as to whether or not he discussed the statement with trial counsel (May 13, 2013 TR p. 9, line 18 to p. 10, line 1). He testified he could not recall who asked him to take Mr. McCollum's statement; and that he did not obtain Mr. McCollum's trial counsel's permission to take the statement; and that he could not recall if trial counsel asked him to take Mr. McCollum's statement (May 13, 2013 TR, p. 11 lines 11-15 and p. 12, lines 6-9).

Trial counsel testified that he would have shared with Applicant all discoverable material produced by the State and any report of Mr. Staffalino (August 12, 2012 TR, p. 21, lines 10-17). Trial counsel testified that he was aware that Mr. McCollum had pled prior to Applicant's trial, but was unaware of any exculpatory statements by Mr. McCollum given at the time of his plea (August 12, 2012 TR, p. 24, lines 5-13).

At the Post-Conviction Relief hearing trial counsel was never asked any questions concerning the McCollum statement. Therefore, there is no evidence that trial counsel was aware of the statement during Applicant's trial or at any time for that matter.

Applicant did not testify at his PCR hearing, so the record is silent as to when he claims to have come into knowledge of the McCollum statement. In his brief, Applicant makes no reference (nor could he) as to when trial counsel was aware, if ever aware, of any exonerating statement by Mr. McCollum. Obviously, trial counsel was not going to call a witness without knowing to what the

witness would testify. To do so would be professional error on its face. Also, obviously, trial counsel could not, without counsel's permission, talk to a represented co-defendant, nor could he request a third party investigator to talk to a represented co-defendant.

In sum, Applicant has failed to carry his burden of proof and has failed to prove trial counsel was ineffective by not calling McCollum as a witness on Applicant's behalf.

While Applicant alleges that counsel was ineffective for failing to call McCollum as a witness on his behalf at trial, McCollum's testimony at trial would be completely speculative as he refused to testify at the PCR hearing. An allegedly signed, unsworn document can hardly be considered probative evidence that McCollum would testify on Applicant's behalf. This is especially true considering that McCollum, under oath, at his plea, testified that he agreed with the facts as presented by the solicitor. These facts include that not only was Applicant involved, but also that Applicant possessed a gun and was in the doorway when McCollum fired the fatal shots. Therefore, because McCollum refused to testify and provide competent evidence to show how the outcome of Applicant's trial would have differed had Mr. McCollum testified, Applicant has failed to prove resulting prejudice from counsel's failure to call McCollum on his behalf at trial pursuant to Underwood, supra.

During the trial, two eyewitnesses testified that Applicant was on the porch of the house when the shooting of Victim occurred. While Applicant claims A.J. Williams and Katrina Howard's testimonies were not credible, that was a credibility question for the jury to decide, which apparently the jury believed as Applicant was convicted in this case. Regardless, the trial judge ruled that a statement made by Terrance McKnight, another co-defendant, would be allowed with redactions. After Williams and Howard testified, the State called Detective Sara Robbins to testify. During a vigorous cross-examination, and in response to a question posed by trial counsel, Det. Robbins testified she was able to corroborate Williams's statement with McKnight's statement. (TR. p. 439, line 20- p. 440, line 3).

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Admittedly, trial counsel did not object to this testimony. The trial court then ruled that counsel "opened the door" to allow the un-redacted version of McKnight's statement. (TR. pp. 496-498).

Applicant argues counsel was ineffective for failing to object to Det. Robbins' testimony. However, the Court of Appeals has already ruled upon this issue and therefore it is not properly before this Court. See Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (any issue that was or could have been raised on direct appeal cannot be asserted on PCR). The Court of Appeals, first, held the trial judge erred in allowing McKnight's unredacted statement to be read into evidence in order to rehabilitate Det. Robbins' testimony concerning her investigative techniques. ("While we recognize the discretionary authority of the trial judge in this area, we believe [the trial judge] erred in finding that Page's counsel's zealous representation of his required the admission of this inadmissible evidence in order to rehabilitate Detective's investigative techniques." State v. Page, Op. No. 08-4367 (S.C. Ct. App. Filed April 3, 2008)). The Court of Appeals then held any error resulting from the admission of the unredacted statement was harmless.

The Court of Appeals, in discussing harmless error, stated:

Error is harmless where it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 193-94; 391 S.E.2d 241, 243 (1990). In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case.

State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 634, 635 (1994) (quoting Delaware v. VanArsdall, 475 U.S. 673, 684 (1986)). Thus, an insubstantial

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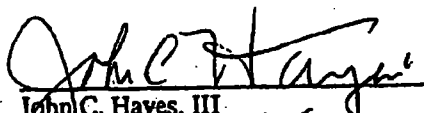
error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).

While Applicant has carried his burden of proof as to trial counsel's error in "opening the door" for Ms. Robbins's testimony, Applicant has failed to prove that he was prejudiced thereby. In fact, an Appellate Court of this State has affirmatively found Applicant was not prejudiced by the introduction of McKnight's unredacted statement.

As Applicant has failed to carry his burden of proof and failed to prove trial counsel rendered ineffective assistance to him in regard to trial counsel's representation of him, Applicant's Post-Conviction Relief application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #9

April 21st, 2014
York, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Jaleel V. Page,)

Petitioner)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
16TH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-46-02584

MOTION TO RECONSIDER

FILED-RECEIVED
2014 MAY -2 PM 4:04
DAVID HAMILTON
E.C.P. & C.S.
YORK COUNTY, SC

PLEASE TAKE NOTICE, that the undersigned, as counsel of record on behalf of the Petitioner will move before the Presiding Judge in the above referenced matter to reconsider This Court's Order dated April 21, 2014 pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. The Petitioner's motion is based on the following:

COURT OF APPEALS RULING DOES NOT HOLD THAT THE FAILURE OF TRIAL COUNSEL TO OBJECT WAS HARMLESS

The prejudice that was introduced into the Petitioner's trial was not the underacted statement from McKnight as indicated in this Court's Order Order P. 9. The prejudice was the introduction of Detective Robbins' testimony. The Court of Appeals did not hold that Detective Robbins' testimony was harmless, but that the introduction of the McKnight's underacted testimony was harmless. State v. Page, 377 S.C. 578 (Ct. App. 2008).

The Court of Appeals relied on evidence already in testimony, and unchallenged by Petitioner's trial counsel. Said testimony was Detective Robbins' testimony, not McKnight's statement. Trial counsel failed to object, which this Court agrees was err, Order p. 9. However, the Court of Appeals made no ruling that Detective Robbins' testimony was harmless. The err the Court of Appeals analyzed was the Trial Judge's err

in allowing the underacted McKnight statement. The Court of Appeals did not analyze or consider the err made by Trial Counsel not to object or otherwise move for a mistrial after Detective Robbins' testimony. The Court of Appeals specifically relied on Detective Robbins testimony that was unchallenged in concluding that the err of allowing the underacted was harmless.

For the above reason, This Court should reconsider its ruling that Trial Counsel's err was harmless. The justification for concluding that trial counsel's err was harmless does not exist without Detective Robbins' testimony. Detective Robbins' testimony was entered into evidence by trial counsel in err. For that reason, trial counsel was deficient and the petitioner should be granted a new trial.

TRIAL COUNSEL EITHER NEW OR SHOULD HAVE KNOWN ABOUT
DEFENDANT MCCOLLUM'S STATEMENT

This Court's order emphasizes that the record is silent as to whether Trial Counsel knew about the McCollum statement. However, it is clear from the record that Trial Counsel's investigator knew about the statement because he took the statement and included it as a part of his file. Trial Counsel's investigator is Trial Counsel's agent. Knowledge of an agent is imputed to the principal. See e.g. Citizen's Bank v. Heyward, 133 S.E. 709, 135 S.C. 190 (1925).

Therefore, under the law of agency, Petitioner was not required to show that Trial Counsel had direct knowledge of the McCollum statement. This Court should impute knowledge of the statement to Trial Counsel. Differences between McCollum's plea testimony and his signed statement should have been presented by Trial Counsel to the jury for its consideration in its fact finding obligation. For that reason, trial counsel was deficient and the petitioner should be granted a new trial.

Very Respectfully,



Brian R. Murphy

Attorney for the Petitioner
PO Box 805
Fort Mill, South Carolina 29716
brian@brmurphy.com
803-548-0321

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Jaleel V. Page

Plaintiff,

VS.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
Sixteenth JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No.: State of South Carolina

I certify that on this date, I served a copy of MOTION TO RECONSIDER in this action, dated May 2, 2014, on Rutledge Johnson by

- ☐ Delivering it to him/her personally;
- ☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

PO Box 11549, Columbia SC 29211

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),
SCRCP, addressed as follows: ; or,

☐ Other:

May 3, 2014
Date

[Signature]
Signature

STATE OF SOUTH CAROLINA

COUNTY OF YORKJaleel V. Page

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
YORK JUDICIAL CIRCUITCASE NO.: 2011-CP-46-2584MOTION AND ORDER INFORMATION
FORM AND COVERSHEETFILED-RECEIVED
2011 MAY -2 PM 4:04
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

Plaintiff's Attorney: <u>Brian R. Murphy, Bar No. 77456</u> Address: <u>PO Box 805, Fort Mill SC 29716</u> Phone: <u>803-548-0321</u> Fax <u>888-506-3672</u> E-mail: <u>brian@brmurphy.com</u> Other: _____	Defendant's Attorney: <u>Jutledge Johnson, Bar No. _____</u> Address: <u>PO Box 11549, Columbia, SC 29211</u> Phone: _____ Fax _____ E-mail: _____ Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Reconsider</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

2014 MAY 19 AM 9:24

C.A. No.: 2011-CP-46-2584

Jaleel Page, #309433,

Applicant,

v.

State of South Carolina,

Respondent.

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ORDER

FILED-RECEIVED
2014 MAY 19 AM 9:16
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This is a Post-Conviction Relief case. The Court issued an Order denying and dismissing Applicant's application for Post-Conviction Relief on April 21, 2014. Applicant has timely moved the Court for reconsideration of the April 21, 2014 Order, pursuant to SCRPC Rule 59. Applicant raises two grounds for relief from the April 21, 2014 Order.

Applicant first asserts that trial counsel either knew or should have known about a statement of co-defendant Lamont McCollum. This argument is based on imputed knowledge as the record is silent as to whether or not trial counsel knew of the existence of the statement during Applicant's trial.

I find that trial counsel cannot be found to be ineffective in representation of a client absent counsel having actual knowledge of the existence of evidence. I find imputed knowledge, as alleged by Applicant, should not apply to an attorney in regard to his or her representation of a client. The undersigned finds no South Carolina case law directly on this point but the Court feels that logic and reality support this finding. It stands to reason that an attorney can only present to the Court information or facts which are within the attorney's actual ken.

I find Applicant's ground for relief based on the failure of trial counsel to utilize a statement by co-defendant McCollum to be without merit.

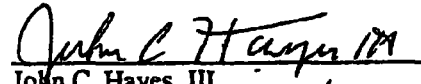
JEH

Applicant next asserts the April 21, 2014 Order is incorrect regarding the Court of Appeals Opinion in Applicant's case (State v. Page, 377 S.C. 578, 2008).¹

Applicant posits that the Court of Appeals did not address prejudice based on the admission of Detective Sara Robbins' testimony and did not find the introduction of co-defendant McKnight's un-redacted statements to have been harmless. To a degree, this position is true, as the Court of Appeals found the trial judge's admission of inadmissible evidence to have been harmless. The Court of Appeals specifically found "nevertheless, we find any error resulting from the admission of the un-redacted statement was harmless." (emphasis added). Therefore, regardless of whether or not trial counsel was ineffective regarding the avenue by way of which the un-redacted statement entered the trial, the Court of Appeals has held the admission of the statement to have been harmless. In essence, any error by trial counsel regarding the admission to the statement, did not work to the prejudice of Applicant as the Court of Appeals has found the impact of the statement to have been harmless. This conclusion is well addressed in the Court's April 21, 2014 Order.

Applicant's Rule 59 SCRPC Motion for Reconsideration of the Court's Order of April 21, 2014 is denied. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review: See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #2

May 14th, 2014
York, South Carolina

¹ The appeal was a direct appeal and the issue of counsel's representation was not a justiciable issue at the time of the appeal.

WITNESSES

YPB/Robbins

DOCKET NO. 2004-GS-46-4004

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

December 9, Term 2004

Defendant

ARREST WARRANT NUMBER

H454751

THE STATE

Witness:

vs.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Jaleel V. Page

aka

Jameel Page

Foreperson of Grand Jury

Date: 12/9/04

VERDICT

Guilty

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

Forfeiture of Petit Jury

Date:

5/27/05

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
COUNTY OF YORK) 2011 JUL 7 AM 8:31

At a Court of General Sessions, December 9, 2004 the Grand Jurors of York County present upon their oath.
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ATTEMPTED ARMED ROBBERY

On or about March 16, 2003, Jaleel V. Page aka Jameel Page did in York County, South Carolina, attempt to steal goods or monies from the person or presence of Willie Cunningham by means of force or intimidation while armed with a deadly weapon. Said offense occurring in the City of York, York County, South Carolina, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. P. Page
SOLICITOR

ARREST WARRANT
H-454751

STATE OF SOUTH CAROLINA
County/ ☐ Municipality of YORK
FILED-RECEIVED
2004 FEB 12 PM 4:41

THE STATE
against

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

PAGE, JAMEEL
Address: ROCK HILL / YORK, SC, SC 29730
Phone: SSN: -
Sex: M Race: B Height: 5'02 Weight: 240
DL State: DL #:
DOB: Agency ORI#: SC04460400
Prosecuting Agency: YORK CITY POLICE DEPT.
Prosecuting Officer: ANY LAWEIL DEETICER
Offense: ATT ROBBERY (ARMED)
Offense Code: 026
Code/Ordinance Sec. 16-11-330(2)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN
A copy of this arrest warrant was delivered to defendant PAGE, JAMEEL on 02-06-04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO
CITY OF YORK POLICE DEPARTMENT
12 N ROOSEVELT
P. O. BOX 500
YORK, S.C. 29745-0500

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of YORK

AFFIDAVIT

being duly sworn deposes and says that defendant PAGE, JAMEEL
within this county and state on 03/16/03 violate the criminal laws
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of YORK

the following particulars:
DESCRIPTION OF OFFENSE: ATT ROBBERY (ARMED)
16-11-330(2)

ATTEMPTED ARMED ROBBERY

IS ST the crime set forth and that probable cause is based on the following facts:
ON 12/31/03, AFFIANT OBTAINED A STATEMENT FROM A J WILLIAMS, WHO WAS ADVISED
OF HIS RIGHTS AND SIGNED A WAIVER. HE STATED THAT HIMSELF, THE DEFENDANT AND
ANOTHER CO-DEFENDANT PLANNED TO ROB A RESIDENCE AT 9 DR INSIDE THE
CITY OF YORK. MR WILLIAMS STATED THAT HE WAS THE LOOKOUT AND THAT THE DEFEN-
DANT AND CO-DEFENDANT WENT TO THE DOOR WITH A PLAN TO HOLD THE OCCUPANTS AT
GUNPOINT AND ROB ITEMS BELONGING TO RASHAD SIMPSON. WILLIE CLANNINGHAM CAME
TO THE DOOR AND CO-DEFENDANT SHOT HIM TWICE, RESULTING IN HIS DEATH. MR
WILLIAMS FURTHER STATED THAT THE DEFENDANT AND CO-DEFENDANT THEN FLED THE
SCENE AS THE VICTIM ATTEMPTED TO RUN AFTER THEM. THE DEFENDANT AND CO-DEFEN-
DANT WERE ARMED WITH SMALL CALIBER HANDGUNS. *****20030359*****

Sworn to and subscribed before me
on JANUARY 01, 2004

Signature of Issuing Judge
Lynne Benfield (L.S.)

Signature of Affiant
YORK, SC 29745
Affiant's Address 12 NORTH ROOSEVELT STREET
Affiant's Telephone 803 684-4141

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of YORK

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY COMMISSIONER OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/16/03 defendant PAGE, JAMEEL did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of YORK) as set forth below:
DESCRIPTION OF OFFENSE: ATT ROBBERY (ARMED)
16-11-330(2) ATTEMPTED ARMED ROBBERY

Now, therefore, 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.

Signature of Issuing Judge
Lynne Benfield (L.S.)
Judge Code: 005
LYNNE BENFIELD

Judge's Address 10 N ROOSEVELT STREET
YORK, SC 29745
Judge's Telephone 803 684-2341
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

15
cc, 80,

WITNESSES

YPD/Robbins

DOCKET NO. 2004-GS-46-4005

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS
December 9, Term 2004

ARREST WARRANT NUMBER

H454752

THE STATE

Defendant

Witness:

C.C.C. PLS. AND G.S.

VS.

ACTION OF GRAND JURY

TRUE BILL

Jaleel V. Page
ska
Jameel Page

Forfeiture of Grand Jury
Date: 12/9/04

VERDICT

Guilty

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 0049

Julie Davis
Forfeiture of Petit Jury
Date: 5/27/05

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

) CERTIFIED TRUE COPY

2011 JUL 14 AM 8:31

At a Court of General Sessions convened on December 9, 2004 the Grand Jurors of York County present upon the oath of
DAVID HAMPTON
CLERK OF COURT
YORK COUNTY, SC

CRIMINAL CONSPIRACY

Jaleel V. Page aka Jameel Page did in York County, South Carolina, on or about March 16, 2003, wilfully and unlawfully unite, combine, conspire, confederate, agree and/or have tacit understanding with Antonio Javar Williams, Lamont McCollum and/or others for the purpose of committing the crime of Armed Robbery, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JS Page
SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF York
VS.
JALEEL VAUGHN PAGE

ORIGINAL

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2004-GS46-4005

837

AKA: JAMEEL PAGE
Race: B Sex: M Age: 2011 JUL 7 AM 9:31
DOB: SS#:
Address: ROCK HILL, SC 29730
DL#: SID#: SC01526404

CERTIFIED TRUE COPY
A/W#: H-454752
Offense: 03-16-2003
S.C. Code § : 16-17-410
CDR Code #: 0049
DAVID HAMILTON ☐ CASE RESTORED
CLERK OF COURT
YORK COUNTY, SC ☐ PLEA ☒ TRIAL
SENTENCE

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: CONSPIRACY TO COMMIT ARMED ROBBERY
in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST
Willy Thompson Solicitor: David Hamilton Defendant: David Hamilton Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5/27/05
☐ The Defendant is given credit for time served pursuant to S.C. Code § 24-23-40 to be calculated and applied by the
State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: _____
§ 14-1-206 - (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Surcharge) \$ 100.00
§ 14-1-211(A)(2) (Surcharge) \$ _____
§ 56-5-2995 (DUI Assessment) \$ _____
3% to Count (if paid in installments) \$ _____
§ 73.3, 1B TP (Law Enforce. Funding) \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge) \$ _____
§ 50-21-114(BUI Breath Test Fee) \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$ _____
TOTAL \$ 125.00

David O Hamilton
Clerk of Court/Deputy Clerk.
Court Reporter: Nike Watkins

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to clerk during probation.
PRESIDING JUDGE David Hamilton
Judge Code: 1 0 1 2
Sentence Date: 5-27-05

ARREST WARRANT

H-454752

STATE OF SOUTH CAROLINA RECEIVED

☐ County/ ☐ Municipality of
 YORK

2004 FEB 12 PM 4:41

THE STATE
against
 W.A. HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

PAGE, JAMEEL

Address: ROCK HILL / YORK, SC, SC 29730

Phone: SSN: -

Sex: M Race: B Height: 6'02 Weight: 240

DL State: DL #:

DOB: Agency Orig: SC0450400

Prosecuting Agency: YORK CITY POLICE DEPT.

Prosecuting Officer: ANY LAWFUL OFFICER

Offense: CRIMINAL CONSPIRACY

Offense Code: 049

Code/Ordinance Sec: 16-17-410

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant PAGE, JAMEEL
 on 02-06-04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF YORK POLICE DEPARTMENT

N ROOSEVELT

D. BOX 500

S.C. 29745-0500

 STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of
 YORK)

AFFIDAVIT

Personally appeared before me the affiant ROBBINS, LT DETECTIVE SARAH

who

 being duly sworn deposes and says that defendant PAGE, JAMEEL
 did within this county and state on 03/16/03

 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of
 YORK

 violates the criminal laws of the
 YORK

In the following particulars:

DESCRIPTION OF OFFENSE:

CRIMINAL CONSPIRACY

16-17-410

 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 12/31/03, AFFIANT OBTAINED A STATEMENT FROM A J WILLIAMS, WHO WAS ADVISED OF HIS RIGHTS AND SIGNED A WAIVER. HE STATED THAT HIMSELF, THE DEFENDANT AND ANOTHER CO-DEFENDANT PLANNED TO ROB A RESIDENCE AT DR INSIDE THE CITY OF YORK. MR WILLIAMS STATED THAT HE WAS THE LOCKOUT AND THAT THE DEFENDANT AND CO-DEFENDANT WENT TO THE DOOR WITH A PLAN TO HOLD THE OCCUPANTS AT GUNPOINT AND ROB ITEMS BELONGING TO RASHAD SIMPSON. WILLIE CUNNINGHAM CAME TO THE DOOR AND CO-DEFENDANT SHOT HIM TWICE, RESULTING IN HIS DEATH. MR WILLIAMS FURTHER STATED THAT THE DEFENDANT AND CO-DEFENDANT THEN FLED THE SCENE AS THE VICTIM ATTEMPTED TO RUN AFTER THEM. THE DEFENDANT AND CO-DEFENDANT WERE ARMED WITH SMALL CALIBER HANDGUNS. *****20030359*****

Sworn to and subscribed before me

on JANUARY 01, 2004

Signature of Affiant

Affiant's Address: 12 NORTH ROOSEVELT STREET

YORK, SC 29745

Affiant's Telephone: 803 684-4141

000-0000

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
 YORK)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 03/16/03 defendant PAGE, JAMEEL
 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of
 YORK) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL CONSPIRACY

16-17-410

 Now, therefore, 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.

Signature of Issuing Judge (L.S.)

Judge's Address: 10 N ROOSEVELT STREET

Judge's Telephone: 803 684-2341

LYNNE BENFIELD

ORIGINAL

 Form Approved by
 SC Judicial Branch
 Jan 26, 1990
 SCDA 618

WITNESSES

YFD/Robbins

DOCKET NO. 2004-GS-46-4006

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

December 9, Term 2004

ARREST WARRANT NUMBER

Direct Indictment In Re: H454753

THE STATE

vs.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Jaleel V. Page
aka
Jameel Page

Forfeiture of Grand Jury
Date: 12/9/04

VERDICT

Guilty

Indictment for
POSSESSION OF A WEAPON
DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 0549

Julie Boers
Fiduciary of Petit Jury
Date: 5/27/05

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2011 JUL -7 AM 8:31

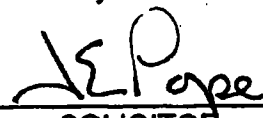
At a Court of General Sessions convened on December 9, 2004 the Grand Jurors of York County present upon the return of a

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME

On or about March 16, 2003, Jaleel V. Page aka Jameel Page possessed a firearm during the commission of the violent crime of murder and/or attempted armed robbery of Willie Cunningham. Said offense occurred in the City of York, York County, South Carolina. All in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

COUNTY OF York
STATE

VS.

JALEEL VAUGHN PAGE

ORIGINAL

2004-GS46-4006

AKA: JAMEEL PAGE

Race: B Sex: M Age: 21

DOB: SS#:

Address: ROCK HILL, SC 29730

DL#: SID#: SC01526404

CERTIFIED TRUE COPY DIRECT INDICTMENT

Date of Offense: 03-16-2003

§ : 16-23-490

CDR Code #: 0549

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/27/05 of attempted armed robbery☐ The Defendant is given credit for time served pursuant to S.C. Code § 24-23-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 - (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Surcharge) \$ 100.00

§ 14-1-211(A)(2) (Surcharge) \$

§ 56-5-2995 (DUI Assessment) \$

3% to Count (if paid in installments) \$

§ 73.3, 1B TP (Law Enforce. Funding) \$ 25.00

§ 33-7, 1B TP (Drug Court Surcharge) \$

§ 50-21-114(BUI Breath Test Fee) \$

§ 56-5-2942(J) (Vehicle Assessment) \$

TOTAL \$ 225.00

David Hamilton

Clerk of Court/Deputy Clerk

Court Reporter: Mike Watkins

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE

Judge Code: 1 01012

Sentence Date: 5-27-05

DOCKET NO. 2004-GS-46- 4007

WITNESSES

J/Robbins

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

December 9, Term 2004

Mel

ARREST WARRANT NUMBER

H454760

THE STATE

vs.

Jaleel V. Page

ACTION OF GRAND JURY

TRUE BILL

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within Indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Grand Jury
Date: 12/9/04

Jaleel V. Page

VERDICT

Guilty

Indictment for
POSSESSION OF A PISTOL BY
PERSON UNDER TWENTY-ONE

Foreperson of Petit Jury
Date: 5/12/105

SC Code: 16-23-30(e)

CDR Code: 2364

STATE OF SOUTH CAROLINA)

INDICTMENT

CERTIFIED TRUE COPY

COUNTY OF YORK

2011 JUL -7 AM 8:32

At a Court of General Sessions, convened on December 9, 2004, the Grand

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Jurors of York County present upon their oath:

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

Jaleel V. Page did in York County, South Carolina, on or about March 16, 2003, unlawfully and knowingly have in his possession a .25 caliber pistol, said defendant being under Twenty-One (21) years of age at the time of incident, all in violation of Section 16-23-30, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

COUNTY OF YorkSTATE VS.
JALEEL VAUGHN PAGE

2004-GS46-4007

AKA: JAMEEL PAGERace: BSex: MAge: 21

DOB: _____

SS#: _____

Address: _____

ROCK HILL, SC 29730

DL#: _____

SID#: SC01526404**ORIGINAL**
CERTIFIED TRUE COPYX/W#: H-454760Date of Offense: 03-16-2003S.C. Code § : 16-23-30(E)CDR Code #: 2364☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was
TO: POSSESSION OF A PISTOL UNDER 21 YEARS OLD☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-30(E) of the S.C. Code of Laws, bearing CDR Code # 2364☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor: Willy Thompson

Defendant: _____

Attorney for Defendant: David HamiltonWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5/27/05☐ The Defendant is given credit for time served pursuant to S.C. Code § 24-23-40 to be calculated and applied by the
State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 - (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Surcharge) _____ \$ 100.

§ 14-1-211(A)(2) (Surcharge) _____ \$ _____

§ 56-5-2995 (DUI Assessment) _____ \$ _____

3% to Count (if paid in installments) _____ \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) _____ \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) _____ \$ _____

§ 50-21-114(BUI Breath Test Fee) _____ \$ _____

§ 56-5-2942(J) (Vehicle Assessment) _____ \$ _____

TOTAL _____ \$ 125.00Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Mike Watkins

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to clerk during probation

PRESIDING JUDGE: David HamiltonJudge Code: 1 1 12 16Sentence Date: 5-27-05