

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

JAN - 5 2015

RICHARD DEAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001761

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 26-30, 2009	1
FINAL BRIEF OF APPELLANT	730
INITIAL BRIEF OF RESPONDENT	746
<u>STATE V. DEAS</u> , UNPUBLISHED OPINION NO. 2012-UP-615 (FILED NOVEMBER 21, 2012)	782
REMITTITUR	785
APPLICATION FOR POST-CONVICTION RELIEF	786
RETURN	793
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 17, 2014	799
STATE'S EXHIBIT # 1 (LETTER TO CLIENT)	867
ORDER OF DISMISSAL	868
INDICTMENTS AND SENTENCE SHEETS	883

1 have us take a look at it and see if it was in the
2 area.

3 Q Okay. And show you what has been previously
4 marked as State's Exhibit 23. You want to step down
5 for just a second with the Court's permission.

6 This is Meeting Street. Do you recall where
7 you all were when you arrived?

8 A This is Line street. When she called the
9 complainant said it was in the area of Hanover and
10 Line. And the car was parked between -- it was
11 parked on Line Street between Hanover and Aiken,
12 almost in the middle.

13 Q Okay. And now on the 16th when you got the
14 call, was the car there when you arrived?

15 A No, ma'am, it was not.

16 Q Did you receive a second call regarding the
17 same car on a different date?

18 A Yes, ma'am.

19 Q And what was that date?

20 A October 18th, two days later.

21 Q And when you arrived there, who was present?

22 A I was met by Ms. Doctor.

23 Q Okay. And did you tell her you needed
24 something from her before you could do anything
25 further?

1 A I did. She requested that her car be towed to
2 her residence. Before I towed the vehicle or let her
3 towed the vehicle I asked her to show me some proof
4 of ownership. She did not have any at the time. She
5 called her mother who responded to the scene and
6 showed me proof of ownership.

7 Q Now did anyone else arrive at the scene other
8 than Whitney Doctor and her mother?

9 A Yes, ma'am.

10 Q Okay. And could you describe that person to
11 us?

12 A She was described as a short, heavysset black
13 female.

14 Q Okay. I'm going to show you what has been
15 previously marked as State's Exhibit 33 and ask you
16 if you can identify that?

17 A Yes, ma'am, that's her.

18 Q Okay. Are you familiar with what her name is?
19 If you don't remember it, that's fine.

20 A I am now.

21 Q Okay. At the time did you know her name?

22 A No, ma'am, I did not.

23 Q Okay. And if you could just describe for us,
24 briefly, the exchange between Ms. Doctor and the
25 woman that you've identified in that lineup, not

1 lineup but that photograph?

2 A Ms. Doctor and this lady, when she arrived on
3 scene, they became argumentative one to another. They
4 were disputing the ownership of the vehicle. And
5 they went back and forth about whose vehicle it was.

6 Ms. Doctor told me that it was in her name but
7 this lady was paying the bills. She didn't go on to
8 why that was, why it was arranged that way, so I told
9 both of them, I need to see the prove of ownership
10 and whoever brought me the proof of ownership I would
11 release the car to them. And Ms. Doctor did.

12 Q And after you made your decision ultimately
13 was to do what?

14 A To give the car back to the registered owner.

15 Q Okay. And did you happen to see where the
16 woman who approached the scene that you've identified
17 in that photograph, where she went?

18 A There was a group of bystanders approximately
19 half a block away. After I released the car back to
20 Ms. Doctor, she then walked away and were talking to
21 the group of people. But after that, I have no -- I
22 didn't talk to her after that.

23 Q Okay. Now on October 23rd, 2007, did you
24 report to ?

25 A I did.

1 Q And was that for the arrest of Richard Deas?

2 A Yes, ma'am, it was.

3 Q And can you tell us whether officers were
4 present at the arrest?

5 A Let's see. Officer Cooper, who is no longer
6 with us, he is out in California at another police
7 agency. Officer Rivers was there along with some
8 United State Marshalls, they were also there on
9 scene.

10 Q Okay. And what was your role after Mr. Deas
11 left that apartment?

12 A I transported Mr. Deas back to CPD
13 headquarters.

14 MS. SHEALY: Beg the Court's indulgence.

15 THE COURT: Uh-hum.

16 MS. SHEALY: Okay. I have no further
17 questions, thank you. Please answer any questions
18 Ms. Ford may have.

19 THE COURT: Any questions for the witness?

20 MS. FORD: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION

23 BY MS. FORD:

24 Q Good morning, officer.

25 A Hello.

1 Q You wrote a report covering this whole car
2 situation, didn't you?

3 A Yes, ma'am.

4 Q But you did not write it at the time it
5 happened, right?

6 A No, ma'am.

7 Q You wrote it on October 29th, right?

8 A That's correct.

9 Q And you wrote it specifically at the request
10 of Detective Osborne, correct?

11 A Yes, ma'am, that's correct.

12 Q So before he requested it, you did not see a
13 need to write a report, correct?

14 A Not at that time.

15 Q And no one was arrested that night, were they,
16 or night of the car when you went out, no one was
17 arrested for stealing a car or anything like that,
18 right?

19 A No, ma'am. But the car was unoccupied.

20 Q You didn't arrest the woman that you pointed
21 out in the picture, right?

22 A No, ma'am, I did not.

23 Q And you never talked to Richard Deas that
24 night, right?

25 A I did not.

1 Q In your report you didn't even mention seeing
2 him, right?

3 A I saw several people, but not -- I don't
4 recall seeing him on scene. I saw a lot of people
5 but I don't know who I saw that night.

6 Q So when you told us that Ms. Bennet, Ms. Deas,
7 the person who has been identified as Richard's mom,
8 when she walked to a group of bystanders you have no
9 clue as to who those people were, right?

10 A All I know is that they were male subjects.

11 Q And when Ms. Doctor was talking to you about
12 everything that happened, over the two incidents,
13 correct, the 16th and the 18th, right? Because you
14 handled both situations, right?

15 A I did the first night, no one was there.

16 Q There is no indication of any kind of
17 altercation, right? Physical altercation?

18 A No physical, they were just arguing. That's
19 all.

20 Q And the people arguing were Whitney Doctor and
21 Altida Bennet, correct?

22 A Yes, ma'am, that's correct.

23 Q So not Richard Deas?

24 A That's correct.

25 MS. FORD: Beg the Court's indulgence.

1 THE COURT: Uh-hum.

2 Q (By Ms. Ford) When you reported on the night
3 of the 18th and you spoke to Ms. Doctor, Whitney
4 Doctor, her mom came out, right?

5 A That's correct.

6 Q And Ms. Bennet was there, right? The woman
7 you've identified?

8 A She was.

9 Q There no mention of a man being with her,
10 right?

11 A Not that I remember.

12 Q Okay. So Leroy Simmons was not with them,
13 right?

14 A Not that I can recall.

15 MS. FORD: Thank you.

16 THE COURT: Any redirect?

17 MS. SHEALY: Beg the Court's indulgence.

18 I have no further questions, thank you.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MS. SHEALY: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: Sir, you are excused.

25 You may call your next witness.

1 MS. SHEALY: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 I have a brief matter of law I need to take up with
7 the attorneys. During this break please do not
8 discuss the case. Please leave your notepads in your
9 seats.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: What is that witness's name, Ms.
12 Shealy?

13 MS. SHEALY: Marvin Hancock.

14 THE COURT: What portion of the recording
15 would the State be seeking to introduce?

16 MS. SHEALY: Your Honor --

17 THE COURT: I'm referring more specifically to
18 those that were pointed out to me which took place
19 October 23rd, 2007, time is 16:35:29. And the same
20 date, the 16:50:25, take them in that order.

21 MS. SHEALY: Okay. We tried to narrow it,
22 Your Honor, to a complete conversation and only those
23 parts that we thought would be relevant. And I don't
24 know if the Court received a copy of the transcript
25 we had typed up.

1 THE COURT: No necessity, I've listened to it.

2 MS. SHEALY: Okay.

3 THE COURT: Transcripts would not be
4 admissible anyway, so I listened to it and that's the
5 best evidence of what was said.

6 MS. SHEALY: Well, Your Honor, beginning then
7 at 5 minutes 50 seconds into that conversation.

8 THE COURT: Which one are you referring to?

9 MS. SHEALY: Would you be interesting in my
10 transcript for purposes of this argument.

11 THE COURT: You can summarize. Both
12 conversations were less than 13 minutes each. I
13 remember what was said.

14 MS. SHEALY: Okay. There is a conversation
15 with Nicki where the defendant said.

16 THE COURT: You are referring to 16:35:29?
17 Which one are you referring to?

18 MS. SHEALY: I don't have it by the second,
19 Your Honor, but --

20 THE COURT: There are two conversations, and
21 they're delineated as 16:35:29 and 16:50:25. I need
22 to know which one you are referring to. Because one
23 was between he and his mother and several other
24 people. Well, they are both between he and his
25 mother, but one there were several other people that

1 were involved in the conversation.

2 MS. SHEALY: Beg the Court's indulgence, I'm
3 sorry.

4 THE COURT: Uh-hum.

5 MS. SHEALY: Your Honor, I apologize for
6 making it more confusing if I am. But your question
7 as to the first recording we would like to get in is
8 dated 10/23/07 --

9 THE COURT: They were both dated that.

10 MS. SHEALY: I was going to give you the time
11 which was 16:35.

12 THE COURT: Okay.

13 MS. SHEALY: And we would like to get that
14 part of the conversation that begins 50 seconds into
15 that conversation.

16 The programming that we have is hard to -- but
17 it gives a good reference point to be able to do it.
18 But it is 5 minutes and 50 seconds into that
19 conversation. Where he is having a conversation
20 first with Nicki, and then with Slick.

21 THE COURT: And then what portion would you be
22 seeking, and for what purposes would you be offering
23 the conversation with Nicki?

24 MS. SHEALY: Your Honor, because within that
25 conversation he is talking with Nicki and trying to

1 get her to say that he had slept with her -- he slept
2 at her house.

3 THE COURT: Actually, what he said is, why
4 didn't you tell the police you were at my house? I
5 think it's unfair to characterize it that he was
6 trying to persuade her. He was upset with her that
7 she maybe did not corroborate that he was there with
8 her.

9 MS. SHEALY: Well I think that point is clear.
10 He is upset with her. It was never said by him, you
11 know I was there, he never said that.

12 THE COURT: That's not that point. You
13 characterized it as him trying to influence her.

14 MS. SHEALY: I think he is.

15 THE COURT: Well, I think it's subject to
16 interpretation but he merely says, you know, I'm
17 upset with you.

18 MS. SHEALY: That's correct.

19 THE COURT: Why didn't you tell the police I
20 slept there.

21 MS. SHEALY: That's correct, Your Honor. Then
22 he also tells Slick, you know, we got to get Nicki to
23 say that I was over there.

24 THE COURT: I will have to listen to that
25 again, I did not hear that.

1 MS. SHEALY: He never indicates, Nicki, I was
2 there with you, why didn't you tell them the truth.
3 It's, Nicki, why didn't you tell them I was there.

4 THE COURT: That's always what you can argue.

5 MS. SHEALY: That's correct.

6 THE COURT: I'm with the bear bones of what
7 was said, not anything you all want to argue in terms
8 of inference is not for me to consider. The issue is
9 what actually was said.

10 MS. SHEALY: Well, what was said --

11 THE COURT: Which was actually said you know
12 I'm upset with you, I'm paraphrasing, why didn't you
13 tell them that I spent the night at your house.

14 MS. SHEALY: He also said, I mean everything
15 is still good, I mean I still could come back out
16 there, I mean everything is good. I mean everything
17 is good. That doesn't stop me from coming back out
18 there. I'm coming back out there no matter what.
19 I've been sitting here having this thing in my head
20 wondering why this girl telling people that. You
21 know you got me sitting, right?

22 And then a little bit further down, you are
23 supposed to be mad at me or something.

24 THE COURT: They were talking about something
25 else, wasn't about that. She got quiet on him and

1 then later he told her he was going to put her on the
2 list to come visit him.

3 MS. SHEALY: This is the part immediately
4 following why she did not tell the police that he was
5 there.

6 THE COURT: I've got to listen to it.

7 MS. SHEALY: I had someone try to transcript
8 it.

9 THE COURT: I listened to it last night. You
10 have -- it's not necessarily related to that. She
11 got quiet on him while they were talking, what now
12 you are supposed to be mad at me.

13 MS. SHEALY: That's correct, after he had
14 said, you know you got me sitting. And she goes, I
15 know.

16 THE COURT: They talked about some other stuff
17 between that.

18 MS. SHEALY: I don't know if at that point
19 there's something between, that's not how I remember.

20 THE COURT: My memory is not infallible, but I
21 listened to it very intentionally. I listened to
22 both of them twice.

23 MS. SHEALY: And then also he then says, what
24 I am saying is them boys ain't got shit, right, them
25 boys just, them boys just. He said she said -- this

1 is the conversation with Slick.

2 THE COURT: Are you referring to the same --
3 within that same conversation?

4 MS. SHEALY: It is. They were handing that
5 phone to different people.

6 THE COURT: Uh-hum.

7 MS. SHEALY: And he says, yeah, about what
8 make it, about what make it good. I give them some
9 statements but them boys ain't shown me the
10 statements right there.

11 THE COURT: I think the statements say they
12 were talking about the strength or weakness of the
13 State's case. Basically what he told his friend is
14 they didn't have any evidence against him, he was
15 going to beat it and he was going to come back out.

16 MS. SHEALY: Your Honor, and then pivotally
17 Slick says, they say something about a bike or
18 something. And he says, yeah, they ain't really know
19 who did what, fell me? Get what I'm saying?

20 THE COURT: And that they cannot identify the
21 second person. I think it's safe to say again,
22 parenthetically, he was talking about the weakness of
23 the State's case without going into all the
24 specifics. That's the gist of it, correct?

25 MS. SHEALY: I think it could be characterized

1 that way. But I also think it shows collaboration
2 with Slick in saying, I got to get Nicki, she hasn't
3 told them that I was there.

4 THE COURT: I will listen to it again to see
5 if I hear that. So is that all you would be seeking
6 to introduce in the first report?

7 MS. SHEALY: Just one second, Your Honor.

8 Then he also says, oh, but yeah, like I have
9 been saying, yeah, but when she's good on her part
10 because I'm going to just tell her, you know, just
11 tell them boys when the time comes that she got
12 Thursday and Friday mixed up. And I ain't come home
13 after homecoming, you know.

14 THE COURT: What else would you be seeking to
15 introduce? And I don't need you to read it to me, I
16 am going to listen to it. I just need you to
17 parenthetically tell me which portions of it you are
18 seeking to offer.

19 MS. SHEALY: Those are the ones just
20 enumerated.

21 THE COURT: For what purpose would you be
22 seeking to offer them? How would they be relevant?

23 MS. SHEALY: To show that he is attempting to
24 have Nicki indicate -- that he is telling his friend
25 that I'm just going to have her say this, get her

1 straight. It shows that he was involved in it, and
2 one person is not doing what he wants them to do, and
3 he plans on getting them to do what he wants them to.

4 And I haven't hit the second conversation,
5 yet, Your Honor. That's the one that begins 16:50.

6 THE COURT: Tell me which portions would you
7 be seeking to introduce?

8 MS. SHEALY: Your Honor, just the very end of
9 the conversation where he says, I don't know, I don't
10 know. If he say one of my homeboys but what I got to
11 say, but I forget what I'm about to say about them
12 boys, But them boys they charge me with a murder
13 weapon but they ain't got the murder weapon.

14 THE COURT: Would that be the extent of what
15 you would be seeking to introduce?

16 MS. SHEALY: Yes, Your Honor.

17 THE COURT: How would that be relevant?

18 MS. SHEALY: Because it shows that he has
19 knowledge of where the murder weapon is and knows
20 that they don't have the murder weapon.

21 THE COURT: Is there anything further from the
22 State?

23 MS. SHEALY: Excuse me?

24 THE COURT: Anything further from the State
25 regarding what you are seeking to introduce as

1 regards to these recordings?

2 MS. SHEALY: No, Your Honor, other than it
3 would be our position that the jury is entitled to
4 hear them and then they can make their own
5 conclusions as to how they perceive the
6 conversations.

7 THE COURT: Anything from the defense?

8 MS. FORD: Yes, Your Honor, may it please the
9 Court. Well, just based on the substance of the
10 conversations and not on the argument about jail
11 tapes --

12 THE COURT: You need to make your full record.

13 MS. FORD: Yes, ma'am. I was going to start
14 with the substance though. But as far as the gun
15 goes, Your Honor, I think it's completely irrelevant,
16 prejudicial. He is simply stating a true fact, they
17 think they have the murder weapon but they don't.
18 And that is not in dispute at all.

19 They did think they might have the murder
20 weapon, but they in fact did not know -- I mean they
21 did not have it. There was no match. And so that's
22 a true statement, Your Honor, and all it does is try
23 to prejudice my client.

24 And it goes along with the other motion that I
25 had made to exclude the testimony about the gun being

1 found when he was arrested because that was
2 prejudicial and -- irrelevant and prejudicial and
3 enough to overcome its probative value. So that's
4 why I argued that that be excluded.

5 As far as the conversation with Nicki, she
6 testified, Your Honor, and she indicated that, from
7 my understanding, he never tried to -- he talked to
8 her just last Friday and didn't ask her to do
9 anything. He is just talking to a friend, Your
10 Honor. You can hear from the conversation he is not
11 threatening her in any way. And as you suggested, he
12 is just asking her why she didn't, he is not asking
13 her to or telling her to.

14 It's just a conversation with his friend. And
15 just because he makes any statement is not allowed in
16 trial. Just because it's the defendant's statement
17 there are exclusions and it has to be relevant and I
18 think it's cumulative to Ms. Williams' testimony and
19 to the statement of -- that my client gave to
20 Detective Osborne which was already put into
21 evidence.

22 MS. SHEALY: If I can respond to that briefly.

23 THE COURT: I want her to make a full record,
24 and then I will let you respond.

25 MS. FORD: As far as the jail tapes issue, I

1 just want to make the record clear that I know that
2 there is consent given from the recording. In these
3 particular calls they're collect calls that are
4 different from some of the other jail calls. It's
5 prepaid I mean. So it doesn't sound to me, when I
6 listen to them, that they do accept it after there is
7 a message saying that it will be recorded.

8 However, I would argue that this consent is
9 not voluntary and it is not knowing because it's not
10 voluntary because the inmates have no other choice.
11 If they have want to make a phone call they have no
12 other choice other than to use the system.

13 It's not knowing because there are different
14 messages at the jail saying different things. Some
15 say all calls will be recorded. Some messages say
16 some of these calls may be recorded. But in
17 everywhere, every indication, the jail manual,
18 everything indicates that these calls may be recorded
19 for jail security. Nowhere does it mention that the
20 police will listen to them or the police will be
21 given them. Nowhere does it mention that --

22 THE COURT: Doesn't it beg the question if
23 someone is going to record it, at some point somebody
24 else is going to listen to it? It's putting me on
25 notice. Same thing when a bill collector calls me --

1 I've never had one call me, so I'm using it as a
2 hypothetical -- when a bill collector calls your
3 house the first thing you hear is, this call is
4 recorded. Or if you call in a complaint, somebody at
5 customer service says, this is being recording for
6 training purposes.

7 Even when you call a debt collection firm, I
8 know about this, I have had to deal with them a lot
9 just doing this job. The first recording you hear
10 is, your phone conversation is going to be recorded.
11 If somebody tells me my phone conversation is going
12 to be recorded, I think common sense dictates that
13 someone else may listen to it at some point, doesn't
14 it?

15 MS. FORD: Yes, Your Honor. But I would just
16 argue that you wouldn't expect just anybody in the
17 world to be able to listen to them. There is no
18 search warrant --

19 THE COURT: What would you expect? If someone
20 tells you, in a secured, confined environment that
21 your phone conversations are being taped, what would
22 you expect them to be used for?

23 MS. FORD: I would expect them to use those
24 for security purposes like the jail policy states.

25 THE COURT: His mother knew better, she told

1 him, don't be talking about anything on the telephone
2 they're recording us.

3 MS. FORD: I believe things are looked at at
4 an objective standard.

5 THE COURT: He doesn't -- he had her advice
6 after she said it. He was talking to his friends.

7 MS. FORD: I'm talking about the jail calls as
8 a whole, Your Honor.

9 THE COURT: I will listen. Go ahead, I
10 dropped something.

11 MS. FORD: I believe when you look at consent
12 and things like that, the totality of the
13 circumstances, we believe you look at it from an
14 objective standpoint. So whether my client was told,
15 you should be careful what you say, we are talking
16 about a normal at the jail, inmates are told these
17 are for security reasons, it's not -- and they do
18 give consent but consent can be limited and I would
19 argue that the consent is limited to the security
20 reasons and not for law enforcement reasons.

21 If anything, I would think they would need a
22 warrant stating probable cause which is not the case
23 here, Your Honor. They merely went on a fact finding
24 expedition.

25 THE COURT: This isn't just his call, correct,

1 every call is recorded except those between attorney
2 and client and anyone else who's recognized to have a
3 privilege; is that correct?

4 MS. FORD: Some places indicate that calls may
5 be recorded, that's why I am saying it's unclear and
6 it's misleading. Some say --

7 THE COURT: It's not clear, you put your name
8 on the list at the jail they do not record attorney
9 client conversations.

10 MS. FORD: No, I'm saying the jail, when they
11 have the notice around, some notices say these calls
12 will be recorded. Others say that the call may be
13 recorded.

14 THE COURT: The sheet of paper you gave me,
15 where did this come from?

16 MS. FORD: That is from the jail, Your Honor.

17 THE COURT: That is what they're given when
18 they are processed in, correct?

19 MS. FORD: Yes, ma'am.

20 THE COURT: They sign it, don't they?

21 MS. FORD: Yes, ma'am. And on that sheet --

22 THE COURT: What's the reason I don't have
23 that signed paper?

24 MS. FORD: That is not my client's, Your
25 Honor.

1 THE COURT: You just got a copy of it in
2 general?

3 MS. FORD: Yes, ma'am. And I only copied one
4 side. I have a full one, I just copied the part
5 relating to telephone calls. And this one says, all
6 calls from the unit will be collect calls. All calls
7 may be monitored and recorded.

8 THE COURT: This one has several provisions
9 about telephone calls. Is there a reason you did not
10 provide me with a copy with your client's signature?

11 MS. FORD: I did not think of getting it, Your
12 Honor. But I believe the solicitor actually has
13 that. I'm not saying that he did not sign one, Your
14 Honor.

15 THE COURT: Anything further?

16 MS. SHEALY: I do have that, Your Honor. I'd
17 like to make that a Court's exhibit.

18 THE COURT: I'd like to see it.

19 MS. SHEALY: May I approach?

20 THE COURT: Uh-hum.

21 Anything further, Ms. Ford?

22 MS. FORD: Your Honor, I would just argue
23 possibly -- not to go back to the other issue about
24 the substantive part of the calls themselves -- just
25 that I would argue it's hearsay. I realize it's

1 party opponent.

2 THE COURT: It's an admission against interest
3 in looking at it even most restrictively.

4 MS. FORD: I would argue it's not.

5 THE COURT: It would be an exception to the
6 hearsay rule.

7 MS. FORD: I would argue it's not a statement
8 about guilt of any kind.

9 THE COURT: It inculcates him as a statement
10 against interest. It's a statement, classic under
11 the rules, that someone would not make knowing it's
12 contrary to their interest. Therefore it has
13 inherent reliability and comes in under the hearsay
14 exception. But I will note your exception for the
15 record.

16 Anything further as regards to your argument
17 regarding your request to exclude the reports?

18 MS. FORD: No, Your Honor.

19 THE COURT: Anything further from the State in
20 responses to the constitutional argument regarding
21 the recordings?

22 MS. SHEALY: Yes, Your Honor. I do have -- we
23 previously marked Court's Exhibits 13 and 14 which
24 are photographs taken from inside the jail near the
25 phone area. That once again advise the inmates that

1 the recordings may be monitored. If I could hand
2 those up.

3 And it would be our position, Your Honor, that
4 there is -- I'm not sure exactly if she was
5 arguing --

6 THE COURT: Is this the same picture, these
7 are different places or is this the same picture with
8 one close-up and one far?

9 I guess one shows the telephone and one does
10 not?

11 MS. SHEALY: It looks like it is.

12 THE COURT: Close-up in relationship to the
13 phones. Okay.

14 MS. SHEALY: I'm not sure if Ms. Ford was
15 arguing an expectation of privacy argument.

16 THE COURT: Are there other exhibits that you
17 all have marked Court's Exhibits without the Court's
18 permission? Because I noticed that these were marked
19 and they were not proposed to the Court to be marked.
20 I have control over what is marked as a Court's
21 Exhibit, and I maintain control over that.

22 I need to know what else has been marked, what
23 I have admitted what I have not admitted.

24 THE COURT REPORTER: We marked them previous
25 to the motion hearing.

1 THE COURT: Okay, those are not admitted into
2 the record until such time as the Court has ruled
3 upon them.

4 You may continue, Ms. Shealy.

5 MS. SHEALY: Your Honor, addressing Ms.
6 Ford's coerced consent argument, it would certainly
7 be our position that this was consent, that he was
8 warned, that he was given the sheet to sign, that
9 there is a recording on the -- at the time and place
10 of the phone calls. And that there is a sign within
11 the jail right near the telephone.

12 So it would be our position that is clearly a
13 consensual use of the phone and not coercion to use
14 the phone.

15 Regarding -- I'm not sure if any other part of
16 her argument amounts to -- is couched in terms of
17 expectation of privacy.

18 MS. FORD: Yes, Your Honor, I did not include
19 that. I guess I would like to include just that even
20 though they were at the jail, certainly their privacy
21 is very restricted. I would like to argue that there
22 are some rights to privacy, and some cases have found
23 that for example while jails can look at their
24 inmate's units or their cells to see if there is any
25 contraband for example, they just can't take

1 everything in there.

2 It might have paperwork that a client has
3 included notes about their trial strategy. And I
4 also would like, I didn't include it before and I
5 apologize, just that there are particular ethical
6 rules for attorneys in recording conversations, and I
7 know certainly there is -- I'm not trying to argue
8 anything blatant on Ms. Shealy's part -- just in
9 general that attorneys, they are especially held to a
10 higher standard when it comes to recording calls.

11 THE COURT: She didn't record the calls, did
12 she?

13 MS. FORD: No, ma'am. But she is using them,
14 is going to extend the jail is an agent.

15 THE COURT: The jail is not her agent. She is
16 not the jail's agent. They are separate entities
17 governed by separate rules and regulations. They
18 don't act on her benefit and she doesn't act on
19 theirs.

20 MS. FORD: I know exactly. But she was
21 certain powers, for example, to let an inmate
22 released. She has the power --

23 THE COURT: She has no ethical obligation in
24 this regard, even in the most liberal reading of our
25 ethical rule. Now Mr. Sidely (phonetic) might, he

1 represents the county, he gives them advise, Ms.
2 shealy certainly does not.

3 MS. FORD: Yes, ma'am, I apologize not
4 including that earlier.

5 MS. SHEALY: Your Honor, regarding her
6 argument asserting an expectation of privacy
7 violation, I think that may be what the Court was
8 referring to previously when we anticipated this
9 argument. I think it's well settled that there is
10 not an expectation of privacy in phone calls that you
11 make from a jail. And that would be under Katz
12 versus U.S. and State versus M-U-Q-U-I-T and
13 Huntington versus Palmer.

14 MS. FORD: Your Honor, just to talk about the
15 pictures briefly. Just my client was not in that
16 unit, he is not in the regular unit. So just for
17 that record I do not believe that those signs are
18 posted in every unit. He is in one of the south side
19 wings.

20 THE COURT: Isn't the jail a mirror image of
21 itself?

22 MS. FORD: I have not personally walked
23 through there. Just my client indicated that his,
24 where he is, it certainly looks nothing like that.
25 There are four main units, there are wings. My

1 client is in a wing. And that picture is one of the
2 main units.

3 THE COURT: Uh-hum. When the defendant was
4 arrested he was given, as the standard policy of the
5 Charleston County Detention Center, every defendant
6 is provided with a copy of the inmate rules. They
7 are required to read those rules, and in addition to
8 that they're then required to advise the detention
9 center that they understand the rules, that they have
10 read them, and that they will abide by them, and that
11 they have received a copy of the rules.

12 The defendant has signed both -- had his
13 signature and his printed name witnessed by, I cannot
14 read the signature, but it was a witnessing officer
15 with his inmate number. I did not see a date on this
16 form but I would have to assume that was the date he
17 was processed on the date of the booking which is the
18 first sheet is 10/24/07.

19 He received a copy of those rules, and that he
20 read them, understood them, received a copy of them
21 and agreed to abide by them as evidenced by his
22 signature.

23 That form, which is the booking form, actually
24 I can't this is something, interview form heading cut
25 off, that will be marked as a Court's Exhibit.

1 In addition, there are Charleston County
2 Denton Center inmate rules which the defendant
3 received. And skipping to those which are relevant
4 to this inquiry, section 14 telephones, which I will
5 skip all those not relevant, it puts an inmate on
6 notice that their calls are monitored and recorded.
7 That they will be charged applicable fees, rates for
8 calls, that their calls are limited to 15 minutes
9 before lock-down before meals and shift change, and
10 that they're automatically terminated.

11 That those assigned to segregation will be
12 allowed limited telephone privileges. And others
13 during family emergencies and other calls allowed
14 Sunday after 6:00.

15 They are also put on notice that if they make
16 certain types of phone calls they will be prosecuted
17 or placed in disciplinary segregation or their phone
18 privileges will be revoked; that they cannot have
19 three-way calls; that if they attempt it that it will
20 be discounted; and they're not to make any contact
21 with staff or otherwise in making telephone calls.

22 Clearly the defendant was aware when he was
23 processed into the detention center that his phone
24 calls would be monitored and recorded. In addition
25 to that, I think I can take judicial notice from my

1 years of experience on the bench that it is common
2 knowledge among inmates that their phone calls are
3 recorded. And it is no secret that phone calls are
4 recorded.

5 Even the defendant's mother knew that and told
6 him not to speak about certain things as she was
7 talking to him on the telephone. She also advised
8 him not to confide in anyone while he was at the jail
9 or talk to his cell-mates, to keep his business to
10 himself. I think for mother to a son was very wise
11 advise. He seemed to agree with her, to consent and
12 to acknowledge that he knew that his phone calls were
13 being recorded and that he should guard his
14 communications so that they could not be used against
15 him. And that was within their telephone
16 conversation which took place October 23rd, 2007.

17 It is clear that the defendant consented to
18 the recording. He knew his calls were being
19 recorded. He signed acknowledging that upon his
20 entry to the jail. Therefore he cannot genuinely
21 argue that this comes as any surprise to him. It
22 stands to reason that if your phone calls are being
23 recorded that they will be listened to. And that is
24 why you were being put on notice that they were being
25 recorded.

1 Our Supreme Court, as well as several District
2 Courts, I mean several Federal Appellate Courts have
3 discussed these matters in great detail. And the
4 gist of those opinions are that a prisoner has no
5 reasonable expectation of privacy when in a detention
6 or secured facility.

7 And also acknowledging that security concerns
8 justify jailhouse recordings. And that they do not
9 require and come within -- and do not require
10 procurement of a warrant, and are not considered an
11 unreasonable search or seizure.

12 The policy of the County of Charleston was
13 provided, and that was articulated by their by
14 memoranda by their county deputy county attorney who
15 indicated that the jail, as a matter of policy,
16 records inmate telephone calls for safety and
17 security purposes, pursuant to 17-30-10 which allows
18 for the interception of wire communications and
19 recordings of those communications.

20 And that they fall within an exception for
21 that recording of communications and the interception
22 and recording under several of the sections, without
23 going into great detail, I will have the memo marked
24 as a Court's Exhibit.

25 Also he talked about it in the course of FOIA

1 requests, but he articulates the county's position
2 and the reasoning as to why they record telephone
3 conversations.

4 In addition to that, there is a Charleston
5 County Detention Policy procedure manual excerpt
6 which was provided, which the Court is familiar with,
7 that also indicates that the purpose of recording
8 phone calls is for security purposes. And also
9 mirrors the policy that is provided to the
10 defendant's at the time they are processed dealing
11 with no three-way calls, prohibiting harassing phone
12 calls, intimidation, not contacting detention center
13 staff, requiring adherence to the rules of the PIN
14 system, P-I-N, that each of them employ -- they're
15 each given a PIN number to enable them to make phone
16 calls. And that will also be marked at a Court's
17 exhibit.

18 In addition the Supreme Court has been very
19 clear that the Fourth Amendment is not triggered
20 unless the State intrudes into an area in which there
21 is a constitutionally protected reasonable
22 expectation of privacy. Such a constitutionally
23 protected reasonable expectation of privacy exists
24 only when and if the defendant has an actual
25 subjective expectation of privacy in the place

1 searched, and society is objectively prepared to
2 recognize that exception.

3 Clearly the defendant had no actual subjective
4 expectation of privacy to where he was advised upon
5 processing that his conversations would be recorded,
6 where he signed that acknowledgment that he knew his
7 conversations were being recorded, and in addition to
8 that during all conversations there is a constant and
9 chronic recording that says, you are receiving a call
10 from a Charleston County Detention Center and your
11 calls are being recorded.

12 And with that notice this Court would be
13 hard-pressed to find that the defendant believed his
14 calls were private when he knew they were being
15 recorded. And while prisoners do not lose all of
16 their rights to privacy, they do recognize, being in
17 a secure facility, that many of their rights are
18 severely curtailed.

19 Now of course his conversations between his
20 attorney would be privileged and they would be
21 protected, as well as any other privilege that our
22 state law recognize. But certainly they do not
23 recognize conversations between he and his friends,
24 those are not privileged, nor between he and his
25 mother.

1 In addition the Court, I am not certain
2 whether these pictures that have been presented are
3 dispositive which posts the rules, I don't know if
4 they actually reflect the unit that the defendant was
5 in, but if they were they certainly would have given
6 him notice by number which indicates inmate telephone
7 rules outgoing calls only, automatic cutoff in 15
8 minutes. Local and long distance calls must be
9 collect. And all calls are recorded and may be
10 monitored.

11 which is more simply a reflection of the
12 policy that is distributed at the time that a
13 defendant is processed into the facility. Certainly
14 the defendant consented to this when he signed the
15 acknowledgment and then proceeded to make phone
16 calls.

17 Therefore, the Court would find that there is
18 no reasonable expectation of privacy in a phone call
19 when you have been advised and signed an
20 acknowledgement that your phone calls are being
21 recorded. Certainly if you know somebody is
22 listening you cannot have any subjective expectation
23 that your phone calls are private.

24 Therefore, the Fourth Amendment would not be
25 triggered in this situation, based on the Court's

1 previous ruling and without belaboring the point.

2 Now as it regards -- I'm going to have all
3 these things marked as Court's Exhibits in some order
4 in a moment. Now, the relevance is a whole different
5 issue. And I have already addressed the hearsay
6 objection. These remarks would not be hearsay. They
7 clearly come within the exception, they're clearly
8 admissions against interest where they inculcate the
9 defendant or shows his knowledge of certain events.
10 And they certainly are not statements someone would
11 make against themselves and therefore have an added
12 indicia of reliability and come within the hearsay
13 exception.

14 Now whether they are relevant, that's a whole
15 'nother story. And I need to, over the luncheon
16 recess, listen again to the conversation between the
17 defendant and Slick, and to the conversation between
18 he and his mother, as well as the conversation
19 regarding the weapon. Then I will make a decision at
20 that point. This has taken far longer than I
21 anticipated.

22 So what we will do is break for lunch as the
23 jury has been sitting. And then I will listen to
24 those and I will rule after lunch and we will proceed
25 either with the records custodian's testimony or not.

1 Now who would the State's next witness be, Ms.
2 shealy?

3 MS. SHEALY: Your Honor.

4 THE COURT: Your next series of witness?

5 MS. SHEALY: I think we just have one last on,
6 kim collins, the pathologist.

7 THE COURT: So you are not calling any of the
8 other witness?

9 MS. SHEALY: I don't believe so, Your Honor.
10 I would like to think about it over lunch.

11 THE COURT: I'm not going to hold you to it,
12 I'm only asking for scheduling purposes.

13 MS. SHEALY: I believe Kim Collins, other than
14 the gentleman regarding the jail recordings would be
15 the last two.

16 THE COURT: Does the defense intend to call
17 any witnesses?

18 MS. FORD: Your Honor, as far as the gun goes
19 it may -- somebody will have to testify about the gun
20 being found when Mr. Deas was arrested if the jail
21 tape comes in about the gun.

22 THE COURT: You mean you'd want to recall
23 Detective Osborne?

24 MS. FORD: Yes, ma'am.

25 THE COURT: Okay.

1 MS. FORD: I may call Mr. Simmons for
2 impeachment purposes, but I'm not sure about that
3 yet.

4 THE COURT: Now, what if any record would the
5 State be seeking to introduce to impeach the
6 defendant's credibility if he were to testify?

7 MS. SHEALY: Beg the Court's indulgence just a
8 moment.

9 MS. FORD: He has an AWIK.

10 MS. SHEALY: Your Honor, on his record on the
11 Assault with Intent to Kill, has a court date 2007.
12 And then a marijuana charge.

13 THE COURT: I would imagine that's a
14 magistrate level?

15 MS. SHEALY: It is, Your Honor.

16 THE COURT: That would not be admissible. And
17 Assault with Intent to Kill is a common law
18 misdemeanor, isn't it? Or a common law felony?

19 MS. FORD: My understand is it's a
20 misdemeanor, Your Honor.

21 MS. SHEALY: I believe it is a
22 misdemeanor, Your Honor. I would like to
23 double-check.

24 THE COURT: Would the State be seeking to
25 introduce that conviction to impeach his credibility?

1 MS. SHEALY: Your Honor, I am looking at the
2 appropriateness of that right now, I'm sorry.

3 It has been my understanding that he was not
4 going to testify so I apologize.

5 THE COURT: Until I question him it's not
6 settled. I wanted him to have a meaningful
7 discussion over lunch with his attorney about it
8 because the only witness you are going to be calling
9 is the medical examiner, we will move very clearly
10 through questioning him about his rights and I want
11 him to be in a position to answer for it.

12 MS. SHEALY: We are looking to see whether or
13 not it was a misdemeanor or felony. Looks like the
14 question would be whether the probative value
15 outweighs its prejudicial affect to the defendant.
16 It's assault with intent to kill.

17 THE COURT: I know what the standard is. My
18 question still remains, it's a common-law felony or
19 common-law misdemeanor.

20 MS. SHEALY: That's what we are looking at,
21 Your Honor. It would be our position --

22 THE COURT: I'm not going to argue it. I need
23 to know if you are going to introduce it.

24 MS. SHEALY: I would like to, Your Honor.

25 THE COURT: You would be seeking to introduce

1 it.

2 MS. SHEALY: It is a common-law misdemeanor.

3 THE COURT: Okay. So that you all can have
4 the ability to discuss this with him during the
5 luncheon recess, Ms. Ford and Mr. Grimes, and I will
6 take argument so that you can make a complete record,
7 however the Court would not be inclined to allow the
8 admissability of the assault with intent to kill.

9 I was trying to see if I could split the baby,
10 that's why I asked if it was a felony or misdemeanor.
11 My inclination would have been to allow you to ask
12 him if he had been convicted of a felony.

13 The elements of assault with intent to kill
14 are almost identical an could be lesser included, or
15 could be argued as a lesser included of murder and
16 therefore the Court would find, at least
17 preliminarily, that its probative value would be
18 outweighed by the potential prejudice to the
19 defendant. You would not be allowed to ask him about
20 that, unless you want to ask him if he was charged
21 with a misdemeanor.

22 which, because of the time that it carries,
23 you would be able to ask him about it. But I would
24 limit it to that and then instruct the jury regarding
25 their ability to consider it for credibility only.

1 Please bring in the jury.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Thank you.

4 Mr. Foreman, ladies and gentlemen, we have to
5 apologize, that matter took a little bit longer than
6 I anticipated. We are going to take advantage of
7 this break to allow you to go to lunch. We are going
8 to break until 2:30. The Court and the attorneys
9 still have some matters of law to work on during the
10 luncheon recess.

11 During the break please do not discuss the
12 case among yourselves or with anyone else. Please
13 again don't have any contact with anyone in or about
14 the courthouse. Return directly to your jury room.

15 I anticipate we will resume the trial promptly
16 at 2:30. Please leave your notepads in your seats.
17 Don't allow yourselves to be exposed to any media
18 coverage about the case. Have a good lunch.

19 (Whereupon, the jurors exit the courtroom.)

20 THE COURT: Ms. Shealy, could I borrow your CD
21 again, please?

22 MS. SHEALY: Yes, Your Honor.

23 THE COURT: I'm sorry. Do you need it during
24 lunch?

25 MS. SHEALY: I think we have another one at

1 our office.

2 THE COURT: Okay. Is there anything before we
3 break for lunch from the State?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: From the defense?

6 MS. FORD: No, Your Honor.

7 THE COURT: Thank you all very much. See you
8 at 2:30.

9 (Whereupon, a recess was taken.)

10 THE COURT: Over the lunch recess I reviewed
11 the CD which contains the telephone calls -- and I
12 have already ruled regarding the other arguments -- I
13 took under advisement to give myself the opportunity
14 the listen to the recordings again with a point of
15 references, that being the parties' arguments
16 regarding relevance before making a ruling.

17 As regards to the conversation between he and
18 Nicki, the Court would find that it is not relevant
19 and he does not inculcate himself therefore it would
20 not be an admission against interest. He simply asks
21 her -- it's really a flirtatious conversation going
22 on between two folks who are dating, I use that term
23 loosely, where he says, why didn't you tell them I
24 was at your house, and then they end up just sort of
25 bantering back and forth about it.

1 He doesn't indicate to her that he was mad at
2 her or anything, nor is there any indication he is
3 trying to influence her about it. However, later in
4 that conversation he talks with the friend, Slick,
5 and I would find that portions of that recording are
6 admissible, that they are relevant, and they are
7 admissions against interest.

8 The inferences to be drawn from that evidence
9 are for that attorneys to argue that. It could be
10 argued really two ways. And of course it's not for
11 the Court to act in an advocacy capacity. But those
12 portions of the conversations with Slick that deal
13 with -- I'm trying to paraphrase it -- that deal with
14 him telling him that he is going to tell Nicki to
15 change her version of what happened, as well as his
16 references to the fact that there were two people
17 involved and as long as the police can only find one
18 that he is basically not in any jeopardy.

19 Again those can be argued in two ways.
20 Certainly it is free for the defendant to argue that
21 he was simply commenting on the weakness of the
22 State's case in holding him and that they had no
23 case.

24 Now as regards to the second conversation, I
25 may be taking them in reverse order. The

1 conversation that I just referred to was that of
2 10/23/07 which is 16:35:29. And I will leave it to
3 you all to redact and I am strict in my instructions
4 that no other portions of those conversations may be
5 heard by the jury because they're not relevant.

6 As regards to the conversation on 10/23/07 at
7 16:50:25, the only portion that would be relevant
8 would be his conversation with his mother about the
9 gun. And the Court would find that it is an
10 admission against interest, and the inference is that
11 it certainly the State could argue he knows where the
12 gun is, and the defense certainly can argue that he
13 is just generally making a comment about the lack of
14 proof regarding the State or the lack of their
15 ability to prove their case.

16 Now, can that CD be isolated? I couldn't
17 figure out how to fast-forward. I'm not going to
18 pretend that I can do that. Can you all redact it so
19 that those are the only portions that are heard?

20 MS. SHEALY: Yes, Your Honor. Maybe the best
21 way to do it, first of all, when I put the custodian
22 from the jail on the stand, it will be necessary for
23 him to physically identify the disc? If that's so we
24 might have to take a break so that can I que it up
25 once I have it.

1 THE COURT: No. The disc itself will be
2 marked as a Court's Exhibit. The only thing that
3 will be entered into the record is the redactions.
4 The whole disc you are referring to as the entire
5 conversations, all of the conversations?

6 MS. SHEALY: Yes, Your Honor. If I can just
7 get guidance from the Court then. What I'm asking
8 is, we have one disc.

9 THE COURT: Uh-hum.

10 MS. SHEALY: If I need to show it to the
11 witness in front of the jury.

12 THE COURT: I don't think there is any
13 questions about the authenticity of the disc, is
14 there, Ms. Ford?

15 MS. FORD: I believe Mr. Grimes.

16 MR. GRIMES: We believe that they need to lay
17 the proper foundation for the voices on the disc.

18 THE COURT: All they have to authenticate is
19 that they record conversations in the ordinary course
20 of business. He is the records custodian. He
21 doesn't have to authenticate their voices.

22 MR. GRIMES: It's our position if he cannot
23 authenticate the voices it's not relevant.

24 THE COURT: I think the rules of evidence
25 would rebut that position, Mr. Grimes. I will note

1 that for the record. As regards to the custodian,
2 all he has to do is authenticate what they do in the
3 ordinary course of business. This record was kept in
4 the ordinary course of business.

5 He took it from original recording and he
6 duplicated that. Or that he brings the original CD
7 with him.

8 MS. SHEALY: I think he has given us the -- he
9 made a copy from whatever system they have for the
10 requested time period that we have on the disc. And
11 as long as I don't have to physically show him that,
12 we can que it up now with Ms. Ford and Mr. Grimes,
13 make sure we're starting it at the right place.

14 Now what concerns me is it's a dotted line
15 then we will need to move it to the second part
16 that's coming in. And I don't know if that going to
17 be easily accomplished.

18 THE COURT: I have had this before where your
19 office has been able to isolate the conversation on a
20 separate disc.

21 MS. SHEALY: This one was different the way
22 this CD was set up is different than what we have had
23 in the past. I can do it, but it may involve having
24 the jury step out one more time and bringing them
25 back in just to make sure we don't have any problems.

1 THE COURT: The problem is you are going to
2 have to find a way to do it. The jury is not going
3 to be required to come in and hear listen to that
4 tape every time they want to hear it. They're
5 entitled to have it in the jury room and listen to it
6 at their leisure, have the privacy of discussing it.

7 So we are going to have find a way to redact
8 and isolate those conversations onto a separate DVD
9 that goes back with them. So you all might need to
10 figure out how you can do that. And while you all
11 are figuring that out we can go on to the next
12 witness.

13 MS. SHEALY: I want to make sure, Your Honor,
14 that I start the part regarding Slick at the
15 appropriate place.

16 THE COURT: Anything before when he is talking
17 about giving his girlfriend money and all that stuff
18 is not relevant. So once he gets through talking
19 about that, then they start talking about two people
20 on a bike, only being able to find one of them, and
21 he tells him that he is going to get her to change
22 her story, says she is confused about being there
23 with him on two particular nights instead of the
24 night that she says he wasn't there, to tell the
25 police she was confused.

1 MS. SHEALY: Okay.

2 THE COURT: And then after that I think that's
3 the extend of it because then he starts passing the
4 phone around to little children and he is talking to
5 them and then the conversation ends. It's near the
6 very end of the recording, and it's probably less
7 than two minutes. It's probably more like a minute
8 of conversation.

9 MS. SHEALY: With the Court's permission, so
10 that we accomplish this now, would you allow Mr.
11 Neely to continue to work on this while we get
12 started with the other stuff.

13 THE COURT: Absolutely.

14 MS. SHEALY: Because I'm going to need Ms.
15 Walters here for the pictures.

16 THE COURT: Yes, ma'am.

17 MS. FORD: Your Honor, I'm looking at the
18 thing. I'm just worried about the context of taking
19 these few statements by themselves.

20 THE COURT: Do you want them to put in the
21 whole thing?

22 MS. FORD: That's what I'm trying to decide,
23 Your Honor.

24 THE COURT: I don't think you want to play the
25 whole thing, you know, it would be prejudicial to

1 him.

2 MS. FORD: Yes, ma'am.

3 THE COURT: It would not put it in the best
4 light for the jury.

5 MS. FORD: And I agree and that's why I'm
6 trying to --

7 THE COURT: The average lay person is very
8 judgemental. I don't think they would understand
9 half of what he said on those conversations.

10 MS. FORD: I agree they're difficult to listen
11 to.

12 THE COURT: It's a whole different kind of
13 lifestyle. I think it could be very prejudicial to
14 your client.

15 MS. FORD: And I agree and that's why I was
16 trying to look over and make that decision. Thank
17 you.

18 THE COURT: You're welcome. But I would give
19 you what you ask for.

20 MS. FORD: Thank you.

21 THE COURT: You're welcome.

22 MS. FORD: I'm not asking for that, Your
23 Honor.

24 THE COURT: No, I told you all I'll defer to
25 what you ask. You can take the time to review it.

1 I'm just telling you I did it that way because I felt
2 it was less prejudicial to your client to redact
3 three quarters of what he said.

4 It's not relevant or germane to any issue in
5 the case. And -- but if you want them in that's what
6 you ask for that's what I will give you.

7 MS. FORD: Yes, ma'am.

8 THE COURT: Okay. Can we move along with
9 another witness, then I will give you all a break to
10 discuss that with your client and go over the
11 transcript some more. I would imagine this next
12 witness will take us to our afternoon break.

13 Is that acceptable to the State?

14 MS. SHEALY: Yes, Your Honor. I may just need
15 one thing clarified regarding the 16:50 tape you did
16 say that the language regarding the murder weapon
17 would come in, correct?

18 THE COURT: When he was talking with his
19 mother about it, uh-hum.

20 MR. GRIMES: Your Honor, may I ask for
21 clarification?

22 THE COURT: Yes.

23 MR. GRIMES: I think on the 16:50
24 conversation, I think the last two sentences of the
25 last conversation between the defendant's mom and the

1 defendant, will we be allowed to have this portion
2 played where she essentially said, but I don't know
3 how they charged you with murder, what evidence they
4 got? Nothing. Have the murder weapon part and then
5 that part by itself played?

6 THE COURT: I'm sorry you lost me, Mr. Grimes.

7 MR. GRIMES: I understand the Court's ruling
8 says let the State play the part about them having
9 the murder weapon, him saying they don't -- they
10 ain't got no murder weapon. We want next is to have
11 the next couple seconds redacted, then the last
12 exchange where she says, I don't know how they charge
13 you with murder, what evidence they got? And he
14 responds with nothing. We could have that portion
15 played.

16 THE COURT: You want to play that, that's
17 fine.

18 MS. SHEALY: Well, Your Honor, the only
19 exception I would take to that, if they are going to
20 isolate that statement then I mean I think it either
21 should -- the mother's statement in about why he got
22 charged with murder --

23 THE COURT: He responded.

24 MS. SHEALY: I know he says nothing. But I
25 think they want to put what the mother's saying more

1 than what he's saying, to isolate that I think would
2 be inappropriate.

3 THE COURT: I don't think it's really here nor
4 there. What you're asking for he inculcates himself
5 with knowledge of where this weapon is. So if they
6 ask for the other portion of it I'm going to let them
7 play it.

8 MS. SHEALY: Yes, Your Honor.

9 THE COURT: All right I need to move along
10 with the next witness, we will deal with this at the
11 break.

12 MS. SHEALY: Yes, Your Honor.

13 THE COURT: State ready to proceed?

14 MS. SHEALY: Yes, Your Honor.

15 THE COURT: Defense ready to proceed?

16 MS. FORD: Yes, Your Honor.

17 THE COURT: Please bring in the jury.

18 (Whereupon, the jurors enter the courtroom.)

19 THE COURT: Ladies and gentlemen, I hope you
20 all had a pleasant lunch. We will now resume with
21 the trial of this case.

22 Ms. Shealy, you may proceed.

23 MS. SHEALY: Dr. Kim Collins

24 DR. KIMBERLY ANN COLLINS,
25 after having first been duly sworn to state the

1 truth, the whole truth and nothing but the truth,
2 testified on her oath as follows:

3 THE COURT: You may proceed.

4 MS. SHEALY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q Dr. Collins, will you tell the jury about your
8 educational background?

9 A I am a physician. I went the college at the
10 University of Georgia where I received my bachelor's
11 in microbiology. I then attended medical school at
12 the Medical College of Georgia in Augusta and
13 received my MD.

14 Following medical school I completed a
15 combined anatomic and clinical pathology five year
16 residency at Wake Forrest University School of
17 medicine which is also known as Bowman Gray or
18 Baptist Hospital.

19 Following my residency I came to Charleston
20 to the Medical University and I completed my forensic
21 pathology fellowship.

22 Q Would you explain to the jury what is meant by
23 the term forensic pathologist?

24 A Well pathology is the study of any diseases or
25 trauma to the body. Everyone has been treated by a

1 pathologist. In fact if you have a medical record or
2 files on your health, about 80 percent of your whole
3 medical record will deal with pathology. Any time
4 you've had your blood drawn, you've given a urine
5 sample, women had their cervical pap smears, any of
6 that will be examined by and diagnosed by a
7 pathologist.

8 There are different divisions of pathology
9 Laboratory. And a special or subspecialty in
10 pathology is forensic pathology. And that is taking
11 all of the laboratories, the blood lab, the chemistry
12 lab, the autopsy laboratory, take all of those
13 laboratories and using them and that knowledge to
14 investigate and study unnatural death or trauma in
15 both living individuals and in deceased individuals.

16 Q And would you tell us, you said you got your
17 residency in forensic pathology, would you tell us
18 about your various employment experience?

19 A For 15 years I was at the Medical University
20 of South Carolina in the department of pathology and
21 laboratory medicine where I was a full professor.
22 And during that time I was the director of autopsy
23 and forensic pathology.

24 This past summer I had the opportunity to
25 return some to Atlanta, where my family is and where

1 I'm from, and work with Emory University and also
2 work at the Fulton County Medical Examiner's Office
3 there. So I live in South Carolina, but then I spent
4 several days working with the crime scene
5 investigators and the doctors at Emory and the Fulton
6 County Medical Examiner's Office.

7 Q And in the course of your employment have you
8 conducted autopsies?

9 A Yes, I have.

10 Q Would you tell the jury approximately how many
11 autopsies you've conducted?

12 A Approximately 2,700 to 3,000.

13 Q And have you ever testified in a court of law,
14 been qualified as an expert?

15 A Yes.

16 Q And would that be an expert in the field of
17 forensic pathology?

18 A Yes.

19 Q Tell the jury approximately how many times you
20 have been qualified as an expert?

21 A Approximately 200.

22 Q Was that only in state court or state and
23 federal court?

24 A State court, states other the South Carolina,
25 military court and federal court.

1 Q And have you been called to testify both for
2 the state and the defense?

3 A Yes.

4 MS. SHEALY: Your Honor, at this time we would
5 offer Dr. Collins as an expert in the field of
6 forensic pathology.

7 THE COURT: Any questions or objections?

8 MS. FORD: No, Your Honor.

9 THE COURT: So admitted.

10 Q (By Ms. Shealy) Dr. Collins, I would ask you
11 if you performed an autopsy on Leroy Simmons?

12 A Yes, we did. We performed an autopsy on Leroy
13 Simmons October 19th, 2007. And we started the
14 examination at 12:30 in the afternoon.

15 Q Okay. And if you could just briefly explain
16 to the jury, what is the value of an autopsy?

17 A Well an autopsy can tell many things upon
18 examination. What we do with a forensic autopsy is a
19 complete examination. So it is a -- like a surgical
20 procedure after death where you examine all the
21 organs within the body, including the brain. You
22 dissect all of the organs, and you take sections of
23 all of the organs and look under the microscope.

24 At this time we are also gathering any type of
25 evidence such as blood samples, urine samples, DNA

1 samples, we take x-rays. And we are looking for any
2 signs of trauma, any natural disease such as heart
3 disease or cancer a person might have had. We are
4 looking for the cause of death; why on the 19th of
5 October Leroy Simmons died.

6 And we are also trying to take all of that
7 information and determine how it came about. Was it
8 suicide, was it homicide, was it a natural death or
9 was it an accident. So we take all of that based on
10 the autopsy.

11 Q If you would tell the jury where it is that
12 you got his body from. Had he been in another part
13 of the hospital?

14 A He had been in the hospital. We received --
15 we received a referral or consult call from, at that
16 time, the chief deputy coroner of Charleston County
17 and that is Ms. Judy Coleson (phonetic).

18 So she had notified us on that day that there
19 was a death of an individual that was taken to the
20 emergency department at the Medical University of
21 South Carolina. And at that time he underwent
22 emergency surgery to see what the damage was done
23 inside his abdomen. And so that is how we were
24 notified about the case.

25 Q Had you requested a cup of water?

1 A Yes, thank you.

2 Q So surgery had been performed but it was
3 unsuccessful?

4 A Yes. What they performed was an exploratory
5 laparotomy. And that is where they look at the belly
6 and they try to determine what injuries are there and
7 try to emergently fix or sew up what has been torn
8 because of the gunshot wound.

9 Q Okay. If you could just walk us through your
10 findings that were pertinent to the death of Mr.
11 Simmons?

12 A Mr. Simmons sustained or received three
13 gunshot wounds. Now he had clothes on at the time
14 that he received these gunshot wounds, so the clothes
15 were a barrier between the gun and his skin. So we
16 did not see any soot or any particles of gunpowder on
17 the skin. But what we did see were the gunshot
18 wounds themselves.

19 Now he had four holes in his body, that is
20 because one of the bullets went in and then it came
21 out. So we have three entrance wounds to the body
22 and then one exit wound. So you have four holes, but
23 he was shot into his body three times.

24 He received a gunshot to his left waist area.
25 He received one to the kind of front and side of his

1 left thigh. And he also receive one to the back of
2 his right buttocks.

3 Q Okay. You know what I may do, if you could
4 come and stand down here, Dr. Collins, show on your
5 body those areas and then we can take them up
6 individually.

7 MS. SHEALY: Court's permission?

8 THE COURT: (Affirmative head shake.)

9 A This is our body diagram that we use routinely
10 in autopsies so this is just one of a naked man. And
11 what we have got here are three gunshot wounds. And
12 we label them with letters for the fact of what I
13 just mentioned to you, I said he had four holes and
14 that sounds confusing because he was shot three
15 times. So we label them with letters.

16 The letter A, B, C and D have absolutely
17 nothing to do with which one came first. They are
18 arbitrarily labeled. A is to his left waist area.
19 And if you can feel your hipbone right here, it
20 actually skimmed over that hipbone area. So it went
21 into the left aspect of his waist, and we call that
22 one A.

23 B, we are moving down the body, B was to his
24 right hip, right in the middle here of the buttocks
25 region. And it came out of D, which was traveling

1 more toward his right, so in this direction. It went
2 in his hip and then came out his hip.

3 C, went into the front side of his left thigh
4 muscle right here and traveled upwards.

5 Q Okay. You can go ahead and take your seat
6 now.

7 Now regarding shot A, and just to refresh the
8 jury's memory, that was the one that was found in the
9 right hip; is that correct?

10 A No. Shot A is the one that entered into his
11 left waist.

12 Q I'm sorry. If you would, explain to the jury
13 what injuries internally that shot likely caused?

14 A It went into his skin, we labeled that A. It
15 fractured the top of that left hipbone that I
16 mentioned that you can feel at your waistline. It
17 went into his small intestines or small bowel.

18 It then went through and tore the blood
19 vessels that supply the left leg. So the aorta is
20 the largest vessel we have in our body, it goes from
21 the heart down. It then splits into your left and
22 right leg. It went through those vessels in the left
23 leg.

24 It went -- remember we are traveling to the
25 right -- went through his bladder, his urinary

1 bladder, went through those vessels in the right leg,
2 called the right iliac vessel. It then fractures the
3 right hipbone. So we have traveled across the body,
4 across the pelvis, from left to right. And we found
5 the bullet in the right hipbone area.

6 Q Okay. And when you find a bullet, do you then
7 take the bullet out?

8 A Yes. We always take it out, that's a piece of
9 evidence. So we saw this bullet on x-ray also, we
10 knew that there was a bullet present. So we took the
11 bullet out, photographed it, we measured it, then we
12 turn it over to the police department so that they
13 can have someone that specializes in the science of
14 ballistics to look at the bullet.

15 Q In performing an autopsy, do you look at --
16 when there are multiple gunshots -- do you look to
17 see which one may have been the fatal shot?

18 A Yes, we do.

19 Q And regarding shot A, what conclusion, if any,
20 do you have about it potentially being the fatal
21 shot?

22 A A was the fatal shot because it went through
23 major vessels on the left side and the right side of
24 the body, the left leg and the right leg. That would
25 have caused him to bleed to death because of those

1 shots.

2 It also went through the bowel and the
3 bladder, and there are many blood vessels that are in
4 that region that feed the bowel and the bladder. So
5 it also tore some of those blood vessels also.

6 Q Okay. Now turning to shot B, then, would you
7 describe that shot to us?

8 A B was the gunshot wound to the right buttocks
9 region. Now B went through the skin and then through
10 the underlying soft tissue of the right butt. And
11 then it came out the right butt area and we call that
12 D. It was traveling from his left to his right in a
13 downward direction.

14 There was nothing fatal or any vital
15 structures in there, no blood vessels, no major organ
16 in that region, it just went through skin, some soft
17 tissue, some fat and then came right back out.

18 Q Then regarding shot C?

19 A Shot C was to the left thigh, kind of toward
20 the left side, the lateral side of the left thigh.
21 It went into the thigh muscle. And it was traveling
22 in an upward position. It actually crossed his body
23 going through the scrotal area. Through the scrotum.

24 It then went into the thigh muscle of the
25 right leg, travel across through the scrotum into the

1 right leg. And then into the right hipbone in the
2 location where your femur and your thigh bone connect
3 to your hipbone, right in that area, that's where the
4 bullet went into and where we found it.

5 Q Now based on the various directions that you
6 have testified to for the path of the bullets, could
7 you explain to the jury what conclusions, if any, you
8 reached regarding whether the body was stationary or
9 whether it would have been turning at some point.

10 Q The bullets enter the body from different
11 planes. And what I mean by that is some of them
12 enter his backside, some enter his front side, and
13 some enter his left side. And so in order to receive
14 that, he would have to have been revolving or
15 rolling, or the shooter of the gun was moving.

16 Now what is interesting is that even though
17 they are on different planes, if you look at the
18 diagram all of the bullets are moving from left to
19 right. Even the one that goes into his right butt
20 area it still moving from left to right.

21 The one entering into his left waist moves
22 from left to right. The one to the left thigh is
23 actually going from left thigh to right hip area, in
24 that direction. So all of these are moving from left
25 to right, but they enter his body at different planes

1 so he was moving as he was being shot or rolling.

2 Q And can you tell us whether your findings are
3 consistent with the shooter standing and the victim
4 being on the ground?

5 A Yes, it could be. It could be that scenario,
6 yes.

7 Q And would it be consistent with someone being
8 on the ground trying to get up to account for the
9 different in the sides of him that get shot?

10 A Yes, if he gets shot and then he is turning at
11 that time trying to push up or get up off the ground,
12 yes.

13 Q Okay. Now you told us that there was clothing
14 that prevented your being able to see any soot.
15 What, if anything, can you tell the jury about how
16 far away the shooter was? Or what limitations are
17 there in telling that?

18 A What we look for on the body if someone is
19 shot with a gun, we look at the skin to tell us how
20 far away the gun was, the end of the gun, the muzzle,
21 and that is called the range of fire.

22 What we are looking for is evidence of
23 material that comes out of the gun with the bullet.
24 It's not just the bullet that comes out, there's some
25 soot and carbon that comes out, smokiness, there is

1 unburnt gunpowder that comes out of the bullet. And
2 so we are looking for that as it leaves a mark on the
3 skin, like a footprint.

4 If you are very, very close or touching the
5 skin with the end of the gun you'll see soot, black
6 soot, up to about eight inches away from the skin.
7 As you get farther away the soot is too light, it's
8 powdery, it's too light in weight to travel and
9 strike the body. What you can see if you back up
10 some more is pieces of -- small pieces of unburnt
11 gunpowder that will strike the skin and make a little
12 dot and we call that stippling.

13 Now once you get about 18 inches, 20 inches
14 away from your target, it's too far for soot or for
15 the gunpowder to reach the body. The bullet of
16 course will reach the body, but no other material
17 will. So all you have is just a hole. And so we
18 would call that a distance shot.

19 Now the problem we have in this case is that
20 we were not provided any clothing, and so the gun
21 could have been very close to the person and maybe
22 his blew jeans or his shirt or T-shirt has the soot
23 or the unburnt gunpowder, however there's a barrier
24 there, it couldn't reach the skin.

25 So because we don't have any clothes to

1 examine, we really do not know how far away the gun
2 was. And that is why on the autopsy report we called
3 it indeterminate range. We don't know the range of
4 fire.

5 Q Okay. Now as part of the autopsy process, you
6 had indicated that there were certain items that you
7 collected, including the bullets or projectiles. Are
8 samples from the victim's hair taken?

9 A Yes.

10 Q Why don't you tell us what in general is taken
11 from the victim as you do the autopsy?

12 A What you like to have is the projectiles of
13 course, any bullets. We also will take fingernail
14 clippings. We will cut the fingernails. If it's an
15 individual with fake nails, we just pop the whole
16 nail off because we want to see if there is any blood
17 of any skin of any material underneath that nail that
18 maybe came from someone else.

19 We will also take some pulled head hair so
20 that we know that is his head hair because we
21 actually pulled it out at the root so that we can
22 have a control in case at the scene we may find some
23 hair we want to know if it's his or if someone pulled
24 some hair so we usually take that.

25 Now we also take, which we could not in this

1 case because he had surgery and received IV's and
2 blood products, we usually take a tube of his blood
3 so that we know what his blood is in case there were
4 bloodspots somewhere else.

5 So in this case we did the right hand and left
6 hand fingernail clippings, we pulled some of his head
7 hair, and then we had the two bullets that we
8 collected.

9 Q And regarding the fingernail scrapings, would
10 you explain to the jury whether or not that type of
11 evidence is more significant in some crimes than
12 others?

13 A As a rule I take fingernail clippings off any
14 of my suspicious deaths, meaning any of my homicides
15 or potential homicides. The yield is pretty low,
16 meaning that a lot of forensic pathologists just
17 don't take fingernail clippings because you can get
18 nothing when you examine them, or you might get some
19 DNA that it happens to be meaningless such as maybe
20 it would be from their child or from their spouse.
21 Because any time you can get DNA under your
22 fingernails and it's not necessarily of any
23 significance. You could be shaking hands. A couple
24 could be having sex they could have this other
25 person's DNA under their fingernails.

1 Cases where it comes in handy are certain
2 sexual assault crimes, where you look at the victim's
3 fingernails looking for any material, skin, semen
4 blood. Cases where there is a hand-to-hand combat, a
5 lot of bruising on the knuckles, a lot of
6 fist-fighting so you have that contact between one
7 individual and another, that's where it really comes
8 in handy.

9 And if you can find the DNA of the other
10 person or the suspect it helps. Like I said a lot of
11 times it's a difficult test to perform and sometimes
12 you don't find any DNA, you find some DNA that's
13 meaningless.

14 Q Okay. And when you said in those cases where
15 you know that there has been hand-to-hand combat, was
16 there any evidence of that in this case with the
17 victim?

18 A No.

19 MS. SHEALY: Beg the Court's indulgence for
20 just a moment.

21 THE COURT: Uh-hum.

22 MS. SHEALY: Dr. Collins, I have no further
23 questions. Answer any questions the defense may
24 have.

25 THE COURT: Any questions for the witness?

1 MS. FORD: One moment, Your Honor.

2 I have no questions for this witness, Your
3 Honor.

4 THE COURT: Any objection to the witness being
5 excused from the State?

6 MS. SHEALY: No, Your Honor.

7 THE COURT: From the defense?

8 MS. FORD: No, Your Honor.

9 THE COURT: Doctor, you are excused.

10 MS. SHEALY: Anita Maestas.

11 MS. ANITA MAESTAS,
12 after having first been duly sworn to state the
13 truth, the whole truth and nothing but the truth,
14 testified on her oath as follows:

15 THE COURT: You may proceed.

16 MS. SHEALY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. SHEALY:

19 Q My I call you Anita?

20 A Yes, ma'am.

21 Q Tell the jury, please, where you were employed
22 in October of 2007?

23 A I work for the Charleston Police Department as
24 a crime scene investigator.

25 Q Is that where you are currently still

1 employed?

2 A Yes, ma'am.

3 Q Do you any other employment at this time?

4 A I also work for Trident Technical College as a
5 chemistry lab instructor.

6 Q Focusing then back on October 19th, 2007, did
7 you have the occasion to go to the area of
8

9 A Yes, ma'am. I was called out to a scene in
10 reference to an ABWK shooting.

11 Q First describe for the jury what your role at
12 CPD is, Charleston Police Department?

13 A I'm a crime scene technician or investigator.
14 My role is to arrive at a possible crime scene, to
15 collect any evidence that is on the scene, package it
16 and search for any evidence as well.

17 Q Okay. And in fact was that your role that
18 evening?

19 A Yes, ma'am.

20 Q Or early morning hours I should say. As part
21 of that role did you take photographs?

22 A Yes, ma'am. When we arrive on scene one of
23 the first things we do after observing the scene for
24 any possible evidence, then we do take photographs of
25 the scene. It's hopefully in an undisturbed state.

1 Q Okay. And if you would, can you walk us
2 through how the crime scene appeared that morning?

3 A When I first arrived on scene, I spoke with
4 the Lieutenant Hill who was the commanding duty
5 officer at that time. And he informed me that a
6 subject was shot, from what they could tell, multiple
7 times. And they already been transported from the
8 EMS department to MUSC.

9 After searching the scene, we noticed a couple
10 of drops of blood in the roadway. The officers also
11 informed me that there was a plastic bag of some
12 white substance across the street from where the
13 victim was worked on by EMS.

14 Q Okay. And showing you now what has been
15 marked as State's Exhibit No. 10, can you describe
16 this area for us?

17 A That is the area I responded to that morning.
18 It comes down Line Street from Meeting facing East
19 Bay Street.

20 Q Okay. And you've told us about some blood
21 droplets. Showing you State's Exhibit No. 11, can
22 you tell us what that area reflects?

23 A On the pavement, it is hard to notice any type
24 of blood drops without evidence markers. But from
25 looking at this photo, you can see in this area it

1 appears to be this two spots right there on the
2 bottom portion of the screen.

3 Q And when you find an item of evidence or an
4 area that has evidence, do you mark it in some
5 fashion?

6 A Yes, ma'am. After we take our original photos
7 of the area without any markings, I will go back
8 through the scene and put markers down to signify any
9 type of evidence that we believe might be involved in
10 the case.

11 And that way when we take our photos it can
12 actually show up a lot better.

13 Q Okay. And showing you State's Exhibit 12, can
14 you tell us what that number one and number two
15 reflects?

16 A That photo again is facing from Meeting Street
17 to East Bay in that area. And one and two represents
18 the two areas that we believe to be blood at that
19 time.

20 Q Okay. And showing you State's 13 and then 14.
21 Can you tell us what is depicted there?

22 A We take the overall shot of photos, then we do
23 a close-up also to show the evidence. And that area,
24 the little darker area that is outlined by the ruler
25 is a bloodstain.

1 Q And when you saw that it was bloodstain, can
2 you describe to the jury did it look like it was
3 something fresh or something old?

4 A On the pavement sometimes it is hard to tell.
5 But it did appear to be wet still and we did take a
6 sample of it at that time.

7 Q Showing you State's Exhibit 15 and then also
8 16. What do those photographs depict?

9 A Those are close-up photographs of the
10 bloodstain for the second area.

11 Q Okay. When you say that you take a sample of
12 those areas, can you describe briefly what you mean
13 by that?

14 A We take a sterile cotton swab, we wet it with
15 a little bit of distilled water and then we just role
16 the swab over the area that believe has this stain
17 and that collects the evidence. And then we put it
18 into a box to dry it and preserve it.

19 Q Then those items are sent to SLED?

20 A After I package them once I get them back to
21 the office, and according to the solicitor or the
22 detectives working the case that's up to them if they
23 get sent to SLED, yes.

24 Q But the purpose of collecting them is in case
25 other lab analysis needs to be done?

1 A Yes, ma'am.

2 Q Showing you State's Exhibit 17, the yellow
3 placard we see on the right are the ones we just saw
4 up close?

5 A Yes, ma'am.

6 Q And across the street is the tent area. Do
7 you remember the awning?

8 A Yes, ma'am. It was between the two buildings.

9 Q Okay. Now showing you State's Exhibit 18, do
10 you remember you mentioned something about a plastic
11 baggie with what looked like drugs in it?

12 A Yes, ma'am. Excuse me. This area right here
13 was a plastic bag with a white substance when I was
14 on scene, yes.

15 Q And you've told us that you first take a
16 picture before you mark it and then you take a
17 picture once you mark it?

18 A Yes, ma'am, we do.

19 Q And showing you State's Exhibit 19, does this
20 picture depict where it was that you found it?

21 A Yes, ma'am. Referring to the bottom lower
22 corner on the left number three, that's evidence
23 number three. And it's taken at an angle hopefully
24 to show where the victim was and the evidence is in
25 relation to that.

1 MS. SHEALY: Your Honor, I have an item that
2 there is no objection to admitting into evidence. I
3 am going to have it identified.

4 Q (By Ms. Shealy) Ms. Maestas, can you tell me
5 whether you recognize that?

6 A Yes, ma'am, I do.

7 Q And can you describe for the jury what that
8 reflects?

9 A This is the original bag that I put the
10 evidence in, has my case number and my initials and
11 my name on it. And this is the plastic bag that held
12 the substance.

13 MS. SHEALY: Thank you. We offer it into
14 evidence at this time without objection.

15 MS. FORD: Without objection.

16 THE COURT: Marked and admitted without
17 objection.

18 (Whereupon, State's Exhibit No. 34 is marked
19 and admitted into evidence.)

20 Q (By Ms. Shealy) Now I think you testified
21 that when you got there Mr. Simmons had already been
22 transported?

23 A Yes, ma'am, he was.

24 Q So you were not there when the victim's body
25 was there?

1 A No, ma'am.

2 Q Now other than the sampling of blood and the
3 bag of cocaine that was found across the street, were
4 there any other items taken at the scene?

5 A No, ma'am, not on scene.

6 Q Where did you go after completing your work at
7 the scene?

8 A I then responded to the MUSC ER hopefully to
9 get a GSR or gunshot residue kit of the victim, but
10 he had already been taken into surgery.

11 Q Now let me go back for one second. In that
12 this was a shooting that occurred outside, can you
13 tell the jury whether or not there's a difference
14 between a shooting outside as compared to maybe the
15 physical evidence you have inside the location?

16 A Obviously an area outside is going to be a lot
17 larger. Searching an area that large can be
18 difficult to find evidence. You have a lot more area
19 for evidence to unfortunately disappear to or roll
20 away.

21 In an indoor scene things are a little bit
22 more contained. So you have a better chance of
23 finding any possible evidence. But at this
24 particular scene we didn't find anything other than
25 the three items I collected.

1 Q Now when you went to MUSC, did you also
2 collect some items?

3 A Yes, ma'am, I did. I believe I collected the
4 victim's clothing and his personal effects.

5 MS. SHEALY: Beg the Court's indulgence just a
6 moment.

7 THE COURT: Uh-hum.

8 Q (By Ms. Shealy) Now when you say personal
9 effects, was there some money found as well?

10 A Yes, ma'am.

11 Q Okay. Now let me start with the one that we
12 already have marked. Do you recall there being a
13 scarf?

14 A According to my evidence list there was a
15 black scarf, yes.

16 Q And I ask you if you can identify what has
17 already been marked into evidence as State's Exhibit
18 28?

19 A Yes, ma'am.

20 Q Okay. And was that the scarf that you took
21 into evidence that evening?

22 A Yes, ma'am. Obviously the package has been
23 opened. From what I can tell this is the item that I
24 marked as the black scarf with the evidence number
25 and my name and initials and case number.

1 Q And when you say that's what's on the label
2 that's outside the bag?

3 A Yes. On all the evidence that we collect we
4 have to mark it with an evidence number, a case
5 number and our name.

6 Q And these items came from the victim?

7 A I actually collected them from the nurse at
8 the MUSC ER.

9 Q Okay. So these were all things that were
10 transported with the victim?

11 A Yes, ma'am.

12 MS. SHEALY: Beg the Court's indulgence just a
13 moment.

14 THE COURT: Uh-hum.

15 MS. SHEALY: Your Honor, may we approach for a
16 moment?

17 THE COURT: You may.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 MS. SHEALY: Okay. If I can have this mark
21 for ID.

22 (Whereupon, State's Exhibit No. 35 is marked
23 for identification.)

24 Q (By Ms. Shealy) Ms. Maestas, if I can show
25 you what has been marked for identification purposes

1 as State's Exhibit 35, can you tell the jury what
2 that is?

3 A It's marked as evidence number 5-B which
4 states that it's going to be a pair of Nike tennis
5 shoes.

6 Q From the victim?

7 A From the victim, yes.

8 (Whereupon, State's Exhibit No. 36 is marked
9 for identification.)

10 Q (By Ms. Shealy) Showing you what has been
11 marked for ID purposes as 36, if you can please
12 identify what that is?

13 A It's marked as evidence 16 from my markings
14 and it states that it's going to be a pair of mens
15 blue boxers.

16 Q And I noticed that it has a biohazard tag?

17 A Yes, ma'am.

18 Q What is the significance of that?

19 Q Generally we put a biohazard sticker on
20 anything that might contain blood. It probably had
21 blood on it at the time.

22 Q Okay.

23 MS. SHEALY: If I can have this marked.

24 (Whereupon, State's Exhibit No. 37 is marked
25 for identification.)

1 Q (By Ms. Shealy) Showing you what has been
2 marked as State's Exhibit 37 for ID purposes?

3 A This is evidence marked number 7-B which is a
4 pair of jean shorts from the victim.

5 MS. SHEALY: I'm going to have this marked 38.

6 (Whereupon, State's Exhibit No. 38 is marked
7 for identification.)

8 Q (By Ms. Shealy) Showing you State's 38 for ID
9 purposes.

10 A It's my marking of evidence 4-B which is going
11 to be a pair of blue and white pair of socks, again
12 from the victim.

13 Q I think you also indicated there was some cash
14 found?

15 A Yes, ma'am.

16 Q Where was that found?

17 A It was already packaged in a separate envelope
18 from the MUSC ER, but it was with the victim's
19 belongings.

20 Q And also a condom?

21 A Yes, ma'am.

22 MS. SHEALY: Beg the Court's indulgence just a
23 moment.

24 (Whereupon, State's Exhibit No. 39 is marked
25 for identification.)

1 Q (By Ms. Shealy) Showing you State's 39. Can
2 you describe what, in money form, was with the
3 victim's property?

4 A I have it listed as a total of \$71.25. I also
5 have it broken down to one \$50 bill, one \$10 bill,
6 two \$5 bills and a dollar twenty-five in change.

7 MS. SHEALY: Your Honor, at this time I would
8 offer that into evidence.

9 THE COURT: Any objection?

10 MS. FORD: No, Your Honor.

11 THE COURT: Marked and admitted without
12 objection.

13 MS. SHEALY: Thank you, Ms. Maestas. I have
14 nothing further. Please answer any that the defense
15 may have.

16 THE COURT: Any questions for the witness?

17 MS. FORD: Yes, ma'am.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MS. FORD:

21 Q No shell casings were found at the scene, were
22 they?

23 A No, ma'am, they were not.

24 Q And do you know about guns as part of your job
25 at all?

1 A I'm familiar with them, yes.

2 Q And is it fair to say that if a gun is fired,
3 unless someone takes the opportunity to pick up the
4 shell casings, then a revolver was likely used?

5 A With an outdoor scene it's hard to say. For
6 one we don't even know if that is where the incident
7 actually occurred. So not finding any shell casings
8 on scene is not uncommon.

9 If it's an enclosed area and we know that's
10 where the incident occurred and there was no shell
11 casing found, yes, the likelihood, we would assume,
12 would be that it would be a revolver.

13 Q So you are not sure this is where the crime
14 actually occurred?

15 A All I can go by is what we actually saw on
16 scene, and that was the two areas of blood and the
17 plastic bag with a white substance that I collected.

18 As I stated, this victim was already
19 transported. From what we understand that was the
20 area where it occurred. But I have no -- for me to
21 say that's definitively it, I have no way of knowing.

22 Q And while you are at the scene, did you notice
23 a car with a flat tire by chance?

24 A Off the top of my head I can't recall.

25 Q And you mentioned how you went to the

1 hospital, right?

2 A Yes, ma'am, I did.

3 Q And you did that to attempt to do a GSR
4 analysis on Mr. Simmons, correct?

5 A Yes, ma'am.

6 Q And a GSR is -- stands for gunshot residue,
7 correct?

8 A Yes, ma'am.

9 Q And detective -- and Mr. Cooper told us a
10 little bit about that yesterday. Can you tell us
11 again exactly what that is?

12 A Anytime that we have a shooting incident, we
13 try to do a gunshot residue kit on any victim or
14 suspects that were on scene. And that is basically
15 it's a kit and it has little sticky tabs and it also
16 has swabs in it that we can use to tab on to the
17 areas where we believe any gunshot residue may be to
18 collect that to send off for possible analysis.

19 Q And so in this case why did you try to do it
20 here on Mr. Simmons?

21 A He was the victim of a shooting. And our
22 standard for us is if anybody was involved we try to
23 do a GSR on anybody that was involved.

24 Q I'm -- are you the actual -- I'm sorry I
25 missed a little bit. Are you the actual custody or

1 evidence custodian?

2 A No, ma'am. No, I'm the crime scene
3 investigator, technician. I respond actually to the
4 scene. Any evidence that I collect I'm going to go
5 ahead and what we call bag and tag. I'm going to put
6 it in its proper packaging container. I'm going to
7 seal it. I'm going to mark it. That goes into our
8 evidence lockers that are at our crime scene office.
9 Then a person that we have assigned to handle our
10 evidence will actually transport it to the evidence
11 custodian down at the station.

12 Q Okay. I didn't know that you were actually
13 responsible for collecting the evidence at the scene.
14 But I was just clarifying you collected the evidence?

15 A Yes.

16 Q But you don't have anything to do with the
17 evidence after that?

18 A Right. Once I have already packaged it and
19 put it into the evidence locker at our office, I
20 don't have any handling with it unless of course
21 somebody comes to me and they need to look at it, or
22 they request me to do something with it, it's
23 generally I'm done.

24 Q Okay. Are you familiar with a gun collected
25 at all in this case?

1 A Not at the time, no. From looking at the case
2 file and reviewing from my work I'm familiar that one
3 was collected but that's all I know about it.

4 Q And that was actually collected from when Mr.
5 Deas was arrested, right?

6 MS. SHEALY: Objection, Your Honor.

7 THE COURT: Basis?

8 MS. SHEALY: May we approach?

9 THE COURT: You may.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: Object is withdrawn. You may
13 proceed.

14 Q (By Ms. Ford) So this gun, it was found from
15 where Mr. Deas was arrested, correct?

16 A I have no idea, ma'am. Like I said, all I
17 know is when reviewing my files and my report I
18 noticed that a gun was collected because a chain of
19 custody form was in the case file. But I don't know
20 anything else about it.

21 Q But this gun was not the murder weapon,
22 correct?

23 A Ma'am, I don't know.

24 Q Okay.

25 MS. FORD: Beg the Court's indulgence.

1 THE COURT: Uh-hum.

2 Q (By Ms. Ford) You took the pictures on the
3 scene, right?

4 A Yes, ma'am.

5 Q There was a tent outside, right?

6 A Yes, ma'am, on the -- across the street from
7 where the victim was worked on by EMS.

8 Q And there are some pictures showing a little
9 bit of a tent like the poles and everything, correct?

10 A Yes, ma'am.

11 Q But there is no pictures of the actual tent,
12 right?

13 A I believe there was one where I took an angle
14 from across the street going towards that direction
15 that shows a little bit more of the tent. But not
16 one facing directly on it, no.

17 Q Did you take a picture from within the tent
18 looking out by chance?

19 A No, ma'am, I did not.

20 Q If you had known that a witness had been
21 inside of this tent, would you have thought that was
22 more important perhaps to take pictures of?

23 A Possibly. Unfortunately I can only go by the
24 information that I have at the time. And at the time
25 I did not know any of that information.

1 I tried to take photos of the whole area. And
2 I tried to take photos of it every direction from
3 around the scene. So I know I took photos from in
4 front of that area facing across the street to where
5 the victim was found. I mean I did not step into the
6 tent to take the photos, but they were from in front
7 of that area, yes.

8 MS. FORD: Thank you. I have no further
9 questions.

10 THE COURT: Any redirect?

11 MS. SHEALY: Just a couple follow-up
12 questions.

13 REDIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q As I understood your testimony regarding
16 gunshot residue, your policy is to do it on all cases
17 where there has been a victim of a shooting?

18 A Yes, ma'am. I mean it's not always possible,
19 and this is an example of that, but anyone that has
20 been involved, if it's a victim or a suspect, we try
21 to do a gunshot residue kit on them.

22 Q And if a person gets arrested four days later,
23 is there a policy as to how many hours after a
24 shooting that you try to do a gunshot residue?

25 A Generally after six hours we do not do a

1 gunshot residue kit. The gunshot residue is very
2 fine and after just wear and walking and putting your
3 hands in your pockets, washing your hands, it
4 decreases its time to be able to get any residue.

5 MS. SHEALY: Beg the Court's indulgence.

6 THE COURT: Uh-hum.

7 Q (By Ms. Shealy) And regarding the tent that
8 Ms. Ford asked you about. Showing you State's
9 Exhibit 17 -- well let's do State's Exhibit 18. The
10 pole and the blue material that's in the upper
11 left-hand corner, what does that reflect?

12 A That's a portion of the tent that we were
13 talking about.

14 Q Okay. And that evening did anybody mention
15 any significance about a tent to you?

16 A No, ma'am.

17 Q And showing you State's Exhibit 9, if I need
18 to orient you, let me know. But the area where the
19 car is parked, is that the area where the tent was
20 that night? Or can you tell from that picture?

21 A It appears to be from looking at it at this
22 angle, yes. That should be on the left there is
23

24 Q Okay. And showing you State's 12. Is that
25 the area with the tent to the right of where those

1 markers are?

2 A Yes, ma'am. 25 Line is that house on your --
3 on the right of the screen. And directly across the
4 street is the area where the tent was.

5 MS. SHEALY: Thank you, I have no further
6 questions.

7 THE COURT: Any questions for the witness?

8 MS. FORD: No, Your Honor.

9 THE COURT: Any objection to the witness being
10 excused from the State?

11 MS. SHEALY: No, Your Honor.

12 THE COURT: From the defense?

13 MS. FORD: No, Your Honor.

14 THE COURT: You are excused, ma'am.

15 THE WITNESS: Thank you.

16 THE COURT: You're welcome.

17 Ms. Shealy.

18 MS. SHEALY: Yes, Your Honor.

19 THE COURT: Anything further before we take a
20 break?

21 MS. SHEALY: No, ma'am.

22 THE COURT: Mr. Foreman, ladies and gentlemen,
23 we have a matter of law I need to take up with the
24 attorneys that should be -- well, I'd like to say --

25 MS. SHEALY: Your Honor, I apologize.

1 THE COURT: Was there another witness?

2 MS. SHEALY: I do have another witness. I
3 thought you were ready to take a break. I do have
4 one other witness but we probably need to take a
5 break between him. I need to put him up and then
6 we'll have a matter.

7 THE COURT: We will proceed. Ignore what I
8 just said.

9 MS. SHEALY: Sorry.

10 THE COURT: I will give you all a break after
11 this.

12 MS. SHEALY: Marvin Hancock.

13 THE COURT: No. Mr. Foreman, ladies and
14 gentlemen, I have a matter of law I need to take up
15 with the attorneys. It may take a moment, so I'm
16 going to determine how long it's going to take and
17 then I decide whether I'm going to let you all walk
18 around or not. At this moment I'm hoping it will be
19 short.

20 Bear with me. If you'll leave your notepads
21 in your seats. Please don't discuss the case.
22 Please go with the bailiffs.

23 (Whereupon, the jurors exit the courtroom.)

24 THE COURT: Next witness is the records
25 custodian?

1 MS. SHEALY: Yes, Your Honor.

2 THE COURT: I need to make sure the tape has
3 been redacted appropriately, and that you all have
4 agreed to it.

5 MS. SHEALY: That's what I meant, we need to
6 start. You want us to play back in open court of do
7 you want the defense --

8 THE COURT: Sure. How do you all want to
9 handle it? I will give you the option.

10 MR. GRIMES: We can hear it in open court.

11 THE COURT: Works for me.

12 MR. NEELY: Can we play it?

13 THE COURT: Uh-hum.

14 (Whereupon, the audiotape is played in open
15 court.)

16 THE COURT: This is all supposed to be
17 redacted. Turn it off for me.

18 MR. NEELY: I was under the impression that
19 you wanted the conversation he had with Slick.

20 THE COURT: Not the portions that deal with
21 him telling him to give money to his girlfriend, only
22 the portions that deal with the actual discussion
23 about the case which is about the identity of -- that
24 the state doesn't have the identity of the second
25 person on the bicycle, and him telling him that he is

1 going to have the young lady say she's confused about
2 when he spent the night.

3 You all may want to play it on the computer
4 because the computers mic is clear. The computer's
5 mic I think will have less distortion.

6 MR. NEELY: If I put the tape on the computer,
7 it will have everything on there.

8 THE COURT: You recorded it on to a tape?

9 MR. NEELY: Yes, ma'am.

10 THE COURT: That's probably wise.

11 MR. NEELY: But I can go back and pull that
12 part out.

13 MS. SHEALY: I was just going to say, maybe
14 with all that everything needs to be taken out.

15 THE COURT: I want a better quality than that,
16 the CD is better quality. And the transcripts are
17 not coming in.

18 There is no way to copy that to CD and ask for
19 the disc from the jail?

20 MR. NEELY: It was explained to me that you
21 can't alter it in any way. You can't pull any parts
22 out. You can't add anything to it.

23 THE COURT: They do that to make it tamper
24 proof.

25 MR. NEELY: Yes. I mean the only other thing

1 we could do is with the program you can stop it in a
2 certain spot and it will just play that section. But
3 that would be the actual CD with the rest of the call
4 on it.

5 THE COURT: Go ahead and play what you played
6 so far needs to be taken off that deals with his
7 conversation about giving money to his girlfriend
8 because he doesn't want her to mess around while he
9 was in jail. That's not relevant.

10 MR. NEELY: I'll continue to play and you tell
11 me when.

12 THE COURT: Uh-hum, so that I can hear it.

13 (Whereupon, the audiotape is played in open
14 court.)

15 MS. SHEALY: Your Honor, is that the part that
16 you would -- that is the part where he was saying,
17 them boys ain't showed me them statements right
18 there, what makes a situation good them boys trying
19 to say they got two people out but there only found
20 one person.

21 THE COURT: Yes, it starts right before that.
22 I believe it starts rights after they conclude their
23 conversation about giving his girlfriend money.

24 MR. NEELY: Okay. I know what you are talking
25 about, Judge.

1 (Whereupon, the audiotape is played in open
2 court.)

3 MR. NEELY: Tell me, Judge, that was the end
4 of that call?

5 THE COURT: That was. What was the last
6 statement that was made? The last thing he said to
7 Mr. Brown?

8 MS. SHEALY: Yeah, but I know if I come and
9 need something I can do that.

10 THE COURT: Say that one more time.

11 MS. SHEALY: Yeah, but I know if I come and
12 need something I can do that. Just to backup a
13 little bit to put it in context, the defendant says,
14 yeah, everything good, man, I'm coming home, man, I
15 just wish this shit could speed up a little bit, man.
16 And then the friend says, get the hell of out of
17 there.

18 And then he responds, yeah, but I know if I
19 come and need something I can do that.

20 THE COURT: That's not relevant to anything.

21 MR. NEELY: So stop at the last?

22 THE COURT: Yeah, the last part telling her
23 that he was going to get her to change her story.
24 After that they're just talking in general about how
25 long it takes for his case to come to trial and

1 that's not relevant.

2 MR. NEELY: Okay. Then do you want me to play
3 the other part, Judge?

4 THE COURT: Uh-hum.

5 (Whereupon, the audiotape is played in open
6 court.)

7 MR. NEELY: This will be the second part,
8 Judge.

9 THE COURT: Uh-hum.

10 (Whereupon, the audiotape is played in open
11 court.)

12 THE COURT: Yeah, that's the extent of what
13 they talked about but you all wanted, that's all the
14 way at the end of the conversation?

15 MR. GRIMES: Three, four lines.

16 THE COURT: What else is between?

17 MR. NEELY: Between that paragraph and --

18 THE COURT: What is between that and the last
19 statement they're asking to be put in?

20 MR. NEELY: She says, I did not know that. He
21 says, yeah. She says, I'm talking about that on the
22 phone. He says, yeah. Then the sentence they want,
23 but I don't know how they charge you with murder,
24 what evidence they got. He says, nothing. So really
25 it would be three or four lines in between.

1 THE COURT: Okay. You can play it, just
2 eliminate the rest of that between he and his mother.

3 MS. SHEALY: That part was slick at the
4 beginning?

5 THE COURT: No, I'm not talking about that.
6 That part about slick at the beginning about the
7 phone, giving his girlfriend money, that's not
8 relevant. I did not want that included.

9 MR. NEELY: And on the second tape you want to
10 talk about the murder weapon not being the right
11 murder weapon.

12 THE COURT: You have the correct portion on
13 the second one, you just need to add the sentence
14 they have asked to be played.

15 MR. NEELY: Okay.

16 THE COURT: You need some time to do that?

17 MR. NEELY: I would say about 15 minutes.

18 THE COURT: Tell the jury they can walk around
19 for 15 minutes. You all need to go with them,
20 though, if they want to go downstairs. If any of
21 them want air, you all can go downstairs with them
22 and bring them back upstairs.

23 And that will be the last State's witness,
24 correct?

25 MS. SHEALY: That is correct.

1 THE COURT: We will be at ease for 10 minutes
2 while they get that sorted out.

3 (Whereupon, a recess was taken.)

4 THE COURT: Is the State ready to proceed?

5 MS. SHEALY: Your Honor, I believe Mr. Neely
6 has come back with the tape. I didn't know if they
7 wanted to listen to it.

8 THE COURT: Do you all want to listen to it?

9 MS. FORD: Yes, Your Honor, to make sure.

10 THE COURT: Works for me.

11 (Whereupon, the audiotape is played in open
12 court.)

13 THE COURT: Is that the extent of it?

14 MS. SHEALY: It is.

15 MR. NEELY: It is.

16 MR. GRIMES: We just have to erase the part
17 that shouldn't be on there.

18 THE COURT: Which is? Which part is that?

19 MR. NEELY: It's repeating. When I laid it
20 over the second time it was shorter.

21 MR. NEELY: Judge, I think it should be
22 correct now.

23 (Whereupon, the audiotape is played in open
24 court.)

25 THE COURT: Okay. Is the defense satisfied

1 with the recording? Redacted recording?

2 MR. GRIMES: Not to belabor this point, to be
3 on the safe side, I would like to hear it one more
4 time all the way through.

5 THE COURT: Okay.

6 (Whereupon, the audiotape is played in open
7 court.)

8 MR. NEELY: That's the end of it.

9 THE COURT: That's the end of the tape?

10 MR. NEELY: It's a 90-minute tape. It's the
11 end of the recording.

12 THE COURT: All right. Are we ready to
13 proceed from the State?

14 MS. SHEALY: Yes. I just wanted to make sure
15 the gentleman from the jail initialed the CD, I think
16 I gave you a copy that he had made. So I want to
17 make sure everybody looks at this, this was going to
18 be a Court Exhibit.

19 THE COURT: Marked for ID only. I mean marked
20 as a Court's Exhibit.

21 MS. SHEALY: And then you would like for me to
22 mark the tape into evidence before I play the tape?

23 THE COURT: Yes.

24 MS. SHEALY: Okay, just want to make sure I
25 have that straight. I'm ready.

1 THE COURT: Defense ready to proceed?

2 MS. FORD: Yes, Your Honor.

3 THE COURT: Please bring in the panel.

4 Where is your witness, Ms. Shealy?

5 MS. SHEALY: My investigator is going to get
6 him.

7 (Whereupon, the jurors enter the courtroom.).

8 THE COURT: Mr. Foreman, ladies and gentlemen,
9 we appreciate your patience. True to form, it took
10 longer than we anticipated. So we appreciate your
11 patience. I understand you all were able to get a
12 little air, so I'm glad that you all were not in that
13 room without having the benefit of a little bit of
14 freedom for a few moments.

15 We will now resume the trial of the case.

16 Ms. Shealy, you may proceed.

17 MS. SHEALY: Thank you, Your Honor. Marvin
18 Hancock.

19 MR. MARVIN HANCOCK,
20 after having first been duly sworn to state the
21 truth, the whole truth and nothing but the truth,
22 testified on his oath as follows.

23 THE COURT: You may proceed.

24 MS. SHEALY: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 DIRECT EXAMINATION

2 BY MS. SHEALY:

3 Q officer Hancock, tell the jury, if you would,
4 where you work?5 A I work at the Charleston County Detention
6 Center.

7 Q What is your role there?

8 A I'm the head cashier.

9 Q Head cashier. Included in those duties do you
10 have any authority over the jail recordings?11 A Yes. I am the custodian of the phone
12 recordings for the jail. I take care of the
13 subpoenas, I fill them in and send them to the
14 requesting party, or whoever is requesting them.15 Q If you would, tell the jury what we mean by
16 jail recordings?17 A When an inmate is incarcerated in the
18 facility, they're given a PIN number to use the
19 telephone system. All the phone calls that they make
20 are recorded in a database, who they call, how long
21 it lasted, as well as a recording of the actual
22 conversation as long as it's not their attorney.

23 Q And that process begins when?

24 A As soon as they finish -- the PIN number is
25 given to them in the booking process just as they

1 finished being ID'd, fingerprinted and photographed.

2 Q Tell me again about the PIN number. Does each
3 inmate have its own PIN number?

4 A They have their own PIN number and it's unique
5 to them each time they're there, and it only works
6 for them while they are in the unit they're assigned
7 to.

8 Q Pursuant to my request did you receive a
9 subpoena from my office?

10 A Yes.

11 Q And did you provide the solicitor's office
12 with a collection of recordings by Richard Deas?

13 A Yes.

14 MR. GRIMES: Objection. Improper foundation
15 at this point.

16 THE COURT: Please approach.

17 (Whereupon, a discussion was held at the bench
18 off the record.)

19 THE COURT: You may proceed, Ms. Shealy.

20 Q (By Ms. Shealy) Officer Hancock, do you
21 happen to know what Richard Deas's PIN number was?

22 A No, ma'am, I do not.

23 Q When you receive a subpoena, how would you
24 have looked up his PIN number?

25 A We have an interface to the database where I

1 put in an inmate number --

2 MR. GRIMES: Objection, Your Honor, calls for
3 hearsay.

4 THE COURT: Overruled.

5 A I look up his name in the computer and I come
6 up with his inmate number, which is the number
7 assigned to him, and is the same number -- he has
8 that same number each time.

9 And use I the database, I query the database
10 as to the time period requested and his number.

11 Q (By Ms. Shealy) Okay. When you say the
12 database, you are performing this on a computer?

13 A Yes, ma'am.

14 Q When you received the subpoena from the
15 solicitor's office then, did you go through that
16 procedure regard Richard Deas's phone calls?

17 A Yes.

18 Q And if you would explain to the jury what you
19 then provided to the solicitor's office?

20 A The database returns, the result is printed
21 out in the form of call logs that detail when and who
22 he called. And in addition, some of that information
23 and the recordings are downloaded and burned on to a
24 CD ROM.

25 Q And you do this yourself?

1 A Yes.

2 Q And how long have you been doing this?

3 A About a year and a half, almost two years.

4 Q Let me show you this disc and ask if you can
5 identify it?

6 A That is one of the CD's that I made for this
7 case on your subpoena.

8 MS. SHEALY: Your Honor, I would ask that this
9 be marked as a Court's Exhibit

10 THE COURT: Marked as a Court's Exhibit only.

11 (Whereupon, Court's Exhibit No. 23 is marked
12 for identification.)

13 Q (By Ms. Shealy) And can you tell the jury,
14 please, what the dates of the recordings are included
15 on this CD?

16 A This was from 10/23/07 to 5/31/08. There were
17 actually three CD's of recordings resulted from that.
18 This is the first of three.

19 MS. SHEALY: Your Honor, at this time I would
20 offer into evidence portions from that CD.

21 THE COURT: You need to lay the appropriate
22 foundation as to how they are procured.

23 Q (By Ms. Shealy) When you indicated earlier
24 then that you retrieve the recordings, can you
25 explain to us how that process works?

1 A Well the recording -- the information is kept
2 in a database. And what I do is I perform a database
3 query using the front end that was developed by the
4 company that basically that maintains our telephone
5 system.

6 Q So what did you enter into the database to
7 retrieve information?

8 A Specifically I look for the inmate's number.
9 And once I have their inmate number, I put in their
10 inmate number which is a 10-digit number, and then I
11 put in the dates requested.

12 Q And then what do you then receive once you put
13 that in?

14 A It comes back with a set of results, the
15 results are the call records themselves.

16 Q When you say the call records themselves, are
17 you talking about documents of information or are you
18 talking about recordings with sound?

19 A Well it's a series of database records that
20 match the criteria that I have given it for the dates
21 and the inmate. And each one of them, if the call
22 was successful and there was a recording made it is
23 connected to the recording, the recording is part of
24 that record.

25 But for example if an inmate dials a telephone

1 and the person that they're trying to call doesn't
2 want to receive calls and they have their calls
3 blocked, it will make a note that they called such
4 and such a number at this date and time, and that the
5 call was blocked.

6 Q When you have said that a call was actually
7 successful, that the recording itself is also in the
8 database?

9 A Yes, ma'am.

10 Q How is it that you burn that onto a disc?

11 A Well once the data has been retrieved, I tell
12 it okay, I'm ready to burn this onto a disc and the
13 computer -- the software grabs the information and
14 sets it up so that it will burn on a disc and there
15 are different formats that I can burn it in. I can
16 burn it as an actual audio CD, although that would
17 have been probably about 100 CD's if I had done it
18 that way.

19 In this case it's in a proprietary data format
20 that's used by Valued Communications (phonetic), the
21 company that maintains the phone database. And the
22 software to read that data is also put on each CD.
23 So it organizes things and sets up the CD so that a
24 computer can read it.

25 Q And when it's put on the CD in that fashion,

1 can someone who listens to it alter it?

2 A No, ma'am, it cannot be altered once it has
3 been burned on the CD.

4 MS. SHEALY: Your Honor, at this time I would
5 offer portions of the CD into evidence.

6 THE COURT: You also need to lay the
7 foundation what was the actual -- how the calls were
8 recorded, processed.

9 MS. SHEALY: Yes, Your Honor.

10 Q (By Ms. Shealy) At the jail, when an inmate
11 uses his PIN number and makes a phone call, how does
12 that get recorded?

13 A I don't know The exact mechanics of it. I
14 mean when they put in their PIN number the whole --

15 MR. GRIMES: Objection, Your Honor, calls for
16 speculation.

17 THE COURT: He is qualified as to his actual
18 knowledge, overruled.

19 Sir, you may answer the question to the extent
20 of your knowledge.

21 A Okay. The telephone system is computerised.
22 And when they're putting -- when an inmate is
23 assigned to a unit, part of what happens in the
24 computer system is the telephone system is then aware
25 of what unit they're in. So if, for example, an

1 inmate was assigned to unit 1C they happen to be
2 standing around in our booking area and try to use
3 that telephone, it would not work for them.

4 So the system knows where they are supposed to
5 be. It also controls when they can call. They can't
6 just sneak out of the room in the middle of the night
7 and make a phone call. There are only a few special
8 units, usually associated with people that are just
9 booked, have 24/7 telephones calls.

10 Once he enters his PIN number in the system
11 knows that that's him and it begins to record the
12 information into the database, what time that the
13 phone call was made, which phone it was being made
14 from, which unit, which number was called, and the
15 result. If the call was successful it will be in
16 recording once it -- once the dial tone, you hear the
17 dial tone and you hear him dial the phone and the
18 ringing, at that point you are going to start hearing
19 the recording.

20 Q (By Ms. Shealy) So when you go back and plug
21 in the PIN number, the database then is retrieving
22 those recorded phone calls under that number?

23 A Yes.

24 MR. GRIMES: Leading.

25 THE COURT: Sustained, leading.

1 Q (By Ms. Shealy) Explain the process to us
2 again, when you enter the PIN number, what is then
3 generated through the database?

4 A Well the database creates a database record in
5 the database. And essentially if you've ever used a
6 spreadsheet it's a line of information in a table.
7 It will place -- it will create the record. I
8 don't know the exact structure of the database. I'm
9 familiar with database theory. Essentially each
10 record is going to have a unique identifier called an
11 index number. And the information is also indexed so
12 that it could be easily found. For example, when I
13 search by the inmate number and by the date.

14 It's going to record the inmate's number,
15 their name, the phone that they're using in the unit,
16 what units it's from, the date and the time. If the
17 phone call lasted for any duration, it records the
18 duration, it records the telephone number that is
19 being called, and it records also what the result of
20 the phone call was, if it was blocked, busy signal
21 and if the call was completed.

22 If the phone number being called is not on the
23 do not call list, do not call list is comprised of
24 attorneys, then we will start to record once the
25 phone call starts. And that's will ultimately attach

1 to that call record in the database.

2 Q Okay. When you say if it's not a number that
3 was provided to you as an attorney's number we will
4 start to record. How does that process occur, the
5 recording itself?

6 A It's just a digital recording in the database,
7 it's filed. I'm not sure of the structure of the
8 database. It could be a file stored in a specific
9 directory, tagged with its location and file name in
10 the database record itself, or it could be stored in
11 the record.

12 MS. SHEALY: Your Honor, at this time I would
13 offer the portions of the recordings into evidence.

14 THE COURT: Marked and admitted subject to the
15 objection.

16 MR. GRIMES: Additional ground of 901(B)(5).

17 THE COURT: Please approach.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: Overruled, it's a business record.
21 Foundation has been established.

22 (Whereupon, State's Exhibit No. 40 is marked
23 and admitted into evidence.)

24 THE COURT: Alternatively, it's authenticated
25 by the defendant's PIN number as established by

1 protocol that has been testified to by the witness
2 regarding authenticity.

3 MS. SHEALY: Your Honor, at this time we
4 request permission to publish this.

5 THE COURT: You may proceed.

6 (Whereupon, the audiotape is played in open
7 court.)

8 MS. SHEALY: Your Honor, that is all we have
9 for this witness.

10 THE COURT: Any questions for the witness?

11 MR. GRIMES: Just a few, Your Honor.

12 THE COURT: You may proceed.

13 MR. GRIMES: Thank you, Your Honor.

14 THE COURT: You are welcome.

15 CROSS-EXAMINATION

16 BY MR. GRIMES:

17 Q Good afternoon, Deputy Hancock.

18 A It's just officer.

19 Q Officer Hancock. I know you have been out
20 here a long time today. The solicitor's office is
21 the one who requested that you get tapes of what Mr.
22 Deas said?

23 A Yes.

24 Q Have you ever met Mr. Deas before?

25 A No, I don't believe we have.

1 Q Do you know what his voice sounds like?

2 A No, sir, I do not.

3 Q I think you testify before you don't know what
4 his PIN number is?

5 A No, sir. I know his inmate number, that's all
6 I have.

7 Q Sometimes at the jail is it possible that one
8 inmate may let someone else use their PIN number to
9 make phone calls?

10 A Yes, sir, it is.

11 Q And it's the solicitors office who asked you
12 to bring these tapes, or CD's, correct?

13 A Yes.

14 Q Do you recall if they asked you to make any
15 tapes of Shrod Young?

16 A No, sir, I don't know. I keep records, I
17 could check those when I'm back at the jail. But I
18 get a lot of subpoena requests.

19 Q Well for this case do you know if they asked
20 you for any tapes for Shrod Young?

21 A Not that I can recall, no.

22 Q He also goes by Fish?

23 A I don't believe I have. I don't believe I
24 have done any other tapes for this case, but I can't
25 be certain of that.

1 Q Would your duties involve getting wiretaps for
2 potential witnesses in the case or suspects?

3 A No, sir. I have nothing -- the only
4 recordings I have to do with are from the telephone
5 system.

6 Q So you would not be involved in getting any
7 kind of wiretap or taping of Shrod Young's phone
8 calls when he was outside the --

9 MS. SHEALY: Your Honor, I object, relevancy.

10 THE COURT: I think you maximized it, Mr.
11 Grimes. Move along. Sustained relevancy. And no
12 foundation for the question.

13 MR. GRIMES: Thank you, Your Honor.

14 Q (By Mr. Grimes) You said that the CD that you
15 had, the calls were from October 2007 through May of
16 2008?

17 A On that CD, yes. That was a portion of the
18 calls from that time period.

19 Q It is my understanding there were quite a few
20 calls on there?

21 A Enough to fill more than two CD's.

22 Q By chance did you listen to all those, you
23 just give them to --

24 A No, sir, I don't listen to any of them. Only
25 I put them in enough to make sure that the CD did

1 actually record something, occasionally the system
2 will make a blank CD. But I don't listen to the
3 conversations.

4 MR. GRIMES: May I have one moment, Your
5 Honor?

6 THE COURT: You may.

7 MR. GRIMES: Thank you, Your Honor. No
8 further questions.

9 THE COURT: Any redirect of the witness?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: Any objection to the witness being
12 excused from the State?

13 MS. SHEALY: No, Your Honor.

14 THE COURT: From the defense?

15 MR. GRIMES: No, ma'am.

16 THE COURT: Sir, you are excused.

17 MS. SHEALY: May we approach just one moment?

18 THE COURT: You may.

19 (Whereupon, a discussion was held at the bench
20 off the record.)

21 THE COURT: The State may proceed.

22 MS. SHEALY: Your Honor, at this time the
23 State rests.

24 THE COURT: Mr. Foreman, ladies and gentlemen,
25 we are going to take advantage of this break in

1 testimony to give you your evening recess. I
2 anticipate that we will conclude the trial of this
3 case tomorrow ,including closing arguments and the
4 court's instructions on the law. It is absolutely
5 essential that you remain impartial and guard
6 yourselves against any media exposure regarding this
7 case.

8 And I know it sounds redundant, but again
9 please make sure you don't read any newspaper
10 articles, watch anything on television, listen to
11 anything on the radio, read anything on the Internet
12 or do any independent research on the Internet.

13 You will park in the same general area on
14 tomorrow and you will follow the same process. We
15 will resume in the morning at 9:30. Again, please
16 don't have any contact with anyone in or about the
17 building. If you would leave your notepads in your
18 seats, we will see you in the morning at 9:30.
19 Have a good evening.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: State has rests. Are there any
22 motions?

23 MS. FORD: Yes, Your Honor. At this time we
24 would move for directed verdict, just renew all of
25 our prior motions.

1 THE COURT: Would the State like to respond?

2 MS. SHEALY: Your Honor, it would be our
3 position that certainly competent evidence has been
4 presented to present this matter to the jury. If I
5 need to go more fully I can, Your Honor.

6 THE COURT: You all have agreed, and I
7 apologize I'm going a little out of order, you all
8 agreed on the redacted statement, correct? On what
9 should be redacted from the defendant's statement,
10 you all have agreed on that?

11 MS. SHEALY: Yes, Your Honor.

12 MS. FORD: Yes, ma'am.

13 THE COURT: It's just a matter of being copied
14 and substituted on the record; is that correct?

15 MS. FORD: Yes, ma'am.

16 THE COURT: You all will be able to do that
17 before we adjourn today?

18 MS. SHEALY: Yes. In fact if I can send
19 somebody out back there to my office real quick.

20 THE COURT: Okay. Defendant has made a motion
21 for directed verdict. When considering a motion for
22 directed verdict the Court is required to consider
23 the evidence in the light most favorable to the
24 State, and all reasonable inferences in their favor.

25 The Court is not concerned with the weight of

1 the evidence, only with the existence or nonexistence
2 of evidence. And if there is any direct evidence or
3 any substantial circumstantial evidence reasonably
4 tending to prove the guilt of the accused, directed
5 verdict is not appropriate.

6 In this case there is, most liberally speaking
7 in the light most favorable to the State, two
8 eyewitnesses to the event which is certainly comes
9 under the ambit of direct evidence, and there is
10 substantial circumstantial evidence in the record
11 that rises above mere suspicion, conjecture or
12 speculation of the defendant's guilt. Therefore the
13 motion is denied and the matter will go to the jury.

14 Now does the defense intend to present any
15 witnesses other than your client?

16 MS. FORD: No, Your Honor.

17 And at this time my client does not wish to
18 testify.

19 THE COURT: I still need to question him.

20 Sir, if you would stand for me please and
21 raise your right hand to be sworn.

22 (Whereupon, the Court places the Defendant
23 under oath.)

24 THE COURT: Sir, state your full name for the
25 record.

1 THE DEFENDANT: Richard Deas.

2 THE COURT: Mr. Deas, at this time I am going
3 to explain to you certain of your rights. If you do
4 not understand anything that I say, please let me
5 know. If you need me to repeat anything, please let
6 me know. Do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Sir, we have now reached the stage
9 of the trial where you may present your defense. You
10 have the right to claim protections given to you by
11 the Fifth Amendment of the constitution of the United
12 States. And that amendment reads in part: No person
13 shall be compelled in any criminal case to be a
14 witness against himself.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: This means that you cannot be
17 required to testify in this case. You have the right
18 to testify on your own behalf, however no one can
19 make you testify. This is a personal right and no
20 one can waive this right except you.

21 If you decide to testify, you will be subject
22 to being cross-examined, and subject to the same
23 rules that govern other witnesses on any relevant
24 issue in the case.

25 In addition, if you have any conviction

1 involving dishonesty or false statement, or for
2 crimes punishable by imprisonment for more than one
3 year and this Court determines that the probative
4 value of admitting this evidence outweighs its
5 prejudicial affect to you, the solicitor will be able
6 to introduce your record to attack your credibility.

7 If you decide to testify, this decision on
8 your part must be made freely, voluntarily and
9 intelligently, with knowledge of the protections
10 given to you by the Fifth Amendment, and the
11 consequences of your decision to testify.

12 If you decide not to testify, I will instruct
13 the jury that they are not to consider that in any
14 manner whatsoever. In fact, it is not to be
15 discussed in any manner whatsoever in the jury room
16 during the course of deliberations. And that you are
17 to suffer absolutely no prejudice as a result of not
18 having testified.

19 Sir, whether you testify or not is a matter
20 left entirely up to you. You can speak with your
21 family members, your friends or others, but the
22 decision of whether you should or should not testify
23 is a matter solely left up to your discretion.

24 Sir, do you understand your rights as I have
25 just explained them to you?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you understand that I have
3 instructed the solicitor that I would not allow them
4 to question you regarding your record of assault with
5 intent to kill?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Sir, do you have any questions
8 about what I have explained to you?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you need to discuss anymore
11 with your attorneys what I have gone over with you
12 anymore at this time?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Sir, do you wish to testify?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You may take your seat.

17 As regards to the charge, the Court will give
18 a general charge regarding the jury's responsibility
19 and my responsibility. How they are to judge witness
20 credibility and believability. That they are to
21 follow the law as I instruct it and not as they may
22 have some predisposition as to how they think it
23 should be -- what the law should be or could be, but
24 only with what the Court instructs them what the law
25 actually is.

1 They will be given a general instruction
2 regarding expert witnesses. They will also be given
3 a general instruction regarding the presumption of
4 innocence. And that the indictment is not evidence
5 nor does it create any presumptions of guilt in the
6 case, it's merely the way in which a case is
7 processed through the court.

8 They will be given a general instruction on
9 direct and circumstantial evidence from State versus
10 Griffon. The Court will charge reasonable doubt from
11 Victor versus Nebraska. Then charge the elements of
12 murder. And the elements of position of a firearm
13 during the commission of a violent crime. And then
14 charge the forms of the verdict.

15 Are there any requests to charge, based upon
16 -- well, actually I will do it this way.

17 Are there any exceptions to the Court's
18 proposed charge from the State?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: From the defense?

21 MR. GRIMES: Yes, ma'am.

22 THE COURT: Uh-hum.

23 MR. GRIMES: We would object to the Victor
24 versus Nebraska charge.

25 THE COURT: The Court will note your exception

1 and it's overruled. Our Supreme Court has indicated
2 that the Court has the option of charging reasonable
3 doubt, it's selected at the discretion of the Court.

4 I charge Victor versus Nebraska because it's
5 clean, it's to the point, and it's very
6 uncomplicated. And that is what the Court will be
7 charging and I'll note your exception.

8 MR. GRIMES: For the record, we believe the
9 burden shifts in this instruction.

10 THE COURT: The Supreme Court has already said
11 it's not. I will note your exception for the record.

12 MR. GRIMES: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MR. GRIMES: In addition, based upon I think
15 Mr. Shrod Young's testimony, we have an additional
16 charge regarding --

17 THE COURT: I'm sorry, I can't hear you.

18 MR. GRIMES: We would have an additional
19 charge we would ask the Court to consider to charge
20 the jury. Essentially be something along the lines
21 that the testimony of a witness who's paid, gain --
22 testifies either for pay or avoiding punishment or
23 some other personal advantage must be examined and
24 weighed by the jury with greater care than the
25 testimony of an ordinary witness.

1 I would cite Wall versus Delarosa, 644 F2d.
2 1257, Ninth Circuit case from 1980. And United
3 States versus Morgan, 555 F2d. 238, note 10 on page
4 243, also from the Ninth Circuit.

5 And given his testimony about use of marijuana
6 and being high and dozing off, we would also ask the
7 Court to consider this charge, a witness also a
8 narcotics addict --

9 THE COURT: There is no evidence he's an
10 addict. There is a difference between being high and
11 being an addict. There is just no evidence in the
12 record he's an addict.

13 MR. GRIMES: I'm sorry, let me rephrase it.
14 If the witness is under the influence at the time of
15 the event, we would ask the Court to charge -- those
16 are reasonable and should also be examining that
17 witness's testimony with great care.

18 THE COURT: Does the State agree to these
19 charges being given?

20 MS. SHEALY: No, Your Honor.

21 THE COURT: The Court would not give the
22 charges. I would find that they're impermissible
23 charge on the facts. The Court's general charge
24 regarding credibility and believability covers those
25 matters, and instruct the jury to look at any

1 possible motive, bias, prejudice, why a person would
2 be more likely to testify in a particular way.

3 And also I will be charging as it bears on
4 credibility, and I neglected to include that, but I
5 will be charging that too.

6 MR. GRIMES: My one final argument on that.

7 THE COURT: I have heard --

8 MR. GRIMES: Under self-defense, someone is
9 under the influence you can take that into
10 consideration.

11 THE COURT: This isn't a self-defense case.

12 MR. GRIMES: I'm probably stretching it, but
13 I'm trying to find some support in South Carolina for
14 my position.

15 THE COURT: That's confined to a very
16 singularly -- self-defense law is very specific, fact
17 specific actually. I don't think we can extrapolate
18 from that and pull that language out and use it in a
19 case where it's factually not supported.

20 The Court will note your exception for the
21 record. Will you all be ready at 9:30?

22 I need you all to go through the evidence very
23 clearly and make sure everything is back where it's
24 supposed to be for the court reporter's benefit. If
25 you have anything in your possession, if you return

1 it to her please so that she can account for
2 everything this evening.

3 I assume the defendant would want to close?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: Did you all present any evidence?

6 MS. FORD: No, Your Honor, we didn't. For
7 identification purposes only.

8 THE COURT: Anything else before we recess and
9 resume in the morning from the State?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: From the defense?

12 MS. FORD: No, Your Honor.

13 THE COURT: You all have a good evening. I
14 will see you at 9:30.

15 MS. SHEALY: Thank you, Judge.

16 THE COURT: Please make sure the exhibits are
17 in place with the court reporter before you leave.

18 (Whereupon, the proceedings in this matter
19 before the Court were adjourned for the evening.)

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1 THE COURT: We have five stragglers. Now I
2 have two things we need to deal with, one of which is
3 I could not recall if I had asked the juror that I
4 excused, I could not recall if I had asked him if he
5 discussed his concerns with anyone other than the
6 foreperson. So out of an abundance of caution, I
7 brought him back so that I can put that on the
8 record.

9 And in the event that he did, which I don't
10 think he did, but in the case he did, I can voir dire
11 everybody and get that out of the way.

12 And also we have a note -- as the jury was
13 leaving yesterday after you all had already left --
14 asking is there a transcript of the submitted
15 recording, referring to the tape that was played.

16 And I guess they didn't listen to the
17 instructions, and I will give them the same
18 instructions which is -- actually, I think what I may
19 do, I think I may give a -- well. I think I may just
20 answer the question and tell them -- I think I may
21 simply answer the question now and admonish them
22 again they're not to have any premature
23 deliberations.

24 And again that they are to adhere to the
25 instruction that I gave them yesterday. And that

1 they are to be very careful not to come out of their
2 role as fact-finders and in any way take a role as
3 advocates or investigators.

4 Is there any exception from the State in
5 handling the note in that way?

6 MS. SHEALY: Your Honor, there is no exception
7 to your telling them that. We would ask you to
8 explain to them that it is an item of evidence and
9 they will be able to play it back.

10 THE COURT: I suspect I'm going to get a
11 question about it, about wanting a transcript as they
12 start to deliberate. They will have the tape with
13 them. I think that begs the question. And I think
14 it takes it beyond.

15 I have to be very careful not to get into --
16 there is a line that doesn't need to be crossed. And
17 I think that crosses that line. Then we start
18 talking -- I start then getting into an advocate kind
19 of posture. They know what is in evidence and the
20 evidence will go back in. We are at the point of
21 having the closing charge and argument. And they
22 will clearly know that the tape is going with them.

23 They don't have to come in here to hear that
24 tape. They can take the tape-recorder and listened
25 to it all day long.

1 MS. SHEALY: The tape-recorder will go back
2 with them?

3 THE COURT: Yes.

4 MS. SHEALY: Okay, very good. Thank you, Your
5 Honor.

6 THE COURT: Any exception from the defense?

7 MS. FORD: No, Your Honor.

8 THE COURT: Okay. Now is there any exception
9 to the Court querying the discharged juror number
10 137, Elmo Jackson, from the State?

11 I tried to get him back that same day, but
12 apparently he didn't listen -- he doesn't listen to
13 his home, we didn't have a cell phone, and he didn't
14 listen to his home answering machine until late
15 yesterday at the close of business. We told him to
16 come this morning.

17 MS. SHEALY: No exception from the State.

18 MS. FORD: Just that the foreman possibly be
19 questioned again just specifically.

20 THE COURT: I have already questioned the
21 foreperson specifically about his conversation with
22 Mr. Jackson in detail.

23 MS. FORD: And about the inquiry into the
24 transcript. I know yesterday you asked the foreman
25 if there had been any discussions that might be --

1 that would be --

2 THE COURT: Well, the note came right after
3 the playing of the tape. And they literally, they
4 were literally leaving. So there -- I know from
5 there it's not logistically possible that they could
6 have talked about anything. It literally walked out
7 the door and the note came to me.

8 MS. FORD: Yes, ma'am.

9 THE COURT: So I don't -- logistically, and my
10 bailiffs would have told me they would have been
11 observing them at all times.

12 We'll see. I will play that one by ear.

13 Okay, anything further before we proceed with
14 my query of Mr. Elmo Jackson, number 137 from the
15 State.

16 MS. SHEALY: No, Your Honor.

17 THE COURT: From the defense?

18 MS. FORD: No, Your Honor.

19 THE COURT: Please bring in Mr. Jackson. He
20 is in the multi-purpose room.

21 (Whereupon, the juror enters the courtroom.)

22 THE COURT: Mr. Jackson, how are you?

23 A JUROR: Pretty good.

24 THE COURT: I appreciate you coming back and
25 accommodating us. I wasn't sure if I had asked this

1 question of you so out of an abundance of caution I
2 needed to make sure that I had it on the record.

3 Just to refresh your memory, we had discussed,
4 you had provided to the Court information that you
5 were closely related to Leroy Miles and Shoreka
6 Miles. And we had dismissed you on that basis. But
7 in the event that I did not ask this question, I
8 wanted to make sure that I did.

9 Other than the foreperson, did you discuss
10 this matter with anyone else on the jury?

11 A JUROR: No, Your Honor.

12 THE COURT: Okay. Sir, if you would step
13 outside the door with the bailiff for me for a
14 moment.

15 A JUROR: Um --

16 THE COURT: Yes, sir.

17 A JUROR: Me and Leroy wasn't real close,
18 Leroy was an in-law.

19 THE COURT: He's an in-law?

20 A JUROR: Yeah.

21 THE COURT: Related by marriage?

22 A JUROR: Yeah.

23 THE COURT: Okay. Thank you, sir. We
24 appreciate your candour.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: The juror has indicated that he
2 did not discuss this with anyone other than the
3 foreperson. We have already had full voir dire of
4 the foreperson regarding the extent of those
5 conversations and his ability to be fair and
6 impartial.

7 Is there any further inquiry of the dismissed
8 juror necessary for the record from the State?

9 MS. SHEALY: No, Your Honor.

10 THE COURT: From the defense?

11 MS. FORD: No, Your Honor.

12 THE COURT: Please bring him in for me so that
13 I can dismiss him.

14 (Whereupon, the juror enters the courtroom.)

15 THE COURT: Sir, we thank you for taking your
16 time to come back today. I hope you have a great
17 day. You are dismissed with the Court's thanks.
18 Have a great day.

19 A JUROR: All right.

20 THE COURT: Now, did you all already go
21 through the exhibits to make sure everything was in
22 place?

23 MS. SHEALY: We did yesterday, Your Honor.

24 THE COURT: And you all have everything as it
25 should be? From the state?

1 MS. SHEALY: Yes, Your Honor.

2 THE COURT: From the defense?

3 MS. FORD: Yes, Your Honor.

4 THE COURT: I need you all to look at the
5 verdict forms.

6 Are there any exceptions to the form of
7 verdict from the State?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: From the defense?

10 MS. FORD: No, Your Honor.

11 THE COURT: And I neglected to say on
12 yesterday when we were doing the charge conference
13 that I will also instruct the jury that they cannot
14 consider the fact that the defendant did not testify
15 in any manner whatsoever. And they are to give it
16 absolutely no weight in their discussion, in fact
17 they're not to discuss it in any manner whatsoever in
18 the jury room.

19 MR. GRIMES: Your Honor?

20 THE COURT: Yes.

21 MR. GRIMES: Do you use the language that the
22 client has the right to remain silent or?

23 THE COURT: We have a standard charge if the
24 defendant doesn't testify that has been approved by
25 our Supreme Court and I will be using that

1 instruction.

2 MR. GRIMES: Thank you.

3 THE COURT: I think it makes it abundantly
4 clear about what the defendant's right is, and it's
5 not to be considered and he has not burden of proof.
6 Doesn't have to prove a thing, doesn't have to say
7 anything.

8 Is there anything further before we proceed
9 with closing arguments and the Court's instructions?

10 MS. SHEALY: Not from the State, Your Honor.

11 MS. FORD: Not from the defense, Your Honor.

12 THE COURT: Please bring in the panel.

13 I need to let you rest in their presence.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: Thank you. Ladies and gentlemen,
16 I hope that you all had a restful evening.

17 I received a note as you were leaving on
18 yesterday: Is there a transcript of the submitted
19 recordings?

20 The simple answer to that question is no.
21 Again I would caution you that those type of
22 questions concern me, give me pause as to whether you
23 all have -- making sure that you all have not had any
24 premature deliberations in this case or discussed the
25 evidence in any manner whatsoever.

1 I also caution you to abide strictly by my
2 instructions on yesterday. And in addition to that,
3 also be cautioned that in your role as fact-finders
4 that you do not move from the role of fact-finder to
5 investigator. That's not your posture in this case.
6 You are to make a decision based only on the evidence
7 that exists in this record.

8 Mr. Foreman, have there been any premature
9 deliberations in this case during breaks or recesses.

10 A JUROR: No, ma'am. As soon as we left after
11 the recording I wrote the question and just gave it
12 to the bailiff and he said he'd give it to you this
13 morning.

14 THE COURT: That was my assumption, it
15 happened exactly as -- I assumed it happened exactly
16 as you have just told me.

17 Are there any exceptions to the Court's
18 curative instruction from the State?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: From the defense?

21 MS. FORD: No, Your Honor.

22 THE COURT: Ms. Ford, you may proceed.

23 MS. FORD: Your Honor, at this point the
24 defense wishes to rest.

25 THE COURT: You may take your seat.

1 Mr. Foreman, ladies and gentlemen, both the
2 State and the defense have rested their cases. We
3 have reached the stage of the trial where you will
4 hear closing arguments and the Court's instruction on
5 the law.

6 You will hear from the Ms. Shealy, followed by
7 Ms. Ford, and then you will hear the Court's
8 instructions. I would ask that you give the
9 attorneys your undivided attention.

10 Ms. Shealy, you may proceed when you are
11 ready.

12 MS. SHEALY: May it please the Court.

13 THE COURT: Yes.

14 MS. SHEALY: Ms. Ford, Mr. Grimes. Good
15 morning. The mental image of Ricky Deas, who drove
16 the green Cadillac, he drove on that street, Line
17 Street where he hang out. Hanover and Line. Ricky
18 Deas is there.

19 But on October 18th, he suffered the
20 humiliation of that car getting towed away, and his
21 buddies were out there. The mental image of him
22 driving up just hours later, on the handlebars now of
23 a bike, stripped of his car. And Miles, he was
24 seeing Whitney. Ricky Deas tells us, he knows Whitney
25 was the one who called the police on the car. And he

1 knows Whitney and Miles were the ones out at the
2 Family Dollar parking lot a couple days ahead when
3 the police came out looking for the car.

4 Can't you picture him, dressed in black, lying
5 in wait down Line Street until Miles walked out,
6 sitting on the car, tells his girlfriend, I'm coming
7 over.

8 And he comes down that street armed, kills a
9 man, he gets out and tears after him. Now when Miles
10 is on the ground, struggling to get up, he takes that
11 weapon and shoots him and shoots him and he shoots
12 him.

13 Now, ladies and gentlemen, this is a case with
14 eyewitnesses. We have Shoreka Miles, and we have
15 Shrod Young. This is a case with the defendant's
16 statement. A word Ms. Ford likes to use lie. Well I
17 will tell you who told a lie, a bold-faced lie, is
18 Ricky Deas. Little Ricky.

19 I was with my girlfriend. Oh, I'm with my
20 girlfriend every night by 12 o'clock. You think
21 Ricky Deas is off Line Street by 12 o'clock every
22 night with his girlfriend? I was with her all night.
23 He thought his girl was going to stand by him. He
24 thought she would lie for him, but she didn't.

25 And we have the phone records from the jail.

1 And I will tell you, the first time you hear them,
2 they are hard to make out. But they're evidence.
3 You have got a tape, and you'll have a tape-player
4 and play them. Please play them. Listen to what
5 Ricky Deas is saying when he is not talking to the
6 cops, he is talking to somebody he knows.

7 Let's first focus on Shoreka Miles. We have
8 the burden of proving to each of you beyond a
9 reasonable doubt that it was Ricky Deas, Little
10 Ricky, who shot Miles. We meet that burden with
11 Shoreka Miles. She walked into this courtroom, the
12 Judge is going to tell you, you are the people who
13 decide who is believable and who is not believable.

14 They have a reason to come in here and lie?
15 Do they have a bias? Shoreka Miles made the decision
16 for the right reasons. At first she does not want to
17 be on the street talking to Investigator Cooper when
18 the crowds are milling around and say what she saw.
19 This is Line Street, ladies and gentlemen, she was a
20 young girl who would sit hanging out on Line Street
21 watching a man come up to another man and first fight
22 him and then shoot and kill him.

23 She doesn't want to be talking to Detective
24 Cooper about what she saw. But she makes the right
25 decision when she had the opportunity to see the

1 grieving father. She understands a family has a
2 right to know who took their child's life.

3 Remember how she testified. As I told you all
4 in the beginning, these aren't people who are used to
5 being questioned a lot. They're not people who make
6 a living speaking to people. But she came in here
7 and very genuinely and honestly told you who she saw,
8 who she saw shoot and kill Miles.

9 And she didn't know Miles just from the
10 morning before or the evening before. She was asked
11 by Detective Osborne, have you seen him before? Oh
12 yeah, I saw him earlier the day before.

13 Detective Osborne said, maybe I should have
14 said, okay, did you see him before then. She has
15 told you, she knows who he is. People who hang out
16 at Line Street and Hanover Street they know each
17 other. They may not know each other like friends,
18 she knew who Little Ricky was. He had a distinctive
19 look. Now his dreads will be pulled back in the
20 ponytail for the trial, but he's got the dreads. He
21 is a nice looking young man. She knew Little Ricky.

22 And I know you've seen pictures so many times
23 and you'll have them back there with you as well.

24 It's important where the tent is compared to where it
25 happened. She is very close to where this went down.

1 No wonder she was so shaken and scared.

2 Showing you State's Exhibit 12. She pointed
3 out in the picture that didn't have the one and two
4 marks where the fight took place. It's near the car.
5 Miles goes down, right where with the blood is found.
6 What Shoreka says is completely consistent. And
7 where is the tent? Right over there. This is a
8 downtown street, this isn't a wide highway.

9 Showing you 10. where the police officer is
10 standing, that's where the tent is. She sees Ricky
11 Deas coming up the street. She sees him approaching.
12 She sees him come at Miles. She sees him struggle
13 with Miles. She sees Miles go down. Then she sees
14 Miles get shot. She had plenty of time to see
15 exactly who shot Leroy Simmons.

16 More importantly, would she have any reason to
17 come in here and tell you she was sure if she wasn't
18 sure? That's doesn't help the victim's family. That
19 doesn't help them at all. She knows that it was
20 Ricky Deas.

21 In State's Exhibit 17, you can even more
22 clearly see how very close the tent area is to this
23 area where the whole thing went down. And in State's
24 Exhibit 9, where the car is is where the tent was.
25 The photographs show us how close to the sidewalk the

1 tent was. This is not a large area at all. She was
2 quite able to see what happened.

3 And she is quite certain who did it. And when
4 you look at her, look at what she does right after he
5 gets shot. Does she scurry away? Does she flee?
6 Does she run? She takes the one thing she's got that
7 she thinks might could help him. She takes the scarf
8 out of her hair, she runs to him, she sees him
9 bleeding, she applies pressure.

10 And did you see how she reacted when she saw
11 the scarf again? How she got choked up? This was a
12 terrible thing to see. This was a horrible thing
13 that happened. And she's taking it very seriously.

14 Nothing about her demeanor would suggest to
15 you that she would carelessly come in here and say
16 Ricky Deas was the shooter. She takes it seriously.
17 She has told you that is who shot Miles.

18 And I don't want you to lose sight of
19 something. We have emphasized that she doesn't come
20 clean with the cops when they were asking her about
21 it initially, Detective Cooper. Even when Mr.
22 Simmons started talking to her, she told us, I did
23 not really tell him everything. But the testimony is
24 Detective Osborne realizes Mr. Simmons is bringing
25 her in and he has told us, he did not know at that

1 point if she knew who the shooter was.

2 But she came in, and it's only the next day.
3 Because she had a change of heart. And she told
4 Detective Osborne what she saw. And Detective
5 Osborne followed the procedure -- you'll have this
6 back there, too -- read her the admonition. Look,
7 when you look at these photographs, you know they're
8 pictures, hair might be a little bit different,
9 facial hair might be a little difficult, complexion
10 may look a little different. She knew that. She
11 knew that she was going to need to look at this
12 carefully.

13 And when she looked at it he told her, be
14 careful, take your time, and what did she do? You
15 look at these pictures. Ms. Ford has tried to
16 suggest, oh, he just stood out for some reason that's
17 why she chose him. These guys look pretty similar.
18 She chose Richard Deas. And what does she write on
19 her admonish form? Number one is the one who shot
20 Miles.

21 There is nothing about this young lady that
22 would suggest that she would be careless in doing
23 this. This is a very serious matter. Probably the
24 most serious matter she'll ever encounter. It's not
25 easy to come up there and stand up and point at the

1 shooter. That's not an easy task for anyone. And
2 she's a young girl.

3 Now what also is interesting, that is
4 consistent with what Shoreka tells us, is Dr.
5 Collins' testimony. She told us about the actual
6 gunshots. She came up here and showed you on her
7 body where they were. And remember that Shoreka had
8 indicated that Miles was down and he was trying to
9 get back up.

10 What did Dr. Collins tell you? That the the
11 way the shots went into the body, it's suggestive of
12 a turn in some fashion. When I asked her, is that
13 consistent with someone being down, trying to get up?
14 She said yes.

15 Shoreka is telling you exactly what happened.
16 But there is something also interesting about what
17 Dr. Collins testify to. And I suggest that through
18 Ms. Ford's questions, this is what she wants you to
19 do. Here is Ricky Deas shot Miles, and here are the
20 things she wants you to look at. So instead of
21 looking here, let's look at the fingernail scrapings.

22 What did Dr. Collins tell you about fingernail
23 scrapings? If you had sex earlier, their DNA could
24 be under your fingernails. If you had touched your
25 child's, scratched someone's back, given a handshake,

1 their DNA could be underneath your fingernails. She
2 said it's rarely very helpful. It's helpful most
3 often in a criminal sexual conduct case where the
4 bodies are together or semen or something that aids
5 in that type of an investigation.

6 But here the fingernail scrapings only show
7 that he had some type of contact with somebody, so
8 that would have gotten DNA under his fingernails.
9 There is absolutely no reason to look at these areas
10 and ignore the center. No reason.

11 Let's think about how is it Shoreka would have
12 known who little Ricky was? It was his hangout. She
13 told you that. We heard all about that area. Line
14 and Nassau, Line and Hanover. The Nights Convenience
15 Store. That's where he hangs out. Right in this
16 area.

17 And there has been testimony from several
18 people that this is a place where people kind of mill
19 around, they congregate. He knew who he is, he knows
20 who he is, that kind of area. Who else told us this
21 Ricky's hangout? Shaniqua. Remember she told us
22 that she would take him over in the area. Whitney
23 Doctor, she had seen him there at least on two
24 occasions with the car. Shrod Young. Shoreka. Oh,
25 and Ricky Deas. Ricky Deas tells you in his

1 statement, that's his area.

2 Go back one more moment to the fingernail
3 scrapings, another thing Dr. Collins said about that
4 that is very significant, sometimes you will find
5 contact between people if there has been hand-to-hand
6 combat. You know, you're close enough that your
7 hands are scratching each other. There is absolutely
8 nothing about scratches in this case.

9 And remember she told you usually you would
10 see bruises or evidence of that on the hands. There
11 is no evidence of that in this case. Please don't
12 get sidetracked on fingernail clippings.

13 Now when Shoreka was testifying, there was
14 some questions about when this was that she had seen
15 Ricky Deas earlier. And she gave the example of when
16 they were out in the street, and he asked her for a
17 cigarette. And she told us she gave him a tobacco
18 cigarette.

19 We don't know what kind of cigarette he was
20 asking for. We don't know how often if he did smoke
21 tobacco cigarettes how long had he smoked. But again
22 don't focus on this, focus on that detail.

23 You judge Shoreka's credibility. And Ms. Ford
24 was asking a bunch of question, okay now was it 10:00
25 a.m. that you saw him the day before, or was it 10:00

1 p.m.? Do you think Shoreka Miles is someone who
2 says, at 10:00 p.m. I saw him. That's not going to
3 be the way she talks. I don't talk like that.

4 So when she said 10 o'clock, perhaps that is
5 David Osborne, the detective, thought she meant in
6 the evening. But what she told us, yeah, I saw him
7 earlier that day, the day before.

8 She told us that he was in all black. Now I
9 guess if you had on your mind vengeance, you are
10 going to get one of your buddies to go with you, and
11 you are going to get a weapon and arm yourself, I
12 would wear black.

13 She told us he had a black T-shirt on earlier.
14 She tells us that he had a black hoodie on that
15 night. He was dressed in black. That's what is
16 significant. He rides up that street dressed in
17 black ready to kill.

18 And what direction does he come from? His
19 corner, Line and Hanover. He is coming that
20 direction towards him. And he comes that direction,
21 he isn't riding his bike any earlier that evening in
22 front of Shoreka. But when Miles walks out he was
23 down the street on Hanover waiting to see Miles. He
24 was going to show him about getting that car towed.
25 And that's the area that that car had been seen in

1 twice before, Line and Hanover.

2 And there were a lot of questions asked of
3 Shoreka about how did she describe Ricky Deas? And
4 she said, he's got dreads almost to his shoulders.
5 His light. Shoreka Miles has a darker complexion.
6 He is young. She says 21 or 22. He's short, she
7 says 5'3". She was describing Ricky Deas.

8 Let's talk about Shrod Young. Now let me just
9 say he is a little less honorable at coming clean
10 than Shoreka. I will admit that. That guy did not
11 want to get involved.

12 And what I don't know is how does it feel to
13 have the pressures of living in that area and not
14 wanting to get involved, and being there when a
15 friend of 10 years dies. I don't know what that
16 feels like. I don't know that struggle.

17 But I will tell you, he did not come clean
18 until David Osborne had him arrested. There is no
19 getting around that. And the Judge is going to tell
20 you, you can believe all that a witness tells you or
21 you can believe some of what a witness tells you.
22 She'll instruct you that.

23 And let's talk about the warrant that
24 Detective Osborne arrested him with. You'll have
25 this back there with you, please look at it. I don't

1 know how many of you work with computers or where
2 there are forms, but this whole thing about an armed
3 robbery, please look at it on the warrant. It's the
4 very beginning where you are starting to plug in your
5 information. And Detective Osborne told you he just
6 didn't correct that part.

7 Every single thing else about this warrant is
8 obstruction of justice. He wasn't arresting Shrod
9 Young for armed robbery. Shrod Young told he wasn't
10 being arrested for armed robbery. That's what the
11 defense wants you to, God, knows don't look here,
12 look at this part, robbery.

13 Miles still had money in his pocket. We put
14 it into evidence. This isn't armed robbery. But
15 what does the warrant say? That on October 19th,
16 2007, Shrod Young did intentionally and knowingly
17 violate armed robbery. Okay.

18 Then you drop down and you describe the
19 offense. Here it tells you, this is an obstruction
20 of justice charge. And it tells you, on the above
21 date, at about 2:30 in the morning, officers
22 responded to the area of Line and Hanover for a
23 shooting call. Upon arrival officers located Leroy
24 Simmons who was suffering from gunshot wounds. Mr.
25 Simmons was transported to MUSC where he later died

1 as a result of the injuries.

2 Investigator David Osborne met with two known
3 witnesses who both stated they spoke to Shrod Young
4 following the shooting. Shrod told both individuals
5 he witnessed the shooting. He told one witness he
6 knew the identity of the shooter.

7 Investigating officer later spoke to Shrod who
8 told the officer that he would not speak to him about
9 the incident, and he further stated, I ain't no
10 snitch.

11 And David Osborne told you during one
12 conversation he says, Shrod said, just put me down
13 for I didn't see anything. David Osborne should be
14 applauded. He should not be referred to as a liar.
15 He could have walked away from this case. He could
16 have let it lie. He could have said, another
17 shooting in downtown Charleston. He was aggressive,
18 he knew people had seen it, he did his job, and he
19 did it excellently.

20 And Shrod will tell you he was scared when he
21 was taking to Detective Osborne. But that doesn't
22 mean he is lying when he said he saw Ricky Deas shoot
23 Miles. Yeah, he was scared. Yeah, he thought he was
24 in big trouble. Well, he should have. He should
25 have.

1 But that doesn't mean that he did not see what
2 he had told people he saw, what David Osborne knew he
3 had seen. The questions that relate to Shrod Young
4 is one thing, was he there and does he know who the
5 shooter was? I guess that's two things. He was
6 there and he knows who the shooter was. And he told
7 you who the shooter was.

8 And also how did Detective Osborne also know
9 Shrod was out there? Because Shoreka had told him.
10 Shoreka had already been interviewed by Detective
11 Osborne. And she told him Fish was out there. I
12 don't know that any of us like how Fish behaved that
13 evening. But one thing he can hang his hat on is
14 that he called 911.

15 But when Shrod finally got arrested, hanging
16 out, he too was shown the lineup. And who does he
17 identify? Number one, Ricky Deas. He prints his
18 name. He signs his name. And what does he say on
19 the admonition form? That is the one I see, he
20 killed my boy.

21 Now let's talk about Ricky Deas's statement to
22 the police. As a reminder it was the early morning
23 hours of the 23rd I think when he gets arrested.
24 Where is he? He is sleeping in the bed with
25 Shaniquene. His sister is over there. A baby is over

1 there. And he gets arrested. He thinks his girl is
2 going to stand up for him.

3 He gets pulled out of her bed and arrested and
4 taken down to talk to David Osborne. And David
5 Osborne told you, he reads him his Miranda warnings,
6 this is a voluntarily statement on the part of Ricky
7 Deas, and he thought he was being crafty. Ricky
8 thought he was being crafty.

9 He was read his rights, he signed it. The
10 statement itself, you will have in the back with you.
11 Again on the statement, very top, indicates what his
12 rights are. He signs that he acknowledges that.
13 He's willing to talk to David Osborne. He's going to
14 outsmart him.

15 And what does he tell Davis Osborne? In his
16 handwriting, first thing out of the box, first words
17 that we have of Ricky Deas, every night I be in my
18 girlfriend's house before or around 12:00. We start
19 out with a lie.

20 Now Ms. Ford wants you to think that David
21 Osborne said, you got to write an alibi down. Why in
22 the world would a detective say, write an alibi down.
23 That does not make one bit of sense. Not one bit of
24 sense. David Osborne told you that he asked him,
25 what were you doing Thursday night into Friday

1 morning? Tell me what you were doing.

2 First he asked him, when did you hear about
3 Miles's murder? Oh, one of my homeboys, I ain't know
4 which of them, told me about 5 o'clock the day after
5 the murder on Friday. He told me Miles had been
6 killed up Line.

7 So he was telling you he knew the night Miles
8 was killed. So when Detective Osborne was saying,
9 where were you that night, he knew exactly what night
10 we were talking about. Of course he knew what night
11 we were talking about because he killed him.

12 And on the night Miles was killed, where were
13 you? And Ricky Deas said, I took a cab, Express Cab,
14 to my girlfriend Shaniquene Williams' apartment,

15 , about 11:00 p.m. I stayed there all night.

16 It was me, Shaniquene and her baby, six months
17 old. I stayed there all night. And left the next
18 day around 3:00 or 4:00 to go to the mall with slick,
19 Ricky Bradley, picked me up in his cousin's car, a
20 white Altima.

21 So without any questioning he is telling David
22 Osborne, oh, no, no, no, I was with my girl. I was
23 with my girl all day until I go to the mall late in
24 the afternoon on Friday.

25 I don't think Ricky Deas realizes Detective

1 Osborne had already talked to Shaniquene. He thought
2 he could get to her first.

3 Where did you come from before you got to
4 Shaniquene's apartment?

5 Off the block on Line Street, Hanover.

6 What were you doing on Line Street?

7 I been by myself.

8 What happened?

9 I had my mama's car parked on Line Street.
10 Some girl, my little brother's girlfriend, tried to
11 report my mama's car stolen. The police showed up.
12 I mean, I wasn't out there. I mean, I parked the car
13 on Line Street. Me and one homeboy, Laquelle
14 Dickson, took Express Cab from Line. The cab dropped
15 him off at King Street Palace, then dropped me off at
16 Franklin.

17 That didn't happen. Shaniquene told you he
18 came over with some boys earlier in the evening.
19 Well early morning hours of the 19th. He came over
20 with some boys, tried to bring them into her house,
21 she is inside the house with the baby, she says --
22 her instincts are pretty good -- no, you are not
23 bringing them in here. He goes, okay, we will go get
24 them back and I will be back.

25 And he never shows back up until Friday. He

1 wasn't with her all night.

2 How do you know the girlfriend reported the
3 car stolen?

4 Because she had asked to use one of my mama's,
5 Altida Bennet, cars. When my mom said no she got mad
6 and said she was going to report the car in her name
7 stolen. That car was a green Cadillac that she got
8 in her name but my Mama used it and made payments.

9 The girlfriend said she was going to report
10 the car stolen about three week ago. The
11 girlfriend's name was either Whitley or Whitney.

12 Well this is interesting on several different
13 levels. First of all, what's still on his mind?
14 What's still on Rick Deas's mind is that car. He is
15 still hot about the car. Well Whitney Doctor number
16 told you his mama never made a payment. That's why
17 the finance company was calling for her. He tells
18 you he wasn't out there when the police officer was
19 there. Yeah, he was. Whitney Doctor told you he was
20 out there.

21 He says she was going to report it stolen.
22 She reported that Ricky Deas shouldn't be driving
23 that car. He lies about everything.

24 Where did you leave the car on Line?

25 I left the car on Line around Hanover because

1 I went to -- and I will just use the letter F -- my
2 girlfriend Tianai who lives in the Johnson projects
3 on Harris. I parked the car there during daylight.

4 He is trying to distance himself from that
5 area. The homeboy called me at Tianai's apartment
6 and told me about the car, and the police shining a
7 light on it. I called my mama because I know what
8 time it been. I know what time it been.

9 whitni has told you he was right there on that
10 corner. And when she comes running out of her house
11 -- and remember, she is the nursing student, you saw
12 how she behaved on the stand. This is a decent young
13 girl who is helping somebody out by getting the car
14 in her name. And when they tell her, whoa, the
15 insurance is not paid up on it, she is like I'm
16 getting that car back.

17 I think she said something like, time out.
18 And she comes running from her house in her pajamas
19 to make sure that car gets out of their possession.
20 Ricky Deas is sitting there watching. And what did
21 whitni tell you? He was using his cell phone and who
22 shows up? His mama. Furious. And they're having
23 this little scene on the street.

24 And poor whitni Doctor's mother gets this
25 call, doesn't know anything about any of this, has to

1 look for paperwork and bring it down. And the
2 paperwork showed it was Whitney Doctor's car in her
3 name.

4 Nothing about Tita not letting her drive the
5 car. Ricky Deas has been driving that car. And that
6 car in his spot on Line and Hanover gets towed away.
7 And where did the mama head? Right towards the group
8 of boys that were out there. Ricky Deas was
9 emasculated.

10 He said in his statement, oh, when I got out
11 there in my car, and then David Osborne told us he
12 scratched it out and now it says my mama's car,
13 everybody been gone. That's not true. Whitney told
14 you, he was right out there.

15 You will have this statement in the back and I
16 invite you to look at it because this shows the
17 craftiness that Ricky Deas thought he could pull off.
18 He just knew his girl would rise to the occasion.
19 And who did he call Friday? Just this past Friday?
20 Shaniqua told you, he called her. He said, you know
21 we got court Monday. He is still hopeful. She
22 wouldn't lie for him then and she won't lie for him
23 now.

24 Let's talk about what Shaniqua tells us. She
25 told us what I have already discussed about when he

1 comes over he's got his guys with him, she's like,
2 heck no, I'll be back. And what does she do? She
3 leaves the door unlocked for him because she is going
4 to go back to sleep.

5 But at 3 o'clock he still wasn't back. At 3
6 o'clock he still wasn't back. And she calls him.
7 And she does not see him again until the next day
8 when he shows up wearing a khaki shirt, and pays for
9 her hairdo.

10 Isn't that interesting? She said he'd never
11 done that before. But Friday, after he has killed a
12 man, he's going to treat his girl right. He is going
13 to pay for that hairdo.

14 And Ms. Ford when questioning Shanigune, there
15 was some confusion about what time it was those guys
16 came over. She says it was around 12:00 or 1:00 I
17 think is what she testified, 12:00 or 1:00. And in
18 her statement it said 3:00 a.m.

19 Well when Ms. Ford asked her about that, first
20 of all she said what happens at 3:00 a.m. is when she
21 realizes he isn't back yet and called for him. But
22 Ms. Ford asked her, Ms. Ford's language, oh, well did
23 Detective Osborne lie when he said that you said it
24 was 3:00 a.m.? And she answers, yes.

25 To say that David Osborne lied, what

1 difference does it make which time it was frankly?
2 Again we are looking at this. She tells you, no, I
3 remember it was earlier than that and it was at 3
4 o'clock that I made the phone call. The point is
5 this, Ricky Deas was not at her house when Leroy got
6 killed. He was not at her house then. He was not at
7 her house at 3 o'clock, 4 o'clock, 5 o'clock, 6
8 o'clock. He wasn't with her as he told the police
9 officer.

10 And remember Detective Osborne told you he had
11 talked to her at the apartment after Ricky got
12 arrested. He goes down and he talked to Ricky. He
13 comes back, that's what kind officer Detective
14 Osborne is, he comes back and she says, now
15 Shaniquone, Ricky says that he was with you all night.
16 And she said, no, he wasn't. He came by with those
17 guys and I told him they couldn't stay.

18 Now the phone calls. The phone calls from the
19 jail. Again you'll have that tape, please listen to
20 it because it's very significant that he is talking
21 not to the police but to friends and family.

22 And he says, what I been saying is them boys
23 ain't got shit. And I think he is talking about the
24 police when he says boys. Them boys just, them boys
25 just, and the other guy says, he said, she said? And

1 he says yeah, about what make it, about what make it
2 good I'd given them some statements but them boys
3 ain't showed them the statement right there, but
4 about what makes the situation good, them boys
5 trying, they said two people out there but they only,
6 they only know one person.

7 He thinks it's good that he is the only one
8 that has been identified and they don't know who the
9 other guy on the bicycle was. Or he thinks it's good
10 that they have only got one witness and not two. But
11 I think he is talking about they have only got one
12 person on the bike that they know who it is and
13 that's going to be good for him.

14 Because then the other person says, well
15 didn't they say about the bike or something? And he
16 responds, and they ain't really know who did what.
17 Feel me. He thinking he is going to be okay.
18 Because if there are two people and they don't know
19 who did what, he is okay. Oh, he says, get what I'm
20 saying?

21 And then he says, but lot of them, you know,
22 them boys only got one person and everything good.
23 Not, I didn't do this, I can't believe they got me in
24 the jail. Them boys only got one person, as long as
25 that, everything good.

1 I gone, gone doctor. And I tell them boys,
2 the police, I sleep with Nicki every night. But she
3 tell them boys I ain't sleep with her that night.
4 She tell them boys I ain't sleep with her that night.
5 And then he says, oh, but yeah, and like I been
6 saying, but yeah, she good on that part. Because I'm
7 just going to tell her, you know, just tell them boys
8 when the time comes that she got Thursday and Friday
9 mixed up and I ain't come home after homecoming, no.

10 Again, but she good on that part because I am
11 going to just tell her, you know, just tell them boys
12 when the time comes that she got Thursday and Friday
13 mixed up and I ain't come home after homecoming, you
14 know.

15 He thinks he has got it made. He is not
16 professing his innocence during this conversation. I
17 think I'm good. They know there were two, and they
18 don't know who did what. And, I'm going to tell her
19 tell them you got your days mixed up. I'm good.

20 And then he also says, I don't know, I don't
21 know if he say one of my homeboys but what I'm about
22 to say, but I forgot what I'm about to say about them
23 boys, but them boys they charge me with the murder
24 weapon. They ain't got the murder weapon.

25 He knows where that murder weapon is. He

1 knows where it was put. And someone says, but I
2 don't know how they charge you with murder, what
3 evidence they got? What evidence they got? He says,
4 nothing.

5 These conversation are as important for what
6 they say as for what they don't say. He thinks he is
7 going to work his girl. And in a last ditch effort
8 on Friday, you know, next week is court. She
9 wouldn't do it for him. She is not a fool.

10 Ladies and gentlemen, when you have the
11 opportunity to review everything, and when you recall
12 the testimony of Shoreka Miles, Shrod Young, Whitney
13 Doctor, David Osborne, Shaniqua Williams and Kim
14 Collins, you will find the State has met its burden.
15 Ricky Deas, Richard Deas, Little Ricky, he didn't
16 outsmart everybody. But he killed a man for nothing.

17 Leroy Simmons didn't deserve to die. Ricky
18 Deas doesn't deserve to get away with it. Thank you.

19 THE COURT: Ms. Ford.

20 MS. FORD: Yes, Your Honor, may it please the
21 Court.

22 THE COURT: Yes, ma'am, you may proceed.

23 MS. FORD: Hello. Richard Deas is innocent.
24 And today you are going to have to go back to your
25 jury deliberation room and you are going to have to

1 think over everything you've heard and consider
2 everyone that you've heard from.

3 Because, like I said at the very beginning of
4 this trial, it comes down to credibility. And quite
5 simply the State's witnesses have no credibility.

6 You know, sometimes as jurors you are asked to
7 decide if a crime even happened. That's not the
8 situation here. A crime happened, a man died. There
9 is no denying that. The reason why you are all here
10 is to decide if Richard Deas is the one who did it.
11 And the answer is no.

12 Now you have to ask yourself what is there and
13 what isn't there? Well, there is no physical
14 evidence. Nothing that you can see and feel and
15 touch. No DNA. No forensics. And you know what,
16 sometimes there just isn't any. There just isn't.
17 It's not the State's fault, and it's not necessarily
18 the cops fault, it's just not there.

19 In this case the police sent off some items to
20 SLED to have tested, but nothing at all came back
21 connecting Richard Deas to anything with Leroy
22 Simmons. And one thing did come back, the fingernail
23 scrapings. And I'm just going to touch on that
24 because it's not conclusive, it doesn't prove his
25 innocence necessarily, but it is important because

1 Dr. Collins told you, her example is how you would
2 get DNA under your fingernails is from a fight.

3 And there is an indication from the testimony
4 that there was a fight or struggle of some sort. And
5 this DNA was fresh. It's fresh there, there had not
6 been any time for to wash his hands or to rub it off
7 or anything like that. It's an unidentified person.
8 The police didn't compare it to Fish's DNA for
9 example, or even Shoreka Miles.

10 It really doesn't show who did it, we don't
11 know, we don't know who that unidentified person was.
12 Maybe that unidentified person is the shooter, maybe
13 not. But it's just something to consider, and that's
14 all it is.

15 Now also now we are going to go to what the
16 State actually has shown. First of all there is a
17 motive. The motive is not an element of the crime,
18 the State doesn't have to prove a motive, it's really
19 just there to put thing in perspective so we
20 understand why something happened.

21 And the State's motive in this case is Whitney
22 Doctor and the car. And that motive is at least
23 borderline is on the ridiculous. What do we know
24 about that car? Well Whitney comes forth shortly
25 after the shooting. She goes to Detective Osborne

1 herself. She thinks there might be something
2 significant just because this has happened so
3 recently.

4 So she goes to the police, and she tells them
5 what happened. She somehow is connected to Altida,
6 Richard's mom. And Altida apparently has bad credit
7 and so she agrees to put the car in her name and
8 Altida is going to make the payments. And she
9 becomes scared and she tries to get the car back.
10 And that's perfectly understandable, that's the smart
11 thing to do.

12 But in the meantime Richard is driving around
13 in this car occasionally. She sees him on the 15th,
14 a few days before the shooting and she happens to be
15 with Miles when they see him. But, however, there is
16 no confrontation at all. There is no physical
17 argument between them, there is no verbal argument
18 between them. Miles is just standing there.

19 He is not even dating this girl, they are kind
20 of talking, they had only known each other for about
21 a week. Miles was just standing there, okay? No
22 altercation that day.

23 And then two days later, on the day, night of
24 the shooting, Whitney finds the car -- or she hears
25 that the car is at Line and Hanover. So she goes out

1 there and Richard is down the street. Miles is not
2 with her at that point, okay, he is not in the
3 picture at all. Again no one even talks to Ricky,
4 there is no altercation, no verbal altercation, no
5 physical altercation at all with anyone. Ricky just
6 called his mama, that's it.

7 Officer Barfield came and he testified. And
8 he told you that he didn't really even know anything
9 about Richard Deas because nobody mentioned anything
10 about any kind of dispute, or that there was a
11 problem other than someone was driving the car and
12 the person who the car's name was in was just trying
13 to get it back.

14 He didn't make any arrest from this. He
15 didn't think anything illegal had happened. He
16 didn't even think that the whole incident dignified a
17 police report. He only wrote a police report about
18 two weeks later at the specific request of Detective
19 Osborne.

20 And so the State would have you believe that
21 even though there is no indication that Richard knew
22 anything about Miles's whereabouts, or that he would
23 be at Elaine Singleton's, or the time he would be
24 there, that somehow from Line or from Line and
25 Hanover Street, which is not right there it's pretty

1 far away -- Shrod Young told you how Nassau Street,
2 that corner of Nassau and Line was many feet away
3 from where the shooting occurred and Hanover is much
4 further which you can look at the map and see -- and
5 somehow Richard Deas knew that Leroy Simmons would be
6 walking out at that time.

7 Now it was mentioned that Fish was on the
8 phone for example. But Detective Osborne told you he
9 looked for a connection between Fish and between
10 Richard Deas and there was nothing, nothing there.
11 It's ridiculous, it make absolutely no sense
12 whatsoever.

13 What else is there? Just one more thing about
14 that. Possibly explains the reason why the name
15 Ricky just happens to be floating about. Nothing
16 special about Ricky, it's pretty generic, it's not so
17 special a name, nickname like Miles or Fish. So easy
18 to just to drop a name, nothing special.

19 So what else is there? Okay. We go to
20 Ricky's, Richard's statement. He is arrested. He is
21 taken from his bed at 6:00 in the morning after a few
22 hours of sleep. He is arrested for murder, biggest
23 crime out there. He's taken to the station. And he
24 tells Detective Osborne, I don't know. But
25 eventually he gives an alibi.

1 He is an 18-year-old boy who was arrested for
2 murder. The state has painted a picture in which
3 people don't like talking to the police, people lie,
4 they don't want the police to know their business,
5 they don't want the police to know their friend's
6 business, but yet that Richard Deas is exempt from
7 that because he told something that cannot be
8 verified and that means he is a murderer. Is that
9 fair?

10 He doesn't have to have an alibi. People
11 don't have alibis all the time. That's just the way
12 it is.

13 And then you go to the phone records, or the
14 phone tapes, the recordings that you'll hear from the
15 jail. Their from the 23rd of October, the day he was
16 arrested. And what you'll hear on those tapes is a
17 young man who is upset and mad and who's doing
18 nothing but commenting on the complete lack of
19 evidence that the State has.

20 They charged him with a murder weapon. But he
21 was charged with possession of a weapon during a
22 crime of violence. They charged him with that. They
23 accused him of having a gun. He was commenting,
24 there is no gun. Detective Osborne told you, there
25 is no gun. That statement is nothing but the truth.

1 And the whole time he is talking he is just
2 saying how weak the case is for the State. And that
3 was true then and it's true now.

4 And then, yeah, he talked about Shaniquone or
5 Nicki, talking about her maybe getting the dates
6 mixed up. When you saw her, you heard from her on
7 the stand. And, yes, Richard Deas supposedly called
8 her last Friday. He never asked her to do anything.
9 He never threatened her in any way. She didn't
10 indicate that at all.

11 And the State would have you believe that
12 because he paid for her hair that he was trying to
13 buy an alibi. Well, she told you he would give her
14 money when she asked. They had only been seeing each
15 other for about a month, so there is a good chance
16 that she didn't have a hair appointment before that
17 time. That means nothing. And Shaniquone Williams
18 never said it did.

19 And then you go to Shaniquone Williams and the
20 timing. Now she says, during this trial, that
21 Richard came over at 3:00 -- or earlier in the night
22 about 12 midnight. And he was supposed to come back
23 but didn't. So the State would have you believe that
24 possibly that means he did something and that's why
25 he didn't come back.

1 But on the 23rd, the day Richard was arrested,
2 she gave not one but two statements. And we went
3 over that when she was on the stand. And in not one
4 but both specifically, very clearly it says, he came
5 over at 3:00 a.m. He had boys with him and I told
6 him to leave.

7 So that story is actually better for Richard
8 because it shows he came over right after the
9 shooting happened. And there is no indication that
10 he was out of breath or anything like that.

11 So she says -- I wasn't saying -- she says
12 Detective Osborne lied. She acknowledged that her
13 statement did say 3:00 a.m. not once but twice, two
14 different statements taken at two different times.
15 What she is saying is that Detective Osborne lied for
16 her. He just took it upon himself to come up with
17 the story of 3:00 a.m.

18 But that story is better for Ricky. Why would
19 Detective Osborne write down something that was
20 better for Richard Deas than her story? And then the
21 car. She was adamant on the stand that she didn't
22 see how he had arrived. But in her statement it says
23 that he came in his mama's purple Roadmaster.

24 And again she claims, she agrees that is in
25 her statement, but she claims that Detective Osborne

1 took that upon himself to write down, that she never
2 said that.

3 It just doesn't make sense why Detective
4 Osborne apparently was trying to help Richard Deas.
5 So either she is lying or Detective Osborne lied.
6 And I'm not saying it was Detective Osborne.

7 ~~So what else is there?~~ Okay. There is two
8 witnesses. Two witnesses who have two very different
9 stories. And their stories cannot be reconciled with
10 one another.

11 This isn't a situation where one person is
12 saying, the guy was wearing blue, and the other
13 green. People sometimes confuse colors or something
14 like that, that might not stand out the most in your
15 mind. Okay. They're not saying, oh, the shooter was
16 on the right side and the other person saying the
17 shooter was on the left. That's not what we are
18 dealing with.

19 Shoreka says very clearly she was at the tent
20 and Fish was right there standing right there with
21 her. Two guys come up on a bicycle. That's her
22 statement.

23 Fish however, he is adamant that he was not at
24 this tent. In fact he thought we were kind of crazy
25 for even suggesting that a tent existed. Even though

1 you saw the pictures, you didn't get a clear view of
2 the tent, but clearly we saw poles and a top and the
3 police told you how there was a tent. But he didn't
4 know anything about a tent.

5 He was adamant he was not with Shoreka Miles,
6 that he saw her after the fact when she was at Leroy
7 Simmons trying to stop the bleeding. That he was not
8 with her and he did not see two boys, he saw one,
9 only one, and that boy was not on a bike he was on
10 foot.

11 So those stories can't be consistent with one
12 another in any way. They're completely different.
13 Yet the State presented both. So what are you
14 supposed to do, Eeny-Meeny-Miny-Moe? Now there are
15 several theories possibly floating about what could
16 have happened.

17 Now the first, robbery. Now I wasn't pointing
18 out typos to Detective Osborne to show that he was
19 incompetent in some way, that was not the point. The
20 point in me asking those questions was essentially to
21 show that robbery was on the mind. It wasn't in one
22 place, it was in two places, two different places.
23 In Fish's affidavit for his arrest, and then on some
24 evidence log sheets for Richard Deas.

25 And I'm not saying that either one was

1 arresting for robbery. I'm just trying to show that
2 robbery was on the mind. So people thought that
3 there was maybe a robbery. It was believed possibly
4 that some money was missing. But no one can know for
5 sure exactly how much money Leroy Simmons had on him
6 beforehand. They couldn't verify that.

7 The one thing they could verify was that a
8 phone was missing. Leroy Simmons had been on the
9 telephone, he called a cab. The police cannot find
10 his cell phone.

11 So why didn't the police try to say that the
12 shooter must have taken it? Because that doesn't
13 match Shoreka Miles's story. Because she clearly
14 said she didn't see anybody take anything.

15 And then we've heard from several people of
16 the cocaine on the ground. Cocaine just sitting
17 right there in the middle of the street. A lot
18 people would be out of business if you could just
19 walk down Line Street and pick up a bag of cocaine
20 off the street. And Shoreka and Fish, they both told
21 you how there was no one else out there. There is
22 cocaine just lying there. Maybe a drug deal gone
23 bad? Who knows.

24 Let's go to the specifics of the stories, the
25 specific of the credibility of the two main

1 witnesses, Shoreka and Fish. Now Ms. Shealy told you
2 at the beginning of the trial that they're not going
3 to be the best witnesses, okay. But they get on the
4 stand and Shoreka Miles does seem like a better
5 witness, certainly, than Fish.

6 But you have to consider that she, this it not
7 just that she told two different stories, in trial
8 she gave a fourth story. That's four different
9 stories.

10 Now stories number one, as she is out on Line
11 street holding a handkerchief to her friend to try to
12 stop the bleeding, a police officer, Detective
13 Cooper, he asked her, did you see anything? And she
14 says, no. I was in the my apartment. I heard the
15 shots, and I came out and saw him bleeding and I
16 tried to help him. That's statement number one.

17 So as she was holding a handkerchief trying to
18 stop a man from bleeding, she doesn't think that
19 telling the truth would be important at that point.
20 So then Mr. Simmons comes, Leroy's dad, a grieving
21 father desperate for information. And she tells him,
22 I was in my apartment, I heard the shots and then I
23 kind of looked and I saw the face of the driver of
24 the bike, okay. That's story number two.

25 And Mr. Simmons, he decides to focus on Fish.

1 He believes her, just like Detective Cooper believed
2 her. And then she comes forward and she goes to Mr.
3 Simmons and says that she actually saw the whole
4 thing. And so Mr. Simmons takes her to Detective
5 Osborne where she gives a statement, a written
6 statement, and that is when she gives the bulk of her
7 story.

8 She was sitting at the tent and Fish was out
9 there with her. She sees two boys on a bicycle come,
10 one jumps off, there is kind of a struggle. Leroy
11 falls, Leroy is shot.

12 She indicates Detective Osborne is under the
13 clear impression that she did not know who the
14 shooter was. And he asked, have you seen him before?
15 And her response, her only response was, no to the
16 second guy, the driver, but him I saw earlier that
17 night wearing the same exact clothing and he asked
18 for a cigarette and I said no.

19 Now why are those little details important?
20 I'm not just picking out little things just to pick,
21 okay. First of all -- well at first, before the
22 trial, the State's case was that she didn't know the
23 guy and she identified him from the photo lineup.
24 And so that means if someone does not know somebody,
25 there has got to be certain amount, there has got to

1 be a certain amount of reliability, okay.

2 You have to make sure the person saw someone
3 well. And the fact that she had seen this guy
4 earlier in the night and there was an interaction
5 between them, that would mean that her identification
6 was more reliable, okay, because she had a chance not
7 ones but twice to see him. And at that time she was
8 adamant he was wearing the same clothes.

9 Detective Osborne gets a search warrant based
10 on her statement, and so he goes looking for a black
11 T-shirt. And so he finds a generic black T-shirt,
12 has no clue if it has anything to do with the crime,
13 but it's a black T-shirt, you saw it, nothing
14 special, no identifies it in any way.

15 But at trial, where she adds things to her
16 story, she is adamant that the guy was wearing a
17 hoodie. Not only was he wearing a hoodie, but it was
18 not the same clothing he was wearing earlier.
19 Earlier he was wearing a black T-shirt, okay. But at
20 the shooting he was wearing a hoodie.

21 And Detective Osborne told you that that would
22 have been important, he would have searched for a
23 hoodie had he known that a hoodie was involved.

24 And why would she lie about that then or now?
25 On its face it's nothing really, but she had her

1 statement to review, she gave a written statement.
2 Because just like Detective Osborne had to write
3 statements because he doesn't get to testify for a
4 year or more and he has to recall things, she gave a
5 written statement.

6 And she looked at it, yet she's adamant it
7 wasn't a black T-shirt it was a hoodie, and he wasn't
8 wearing the same thing. And the same thing for the
9 cigarette.

10 Now again whether she gave him a cigarette or
11 not is really not important, but why when she wrote
12 in her statement that she didn't give a cigarette,
13 why is she so adamant today that she did give him a
14 cigarette? It just makes no sense. It just a side
15 note. It not proof necessarily of anything, it's
16 just a side note. Shaniqune Williams told you that
17 Richard Deas does not smoke cigarettes.

18 And so when she talked to Detective Osborne,
19 okay, back in 2007 when she was giving her story
20 then, he is under the impression that she didn't know
21 the guy. She shows him -- or he shows her a lineup.
22 She gave a description and she said, the guy was
23 little, he was short and thin and he had dreads down
24 to his shoulders almost. And he was wearing all
25 black clothing, T-shirt, and he had a light

1 complexion.

2 Now that description is not hugely unique.
3 There is nothing special about that description, it
4 could fit many boys in downtown Charleston and other
5 places as well. So she looked at this lineup and she
6 told you that based on that description that Richard
7 Deas fit best.

8 Now except for the complexion, maybe, because
9 she couldn't see the complexion because it had a pink
10 tint over it. Richard Deas is not light complexion.
11 Take that for what you will. But she takes 30
12 seconds to identify the guy. Detective Osborne told
13 you, 30 seconds.

14 Now 30 seconds, first you hear that, it may
15 not seem that long. And if you are trying to
16 identify a man who you don't know and who you are
17 accusing of murder, then you would want to take your
18 time because that's a big deal to accuse someone of
19 murder. But it does not in any way take 30 seconds
20 to identify somebody you already know. Think about
21 it.

22 1 Mississippi, 2-Mississippi, 3-Mississippi,
23 4-Mississippi, 5-Mississippi, 6-Mississippi,
24 7-Mississippi, 8-Mississippi, 9-Mississippi,
25 10-Mississippi.

1 I won't bore you with the other 20 seconds,
2 but that was just a third of the time, and that was
3 more than enough time to pick out someone who you
4 supposedly knew already.

5 What is that time for? Well, it's time to
6 make a calculated decision. It's time to recognize
7 somebody you know, recognize almost fits the
8 description of the person you just gave, recognize
9 that he is someone from the area and so he is
10 plausible. And pick him out. That's what 30 seconds
11 is enough time to do.

12 Why would Shoreka Miles lie? I don't know.
13 She got on the stand. And you know she seems like a
14 nice girl. She seems sincere. But we know that
15 three people believed her before; two detectives,
16 people who were supposed to be able to be able to
17 tell if someone is a telling lie; and a grieving
18 father who's desperate for information. And they all
19 believed her and based their actions based on
20 believing her.

21 And so she gets here today, or the other day
22 on the stand, and she seems like a nice girl. She
23 fooled them, why couldn't she fool you? She cried.
24 There is lots of reason she could have cried. Maybe
25 it is because of the death of a friend that she is

1 remembering. Maybe it's because she feels guilty she
2 didn't come forward earlier. Maybe it's because she
3 feels guilty she is sending, or trying to send an
4 innocent man to jail.

5 Perhaps, I'm not suggesting okay that she
6 actually physically shot Leroy Simmons herself, she
7 was trying to help him, she was trying to stop the
8 bleeding. But maybe, just maybe, she knows a lot
9 more. You have to ask yourself why was Fish trying
10 so desperately to distance himself from her. Because
11 that's what he did. Let's go to Fish.

12 Again Fish is adamant he was not with Shoreka
13 Miles, he was not at the tent, a tent didn't exist as
14 far as he knew, he was down the street. He is
15 distancing himself away from her as much as possible.
16 Maybe to protect her? Maybe because he is afraid of
17 someone she associates with.

18 Why would he lie about things like that?
19 About being -- seeing a person, being next to a
20 person? It make no sense that that would be the
21 stuff he would lie about and be adamant, adamant that
22 he was not with her and there was no tent.

23 So you go to Fish and we can go into some more
24 particulars. Again his story is not the same as
25 hers. One person on foot, and apparently there is

1 enough time involved that he was able to finish his
2 cigar, smoke a blunt, doze off, then when he kind of
3 woke up then he sees a gun. I don't know what kind
4 of timeframe we are talking about, but that can't
5 happen within a short amount of time, or at least the
6 timeframe as described by Shoreka Miles.

7 But anyway, he refuses to talk. He refuses to
8 cooperate. He talked to Leroy Simmons' family,
9 Sandra Green and Leroy Simmons, Sr. And he tells
10 them both a little of what he saw. And he refuses to
11 give them a name. He says, I know who it was, but
12 I'm not to going to tell you.

13 Now he denied that on the stand. He says, I
14 told them. But Detective Osborne told he talked to
15 both Sandra Green and Leroy Simmons, and took
16 statements from them, and it was his belief based on
17 their statements that Fish did not -- refused to give
18 them names.

19 So when does Fish give a name? Well it's when
20 he is arrested for obstruction of justice about 20
21 days after the shooting. Detective Osborne talks to
22 him not once but twice. The first time, I ain't a
23 snitch. The second time, you can say I didn't see
24 anything. So the second time, by the way, after
25 Richard Deas was arrested, so on the 25th, Richard

1 Deas was arrested on the 23rd. So he is arrested for
2 obstruction of justice in November.

3 And then the next day, before he goes to a
4 bond judge, Detective Osborne picked him up to speak
5 to him. And that's when he gives his story. And he
6 says that he knew Richard, he knew him as Little
7 Ricky, so this is different from how Shoreka Miles,
8 her case, how it was a time, because he said he
9 actually knew the guy.

10 He said he knew the guy who was already
11 sitting in jail on the charge, conveniently. And he
12 got there, he's on the stand and he told you, I knew
13 who Detective Osborne wanted me to pick out. I
14 picked out who Detective Osborne wanted me to pick
15 out. He said Detective Osborne didn't tell him
16 anything, didn't say that. But he said he knew.

17 What else did he know? Well also he was
18 afraid about being stuck in the jail, okay. He
19 wanted a good bond, a PR bond, that's exactly what he
20 got. He had a big motive to say whatever he thought
21 he was supposed to say.

22 But what else did Fish say? He said that
23 although Detective Osborne never mentioned it, he was
24 afraid that he would be charged with murder himself
25 if he didn't say anything. Well it was about 20 days

1 after the shooting, a man has already been arrested.
2 If he was going to be arrested, wouldn't Detective
3 Osborne have arrested him for murder and not
4 obstruction justice?

5 Perhaps that indicates that he had a guilty
6 mind in some way, either being the shooter himself or
7 being connected or knowing more, being part of a
8 setup possibly. Why was he afraid of being charged
9 with murder? Nobody had ever said that before.

10 And so he looked at the lineup and he too
11 identified Richard Deas. And again he said he knew
12 them. So that's you know not a big deal to identify
13 someone in a lineup who you already know.

14 Now why would he lie? He lies so much maybe
15 he just likes it. Maybe again he was protecting
16 someone. Maybe he was protecting himself. He told
17 you he was afraid of being stuck in jail on the
18 obstruction charge and he wanted a good bond. He has
19 been to prison before. Most people don't want to go
20 back to prison. There's lots of reasons why he would
21 lie.

22 Why did Detective Osborne even go to the
23 trouble to track down Fish and take statement that
24 was inconsistent with his other witness? Did he
25 feel he needed it? Were there doubts about Shoreka

1 Miles and her alone?

2 Now the State painted a world for you where
3 everyone is afraid or no one likes to talk to the
4 police, okay. People just don't like to talk to the
5 police. And I am not suggesting that that world
6 doesn't exist because it does. But there are limits.
7 Okay. There are limits.

8 So if the cop is asking, whose drugs are
9 those? There is no need to get involved there,
10 drugs. Someone robbed but not hurt. Cop asks, do
11 you know who it was? No, I don't know anything.
12 Okay. Someone beat up, well, that's a dispute
13 between those people, I don't want to get involved,
14 okay I can buy that.

15 But a shooting? That's a little more serious.
16 Maybe if you don't know any of the parties involved,
17 okay, don't get involved. But when it's your friend,
18 when it's your best friend, according to Fish, when
19 it's the man your holding a scarf to, you are trying
20 to stop him from bleeding, you don't come forward?

21 And you heard Shoreka Miles, okay. She was
22 asked, why did you say at first you didn't see
23 anything? She didn't say, oh, I was scared, there
24 were people around, she didn't say that. She was
25 asked that twice, I believe, and she responded, I

1 didn't want to get involved. I didn't want to get
2 involved.

3 She didn't want to get involved? Was a little
4 too late, she was holding her handkerchief to him to
5 stop his bleeding, he bleeding all over her. What
6 would be appropriate? What situation would be
7 appropriate to get involved?

8 And also, okay, does that whole theory about
9 not talking to the police, does it apply to yourself
10 as well? Because you can't forget that Leroy
11 Simmons does not die immediately. You heard from the
12 Elaine Singleton, he was able to talk still. He
13 talked to her. One word, or two. Richard, Richard
14 Deas, Ricky, Little Ricky. He didn't say anything
15 like that.

16 So that indicates that he didn't know the
17 shooter. Because you've heard that he knew who
18 Little Ricky was. They weren't friends, they weren't
19 enemies though. You know, Leroy Simmons was 30 years
20 old. Richard Deas was 18. But he knew him, he knew
21 who he was. He had the opportunity to speak.

22 And if someone shoots you for something as
23 silly as standing next to a girl who has a dispute
24 with his mom over a car, you don't think you are
25 going to say his name and that you are going to be

1 pissed that he just shot you for something so silly
2 and stupid? Leroy Simmons doesn't say anything.

3 In this case nothing adds up. It just
4 doesn't. And I am in no way telling you just to look
5 at these little things around and not focus on the
6 big picture. Because the big picture, the real
7 proof, would be the eyewitness testimony because
8 everything else, Richard Deas never says anything in
9 his statement to Detective Osborne or his jail
10 recordings that indicates he is guilty, okay.

11 They indicate maybe, you know what, this isn't
12 a guy with the best lifestyle, sleeps with different
13 girls, maybe doesn't have the best speech manner,
14 that doesn't mean he is a murderer.

15 But the State would have you look at all of
16 those things, things that he is not, that he doesn't
17 have to prove. They're asking you to forget the main
18 thing, which is credibility. Two witnesses, and she
19 suggested that really you can pretty much go by
20 Shoreka. But she is not credible. Four different
21 stories. You are the fourth person, or fourth group
22 of people she's telling her story to. And three
23 times before she was believed. Three times before
24 she looked in the face of people and they believed
25 her ever single time.

1 Now the State has to prove to you that Richard
2 Deas is guilty of murder beyond a reasonable doubt.
3 And that's not a technicality. That's a sacred
4 burden in this country. If you have any doubt which
5 is reasonable, then you have a duty to find him not
6 guilty.

7 If you think he maybe did or probably did it,
8 that's not good enough. Is there a doubt in this
9 case? Yes. Is there a reasonable doubt? Yes. There
10 is doubt after doubt after doubt. The State is
11 asking you to put the fate of a man in the hands of
12 Shoreka Miles and Shrod Young.

13 And let's think about that. If someone has a
14 sick child, for example, who needs surgery, and they
15 go to a doctor and this doctor tells them something
16 at first and they believe that doctor. And they go
17 to the doctor, same doctor the second time, but there
18 is no new evidence, nothing new learned and he says
19 something different. Well, okay, you'll give him a
20 little leeway, okay, sometimes people make mistakes,
21 you think one thing and then change you're mind.

22 They go to that doctor a third time and he
23 says something different. Okay, really worried now.
24 Fourth time, surgery day, he says something
25 completely different. Is that person supposed to

1 entrust their child to that doctor? No. And that is
2 what the State is asking you to do, to entrust
3 Richard Deas' fate to the hand of Shoreka Miles.

4 Can you trust them? Can you trust them with
5 someone's life? The answers is no. Richard Deas is
6 innocent. He is not guilty. And there is more than
7 enough doubt for you to find him not guilty, for you
8 to come to the conclusion that he is innocent and
9 that is what we are asking you to do.

10 Thank you.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 you all have been sitting almost an hour and a half.
13 I'm going to give you a very short break to allow
14 yourselves to use the restroom, maybe just to stretch
15 a little bit before the Court gives its closing
16 instructions.

17 During this break you are strictly advised not
18 to discuss the case in any manner. Please leave your
19 notepads in your seats. And as soon as you have
20 completed using the restroom, please knock on the
21 door and let the bailiffs know and at that time we
22 will immediately resume with the Court's
23 instructions. Please go with the bailiffs.

24 (Whereupon, the jurors exit the courtroom.).

25 THE COURT: Is there anything before we begin

1 our break from the State?

2 MS. SHEALY: No, Your Honor.

3 THE COURT: From the defense?

4 MS. FORD: No, Your Honor.

5 THE COURT: We will be out 10 minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: We're about to begin the Court's
8 instructions on the law which means there can be no
9 movement in the courtroom. So if anyone feels that
10 they're not going to be able to sit for 30 minutes, I
11 would suggest you leave now, because no one is going
12 to be able to move. If everyone is at peace, bring
13 in the jury. Make sure all your cell phones are off.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: Ladies and gentlemen, I hope you
16 enjoyed your break. As I have indicated, we have now
17 reached the stage of the trial where you will hear
18 the Court's instructions on the law.

19 During this trial, ladies and gentlemen, you
20 and I have certain duties to perform. As the trial
21 judge it is my responsibility to preside over the
22 trial of this case. And I also have the duty to pass
23 upon or rule upon the admissability of evidence
24 offered during this trial.

25 You are to consider only the competent

1 evidence that is before you which has been entered
2 into this record through the lips of sworn witnesses
3 and any exhibits that have been introduced into the
4 record. You are to consider only the testimony which
5 has been presented from the witness stand, together
6 with the exhibits which have been made a part of the
7 record in this case.

8 I have the additional duty to instruct you on
9 the law applicable to this case. As the presiding
10 judge I'm the sole judge of the law of this case, and
11 it is your duty as jurors to accept and apply the law
12 as I now state it to you. If you have a preconceived
13 idea as to what the law is or what the law ought to
14 be in a case, or in this case, and it should not
15 agree with what I now tell you the law is, you are
16 obligated under your oath to abandon this
17 preconception on your part because you are sworn to
18 accept the law and apply the law precisely as I now
19 state it to you.

20 In every case tried in this court before a
21 jury, the jury becomes the sole and exclusive judges
22 of the facts in a case. You, the jury, are the
23 judges of the facts in this case. This Court is the
24 judge of the law.

25 The constitution of our state has declared

1 that a trial judge shall not intimate, state, comment
2 upon or make any statements to a trial jury about the
3 facts in a case. Since you, the jury, are the sole
4 judges of the facts in this case, you are not to
5 infer anything from what I have said during the
6 progress of this trial and ruling upon the
7 admissability of evidence or otherwise, or anything
8 that I say now during the course of this instruction
9 to you, that I have any opinion about the facts in
10 this case.

11 The law does not permit me to have an opinion
12 about the facts. This is a matter solely for you,
13 the jury, to determine. As jurors, then, it is your
14 duty, as I have instructed you, to determine the
15 effect, the value, the weight and the truth of the
16 evidence presented during this trial.

17 Necessarily, you must assess the credibility
18 of witnesses who have testified in this case.
19 Credibility is simply a legalistic term meaning the
20 believability of each witness. It becomes your duty
21 as jurors to analyze and to evaluate the evidence and
22 determine that evidence which convinces you of its
23 truth.

24 I instruct you that in determining the
25 question of the credibility or believability of

1 witnesses who have testified, you may believe one
2 witness as against several witnesses, or several
3 witnesses as against one witness. You may believe a
4 part of the testimony of a witness and reject the
5 remaining part of the testimony of that same witness.

6 If you have a good and sound reason, you may
7 believe the testimony of a witness in its entirety,
8 or reject the testimony of a witness in its entirety.
9 You may consider whether any witness has exhibited to
10 you any interest, any bias, any prejudice, or other
11 motive in this case.

12 You may consider the demeanor of a witness,
13 that is the appearance and manner of the witness from
14 the witness stand. You can believe as much or as
15 little of each witness's testimony as you think
16 proper. You have, ladies and gentlemen, throughout
17 this process but one objective, to seek the truth
18 regardless of its source.

19 Our rules of evidence ordinarily do not permit
20 witnesses to testify to opinions or conclusions. An
21 exception that we have to this rule exists for
22 witnesses we call expert witnesses. A witness who by
23 education, experience, training has become an expert
24 in some art, science, profession or calling, may
25 state an opinion as to relevant and material matters

1 in which the witness claims to be an expert, and may
2 also state the reasons for that opinion.

3 You should consider any expert opinion
4 received in evidence in this case like any other
5 evidence. Give it the weight you think it deserves.
6 If you decide that the opinion of an expert witness
7 is not based on sufficient education and experience,
8 or if you conclude that the reasons given in support
9 of the opinion are not sound, or that the opinion is
10 outweighed by other evidence, you may disregard the
11 opinion entirely.

12 An expert witness's testimony is to be given
13 no greater weight than that of other witnesses simply
14 because the witness is an expert. Further, you are
15 not required to accept an expert's opinion even
16 though it is not contradicted.

17 I instruct you, ladies and gentlemen, that a
18 person who has a past criminal record is competent to
19 testify during a trial. A past record does not
20 affect the ability of that witness to testify. The
21 past record may only be considered by you, if at all,
22 in determining the witness's believability.

23 Remember, ladies and gentlemen, you are the
24 sole judges of the facts in this case and of the
25 believability of any and all of the witnesses.

1 There are two types of evidence which are
2 generally presented during a trial; direct evidence
3 and circumstantial evidence. Direct evidence is the
4 testimony of a person who asserts or claims to have
5 actual knowledge of a fact, such as an eyewitness.

6 Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of a
8 fact. The law make absolutely no distinction between
9 the weight or value to be given to either direct or
10 circumstantial evidence. Nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence.

13 Ladies and gentlemen, you should weigh all of
14 the evidence in this case. After weighing all of the
15 evidence if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find
17 the defendant not guilty. Conversely, if you are
18 convinced of the guilt of the defendant beyond a
19 reasonable doubt, then you must find him guilty.

20 I instruct you that the fact that the
21 defendant was arrested, charged and indicted in this
22 case is not evidence in this case, and cannot be
23 considered by you as evidence of guilt in this case.
24 Nor does it create any presumption or inference of
25 guilt.

1 This documentation, ladies and gentlemen, are
2 simply the formal written instrument which contain
3 the charge or charges made against the defendant.
4 They serve as the formal documents by which this case
5 is processed or brought into the court system.

6 The defendant has pled not guilty to the
7 indictments. That plea casts the burden on the State
8 to prove the defendant guilty. Because a person
9 charged with committing a criminal offense in South
10 Carolina is never required to prove himself or
11 herself innocent.

12 I charge you, Mr. Foreman, and ladies and
13 gentlemen of the jury, that it is a cardinal and
14 important rule of the law of evidence that the
15 defendant in a criminal trial, no matter what the
16 seriousness of the charge or charges made against him
17 may be, will always be presumed to be innocent of the
18 crime for which he is indicted, unless his guilt has
19 been proven by evidence satisfying you of that guilt
20 beyond a reasonable doubt.

21 This presumption of innocence doesn't seize
22 when you retire to deliberate, but it accompanies the
23 defendant from the time of his arraignment,
24 throughout the trial, until you reach a verdict based
25 upon evidence satisfying you beyond a reasonable

1 doubt.

2 Our Supreme Court has said that the
3 presumption of innocence is like a robe of
4 righteousness placed upon the shoulders of the
5 defendant. And it remains with him and assigns to
6 him that class, the innocent, until that presumptive
7 robe of righteousness has been stripped from his
8 person by evidence satisfying you of that guilt
9 beyond a reasonable doubt.

10 Mr. Foreman, and ladies and gentlemen, the
11 presumption of innocence is not mere legal theory.
12 It is not just a legal phrase. It is a substantial
13 right to which every defendant is entitled unless
14 you, the jury, are satisfied from the evidence of his
15 guilt beyond a reasonable doubt.

16 You might ask, what is a reasonable doubt in
17 the law? The State has the burden of proving the
18 defendant guilty beyond a reasonable doubt. Some of
19 you may have served as jurors in civil cases where
20 you were told that it is only necessary to prove that
21 a fact is more likely true than not true. In
22 criminal cases the State's proof must be more
23 powerful than that, it must be beyond a reasonable
24 doubt.

25 Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced of the defendant's guilt.
2 There are very few things in this world that we know
3 with absolute certainty. And in criminal cases the
4 law does not require proof that overcomes every
5 possible doubt. If based on your consideration of
6 the evidence you are firmly convinced that the
7 defendant is guilty of the crime charged, you must
8 find him guilty. If on the other hand you think
9 there is a real possibility that he is not guilty you
10 must give him the benefit of that doubt and find him
11 not guilty.

12 The defendant is charged with murder. The
13 State must prove beyond a reasonable doubt that the
14 defendant killed another person with malice
15 aforethought. Malice is hatred, ill-will or
16 hostility towards another person. It is the
17 intentional doing of a wrongful act without just
18 cause or excuse, and with an intent to inflict an
19 injury, or under circumstances that the law will
20 infer an evil intent.

21 Malice aforethought does not require that
22 malice exist for any particular time before the act
23 is committed. But malice must exist in the mind of
24 the defendant just before and at the time the act is
25 committed. Therefore, there must be a combination of

1 the previous evil intent and the act.

2 Malice aforethought may be expressed or
3 inferred. These terms, expressed and inferred, do
4 not mean different kinds of malice, but merely the
5 manner in which malice may be shown to exist; that is
6 either by direct evidence or by inference from the
7 facts and circumstances which are proven.

8 Express malice is shown when a person speaks
9 words which express hatred or ill-will for another,
10 or when the person prepares beforehand to do the act
11 which was later accomplished. For example, lying in
12 wait for a person, or any other act of preparation
13 going to show that the deed was within the
14 defendant's mind would be express malice.

15 Malice may be inferred from conduct showing a
16 total disregard for human life. Inferred malice may
17 also arise when the deed is done with a deadly
18 weapon. A deadly weapon is any article, instrument
19 or substance which is likely to cause death or great
20 bodily harm. Whether an instrument has been used as
21 a deadly weapon depends on the facts and
22 circumstances of each case.

23 The following are examples of instruments
24 which may be deadly weapons, a pistol, a shotgun, a
25 rifle, a dirk, a dagger, a knife, a slingshot, metal

1 knuckles, a razor, gasoline, a firebomb or Molotov
2 cocktail, lighter fluid. A gun may be a deadly
3 weapon even if it is not operating.

4 These examples, ladies and gentlemen, are
5 evidentiary facts to be considered by you, along with
6 the other evidence in this case. And you may give it
7 the weight that you decide it should receive.

8 The defendant is also charged with possession
9 of a weapon during the commission of or attempt to
10 commit a violent crime. The State must prove beyond
11 a reasonable doubt that the defendant was in
12 possession of a firearm, or visibly displayed what
13 appeared to be a firearm, during the commission of a
14 violent crime. A firearm means any machine gun,
15 automatic rifle, revolver, pistol, or any weapon
16 which is designed, which will, is designed to, or may
17 be ready converted to expel a projectile.

18 In order to find the defendant guilty of
19 possession of a weapon during the commission of a
20 violent crime, you must first find the defendant
21 guilty of either committing a violent crime, or
22 attempting to commit a violent crime. I instruct you
23 that murder is a violent crime as defined by South
24 Carolina code annotated 16-1-60.

25 Ladies and gentlemen, a statement is alleged

1 to have been made by the defendant which has been
2 admitted into evidence in this case. While the Court
3 has determined that the statement is admissible, I
4 instruct you that you make the ultimate decision of
5 whether or not the defendant made the statement.

6 If the defendant did make the statement, you
7 must determine whether the statement was made by the
8 defendant voluntarily and of his own free will. This
9 means that the statement was not caused by pressure,
10 force, fear, threats, coercion, or intimidation, or
11 by hope or a promise of leniency, or a reward of any
12 kind.

13 In determining whether the statement was
14 voluntary, you should consider both the
15 characteristics of the defendant and the details of
16 the questioning. Some of the factors that you must
17 consider are the following: The age of the
18 defendant; the defendant's education or lack of
19 education; the defendant's mental ability or
20 capacity; the defendant's IQ or intelligence; the
21 defendant's background and environment; the place and
22 length of detention; the nature of the questioning;
23 and the advice or lack thereof to the defendant of
24 his constitutional rights, including but not limited
25 to the right to remain silent, that any statement

1 could be used against him in a court of law, the
2 right to have a lawyer present, that if he could not
3 afford a lawyer, a lawyer would be appointed to
4 represent him without any cost, and that he could
5 stop making his statement at any time.

6 You must carefully consider all of the
7 surrounding circumstances before you give any weight
8 to an alleged statement. The State has the burden of
9 proving beyond a reasonable doubt that the alleged
10 statement was voluntary. If you determine it was,
11 you may give the statement any further consideration
12 that you deem proper.

13 You must decide what weight, if any, should be
14 govern to the alleged statement. If you determine
15 the alleged statement was not a free and voluntary
16 statement of the defendant, you should not consider
17 the statement at all.

18 I further instruct you that an issue in this
19 case is the identification of the defendant as the
20 person who committed the crime charged. The State
21 has the burden of proving identity beyond a
22 reasonable doubt. You must be satisfied beyond a
23 reasonable doubt of the accuracy of the
24 identification of the defendant before you may
25 convict the defendant.

1 Identification testimony is an expression of
2 belief or impression by a witness. You must
3 determine the accuracy of the identification of the
4 defendant. You must consider the believability of
5 each identification witness in the same way as any
6 other witness. You may consider whether the witness
7 had an adequate opportunity to observe the offender
8 at the time of the offense. This will be affected by
9 things like how long or short of time was available;
10 how far or close the witness was; the lighting
11 conditions; and whether the witness had a chance to
12 see or know the person in the past.

13 Once again I instruct you the burden of proof
14 is on the State to the extent of every element of the
15 crime charged, and this specifically includes the
16 burden of proving beyond a reasonable doubt the
17 identity of the defendant as the person who committed
18 the crime. If after examining the testimony you have
19 a reasonable doubt as to the accuracy of the
20 identification, you must find the defendant not
21 guilty.

22 I instruct you and emphasize that the fact
23 that the defendant did not testify is not a factor to
24 be considered by you in any way in your
25 deliberations, and in your consideration on the

1 question of the guilt or innocence of the defendant.
2 It must not be considered by you in any manner
3 whatsoever.

4 A defendant has a constitutional right to
5 remain silent and the assertion of this right must
6 not be considered by in you in your deliberations. I
7 repeat, under your oath you are to draw no
8 conclusions whatsoever from the fact that the
9 defendant in this case did not testify. The fact
10 that the defendant did not testify should not even be
11 discussed in any manner whatsoever in the jury room
12 during you consideration of this case in your
13 deliberations.

14 The burden of proof, as I have stated to you,
15 is on the State. The defendant is not required to
16 prove his innocence. The burden of proof remains on
17 the State to prove guilt beyond a reasonable doubt.

18 Ladies and gentlemen, there are two
19 indictments in this case, and each alleges a separate
20 offense. Indictment 2008-GS-10-3339, which is an
21 indictment for murder; and 3340, which is an
22 indictment for possession of a firearm during the
23 commission of a violent crime.

24 Ladies and gentlemen, each indictment charges
25 a separate and distinct offense. You must decide

1 each indictment separately on the evidence and the
2 law applicable to it, uninfluenced by your decision
3 as to any other indictment. The defendant may be
4 convicted or acquitted on any or all of the offenses
5 charged. You will be asked to write a separate
6 verdict of guilty or not guilty for each indictment.

7 Ladies and gentlemen, there are four possible
8 verdicts in this case which you may find. There is
9 no significance whatsoever to the order in which I
10 state these possible verdicts, it is simply that one
11 must be stated first, and so forth. And these will
12 go into the jury room with you.

13 As to indictment 2008-GS-10-3339, which is the
14 indictment for murder, we the jury by unanimous
15 consent find the defendant, either guilty of murder
16 or not guilty, again there is no significance to the
17 order in which the Court states the potential
18 verdict.

19 And as to indictment 2008-GS-10-3340, we the
20 jury by unanimous consent find the defendant guilty
21 of possession of a firearm during the commission of a
22 violent crime or not guilty. Again there is
23 absolutely no significance whatsoever to the order in
24 which the Court has stated these possible verdicts.

25 Ladies and gentlemen, your verdict must be a

1 unanimous one, Mr. Foreman, which means all 12 of you
2 must agree in order to reach a verdict. Mr. Foreman,
3 it will be your responsibility to fill out the
4 verdict forms and to date and sign the forms once the
5 jury has reached a verdict. It will also be your
6 responsibility to knock on the door and advise the
7 bailiffs that the jury has reached a verdict.

8 And if the jury has any questions during
9 deliberations, it will be your responsibility to
10 write those questions out in long form for us so that
11 we can consider them. Ladies and gentlemen, if you
12 have any questions during deliberations, please know
13 that there will be a delay in our response. Please
14 know that we are not ignoring you, there is a
15 procedure that we have to follow in answering your
16 questions. So if you have a question and there is
17 delay, which there will be, please don't think that
18 we're ignoring you, just know that we are simply
19 following that procedure.

20 I'm going to ask now that you return to your
21 jury room, but not yet begin your deliberations.
22 There is a matter of law that I need to take up with
23 the attorneys that may require additional instruction
24 or clarification of an instruction. However, if
25 there is no further instructions we will send in your

1 notebooks, the alternate will be dismissed, and the
2 evidence and the verdict forms and indictments will
3 be sent in for your consideration.

4 If you would go with the bailiffs. Do not yet
5 begin your deliberations and please leave your
6 notepads in your seats.

7 (Whereupon, the jurors exit the courtroom.)

8 THE COURT: Are there any exception from the
9 state?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: From the defense?

12 MR. GRIMES: Just renew our exception with the
13 charge conference yesterday, Your Honor.

14 THE COURT: They have been noted for the
15 record and overruled.

16 MR. GRIMES: Thank you.

17 THE COURT: You're welcome.

18 Have you all gone through the evidence?

19 MS. SHEALY: Yes, Your Honor.

20 MS. FORD: Yes, Your Honor.

21 THE COURT: And is everything in order?

22 MS. SHEALY: Yes, Your Honor.

23 MS. FORD: Yes, Your Honor.

24 THE COURT: Okay. Please bring out the
25 alternate and go ahead and collect their notebooks.

1 Get somebody to help collect the evidence and the
2 notebooks and bring in the alternate.

3 (Whereupon, the alternate juror enters the
4 courtroom.)

5 THE COURT: Sir, we want to thank you for your
6 time and attention to this case. We know being an
7 alternate is really thankless. You get to listen to
8 all of the evidence, and the event that someone is
9 ill or otherwise unavailable to go forward, you take
10 the place on the panel. Fortunately everyone has
11 been well and we have not had to use -- well we have
12 used your services but we won't need them in the
13 deliberations. You are excused for the remainder of
14 the week. You are welcome to stay if you like. I
15 would imagine you might have things you might want to
16 do today.

17 A JUROR: Yes.

18 THE COURT: You're welcome to discuss this
19 case, but I would ask you not do it until after
20 Friday when the entire panel has been dismissed. By
21 the same token if someone should persist in trying to
22 speak with you and you don't want to talk about it,
23 please contact the clerk's office so that we can do
24 what we need to do to protect your privacy and make
25 sure you are not harassed in any way.

1 If you need a work excuse, we would ask you go
2 to the first floor. Otherwise, your check and
3 everything else will be mailed out Friday and you'll
4 get it Saturday or Monday. You are excused with the
5 Court's thanks.

6 A JUROR: Thank you very much.

7 THE COURT: Thank you, sir, have a great day.

8 (Whereupon, the alternate juror exits the
9 courtroom.)

10 THE COURT: The record should reflect the jury
11 has begun its deliberations at 12:03. I would ask
12 that you all leave a cell number so that we can reach
13 you in the event the jury has a question, be in close
14 proximity in the event that they have a question.

15 I think their lunch, we estimate their lunch
16 would get here -- it was 30 minutes of us ordering
17 it, so I am thinking the jury is going to get their
18 lunch between 12:00 and 12:30 but we can let you know
19 when they get their lunch so that you all can get
20 something to eat. We will be at ease.

21 (Whereupon, a recess was taken.)

22 THE COURT: You may be seated. The jury has
23 been deliberating just shy of six hours. And it's
24 now 10 -- 10 'til. Just shy of 10 of 6:00. What I
25 am going to do, I'm going to have the foreperson --

1 before we entertain ordering dinner for them I'm
2 going to ask the foreperson to discuss with them
3 whether they want to go home for the evening and
4 return in the morning, or whether they wish to
5 continue deliberations. We'll abide by whatever
6 their decision is.

7 ~~So, so, so~~ Frankly, I think they're tired, they haven't
8 had a break and haven't left that room. I would
9 imagine they might need a little break.

10 You can bring in the foreperson for me. Make
11 sure they don't deliberate while he's in here.

12 (Whereupon, the foreperson enters the
13 courtroom.)

14 THE COURT: How are you?

15 A JUROR: Fine. How are you?

16 THE COURT: Doing fine. I'm wanting to give
17 you and the jury the opportunity, and I want you to
18 discuss it with them, and then let us now when you
19 have reached a decision. You all can continue to
20 deliberate if you like, or you can go home and return
21 in the morning at 9:00 to resume your deliberations.

22 If you would discuss that with the panel,
23 knock on the door and let the bailiffs know when
24 you've reached a decision about it. We will bring
25 you back in and you can tell us what you all would

1 like to do.

2 (Whereupon, the foreperson exits the
3 courtroom.)

4 MR. GRIMES: Your Honor.

5 THE COURT: Yes, sir.

6 MR. GRIMES: My concern is about Rule 23.

7 THE COURT: Rule 23 has definitely determined
8 the Court has the authority to disburse the jury over
9 the evening. There is nothing requires the jury be
10 held hostage all night in the jury room. It becomes
11 abusive at some point. They have been together for
12 six hours, they need to know they have the option to
13 go home.

14 I will poll them in the morning to make sure
15 they had no exposure to any media coverage or had any
16 other deliberations in the case. That's why I asked
17 them to make the decision.

18 Although technically under the case law's
19 interpretation I can make the decision. But I'm not
20 going to do that. I'm going to give them the option.

21 (Whereupon, a recess was taken.)

22 THE COURT: Okay, they asked a question. They
23 want to know if they can stay until 8 o'clock and
24 then decide whether they want to go home. I guess I
25 will answer them yes.

1 Is there any exception from the State?

2 MS. SHEALY: Your Honor, other than I wonder
3 if they could be offered, it has been a long time.

4 THE COURT: We are in a budget deficit. It
5 will take over an hour to order dinner. We can offer
6 snacks.

7 Any exception from the State?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: From the defense?

10 MS. FORD: No, Your Honor.

11 THE COURT: All right. Did you all mind if I
12 just write it on the note? well, just bring in the
13 foreperson for me and I will tell him that. I will
14 mark the note as a Court's Exhibit.

15 (Whereupon, Court's Exhibit No. 25 is marked
16 for identification.)

17 (Whereupon, the foreperson enter the
18 courtroom.)

19 THE COURT: Sir, the answer to your question
20 is yes. You all just let us know what you'd like to
21 do.

22 A JUROR: We will stay until 8:00. And then
23 we will revisit it and see where we are.

24 THE COURT: That's fine. Just let us know.

25 (Whereupon, the foreperson exits the

1 courtroom.)

2 THE COURT: All right. We will be at ease and
3 await the jury's decision.

4 (Whereupon, a recess was taken until.)

5 THE COURT: I had the clerk ask the jury if
6 they wanted us to order dinner for them. And instead
7 of answering that question they sent out a note that
8 said, we would like to reconvene at 9:00 a.m.

9 It is now 8:30 which means they have now been
10 deliberating since 12:03. So they have been
11 deliberating seven and a half, or eight and a half
12 hours give or take 30 minutes.

13 Is there any exception to honoring their
14 request from the State?

15 MS. SHEALY: No, Your Honor.

16 THE COURT: From the defense?

17 MS. FORD: No, Your Honor.

18 THE COURT: Okay, please bring in the panel.
19 We will have the note marked as a Court's Exhibit.

20 (Whereupon, Court's Exhibit No. 26 is marked
21 for identification.)

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Thank you. Ladies and gentlemen,
24 we received your request that you go home and resume
25 in the morning at 9:00 a.m. and the Court will honor

1 that request. I would ask, however, that you
2 strictly abide by my instructions, and even more
3 strictly now that you are in the deliberative
4 process.

5 It is essential that you have absolutely no
6 discuss about this with anyone or among yourselves,
7 that would be improper. Also please don't watch,
8 read, or listen to any media accounts about this case
9 in any manner whatsoever, or do any independent
10 research on the Internet.

11 When you come to the courthouse in the
12 morning, again follow the same procedures and park
13 where you have been parking and we will bring you
14 straight to your jury room to begin your
15 deliberations at 9:00 a.m.

16 If you would, if you want to leave your pads
17 in the jury room since you will be resuming your
18 deliberations in the morning. Actually, no, leave in
19 your seats. I need to make sure there is no
20 premature deliberations until all 12 are present to
21 begin deliberations and at that time we will give you
22 your notepads back. So if you leave them in the
23 seats, we will secure them during the recess. I hope
24 that you all have a good evening, get some rest, we
25 will see you in the morning at 9:00.

1 (Whereupon, the jurors exit the courtroom.)

2 THE COURT: Is have anything before we adjourn
3 for the evening from the State?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: From the defense?

6 MS. FORD: No, Your Honor.

7 THE COURT: You all have a good evening. Just
8 please be around at 9:00. I'm going to be doing -- I
9 will be here before 9:00. I have a roster meeting in
10 this courtroom at 9:30. Then I will be doing bonds
11 at 10:00. I will be here before the docket meeting.
12 You all be on standby. Have a good night.

13 (Whereupon, the proceedings in the matter
14 before the Court were adjourned for the evening.)

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1 (The jury started deliberations at 9:22 a.m.
2 and it is now 10:25 a.m.)

3 THE COURT: Is the State ready to proceed?

4 MS. SHEALY: Yes, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: I have been advised the jury has
8 reached a verdict.

9 Is there anything before we proceed with
10 receiving the jury's verdict from the State?

11 MS. SHEALY: No, Your Honor.

12 THE COURT: From the defense?

13 MS. FORD: No, Your Honor.

14 THE COURT: Please bring in the panel.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Could we please, ladies and
17 gentlemen, can you bear with me one moment.

18 I understand that you have reached a verdict,
19 the Court is going to receive your verdict.

20 There was one short matter of law I need to
21 take up with the attorneys, if you bear with me one
22 moment and go with the bailiffs for me. It should
23 take less than five minutes.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: I apologize, I neglected to do

1 this because I had to switch so many gears this
2 morning going from the roster meeting, anticipating
3 holding bond court. I intended to this prior to us
4 receiving the jury's verdict.

5 I understand this is an emotional matter both
6 for those represented by the State, that being the
7 victim and the citizens of Charleston County, as well
8 as the defendant's family. But I need to remind all
9 those who are present that this is a court of law and
10 there is a certain decorum that we expect to be
11 maintained and respected.

12 Jurors come to this court with no one to
13 reward and no one to punish. It is their job to
14 objectively review the evidence and render a true and
15 just verdict in every case. And as a result I have
16 to make sure that a certain decorum is maintained.

17 Now I again emphasize I know this is a very
18 emotional matter, if there is anyone however present
19 that feels that they cannot contain their emotions,
20 I'm going to have to ask you to leave the courtroom
21 because I cannot have that.

22 I understand that it's very difficult. And
23 the Court is empathetic, I'm not disregarding those
24 emotions. But anyone else feels that they cannot
25 contain themselves, I would ask that you leave the

1 courtroom. And I am strictly instructing that there
2 is not to be any body movement, gestures, sighs, any
3 kind of show of emotion when the verdict is read. If
4 it is, I'm delegating my authority to the sheriffs to
5 remove you from the courtroom immediately.

6 I hope everyone understands the ground rules.
7 Please bring in the jury for me.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: Thank you. Mr. Foreman, is it
10 correct that the jury has reached a verdict?

11 A JUROR: Yes, Your Honor.

12 THE COURT: If you would give the verdict
13 forms to the bailiff for me, please.

14 Mr. Clerk, if you would publish the verdict.

15 Sir, if you would stand for publication of the
16 verdict.

17 THE CLERK: State of South Carolina versus
18 Richard Vernon Deas. As to the indictment number
19 2008-GS-10-3340. We the jury by unanimous consent
20 find the defendant guilty of possession of a firearm
21 during the commission of a violent crime. Signed by
22 George Pasely, dated January 30, 2009.

23 Ladies and gentlemen of the jury, if this is
24 your verdict, please reply by raising your right
25 hand.

1 Your Honor, let the record reflect all 12
2 jurors have raised their right hand.

3 As to the indictment 2008-GS-10-3339. We the
4 jury by unanimous consent find the defendant guilty
5 of murder, signed by George Pasely, dated January
6 30th, 2009.

7 Once again, ladies and gentlemen of the jury,
8 if this is your verdict, please reply by raising your
9 right hand.

10 Thank you. Your Honor, let the record reflect
11 that all 12 jurors have raised their right hand.

12 THE COURT: Is there any request to poll the
13 jury from the State?

14 MS. SHEALY: No, Your Honor.

15 THE COURT: From the defense?

16 MS. FORD: Yes, Your Honor.

17 THE COURT: You may be seated.

18 Ladies and gentlemen, the clerk is going to
19 poll the jury. I would ask that you give him your
20 attention. You may proceed.

21 THE CLERK: Yes, Your Honor.

22 Ladies and gentlemen, I will be asking you two
23 questions; are these your verdicts, and are they
24 still your verdicts.

25 If you would please, as I call your juror

1 number, please raise your right hand.

2 Juror number 210. Are these your verdicts?

3 A JUROR: .

4 THE CLERK: And are they still your verdicts?

5 A JUROR: Yes.

6 THE CLERK: Thank you.

7 Juror 144. Are these your verdicts?

8 A JUROR: Yes..

9 THE CLERK: And are they still your verdicts?

10 A JUROR: Yes.

11 THE CLERK: Thank you.

12 Juror number 88. Are these your verdicts?

13 A JUROR: Yes.

14 THE CLERK: And are they still your verdict?

15 A JUROR: Yes.

16 THE CLERK: Thank you.

17 Juror number 34. Are these your verdicts?

18 A JUROR: Yes, sir.

19 THE CLERK: And are they still your verdicts?

20 A JUROR: Yes, sir.

21 THE CLERK: Thank you.

22 Juror number 233? Are these your verdicts?

23 A JUROR: Yes, sir.

24 THE CLERK: And are they still your verdicts?

25 A JUROR: Yes, sir.

1 THE CLERK: Thank you.

2 Juror 146. Are these your verdicts?

3 A JUROR: Yes.

4 THE CLERK: And are they still your verdicts?

5 A JUROR: Yes.

6 THE CLERK: Thank you.

7 Juror number 61. Are these your verdicts?

8 A JUROR: Yes.

9 THE CLERK: And are they still your verdicts?

10 A JUROR: Yes.

11 THE CLERK: Thank you.

12 Juror number 205. Are these your verdicts?

13 A JUROR: Yes, sir.

14 THE CLERK: And are they still your verdicts?

15 A JUROR: Yes, sir.

16 THE CLERK: Thank you.

17 Juror number 138. Are these your verdicts?

18 A JUROR: Yes.

19 THE CLERK: And are they still your verdicts?

20 A JUROR: Yes.

21 THE CLERK: Thank you.

22 Juror number 57. Are these your verdicts?

23 A JUROR: Yes, sir.

24 THE CLERK: Are they still your verdicts?

25 A JUROR: Yes, sir.

1 THE CLERK: Thank you.

2 Juror number 338. Are these your verdicts?

3 A JUROR: Yes.

4 THE CLERK: And are they still your verdicts?

5 A JUROR: Yes.

6 THE CLERK: Thank you.

7 Juror number 84. Are these your verdicts?

8 A JUROR: Yes, sir.

9 THE CLERK: And are they still your verdicts?

10 A JUROR: Yes, sir.

11 THE CLERK: Thank you.

12 Is there anyone's name or juror number that I
13 have not called?

14 Your Honor, the verdict stands.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 we thank you for your time and your attention to this
17 case. We know that jury service is a great sacrifice
18 to you both to your work and family responsibilities.

19 I hope however it has been educational for
20 you. I hope that you learned how the system actually
21 works. And more importantly how integral you are to
22 its operation. We could not do our job every day
23 without individuals being willing to come to the
24 courthouse day after day, and parking, sometimes
25 lunch will be donuts, this week because of the budget

1 cuts you all brought your own donuts, being willing
2 to sit as impartial fact finders, and find the facts
3 in the case and render a verdict based on applying a
4 very complicated set of laws to those facts.

5 We thank you again for your time and your
6 attention. The clerk has both your work excuses and
7 your checks here with us. We will distribute those
8 once you are dismissed. I need the foreperson, as
9 you are dismissed, to remain so that we can have you
10 to sign the indictments.

11 You are welcome to discuss this case if you
12 would like. You are also welcome not to discuss it.
13 If someone should persist in trying to speak with
14 you, please make us aware of it by contacting the
15 clerk's office so that we can protect your privacy
16 and make sure that you are not harassed in any way.

17 You are also welcome to stay for sentencing if
18 you would like. If you would like to do that, please
19 let the bailiffs know and we will make appropriate
20 arrangements so that you may be able to observe that
21 process. You are excused with the Court's thanks.

22 I will hear post-trial motions and sentencing
23 in a few moments.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: We have the sentencing forms

1 filled out?

2 MS. SHEALY: Our law clerk ran back over to
3 get them. She should be back in just a second.

4 THE COURT: Okay. I am glad to hear any
5 post-trial motions.

6 Are there any from the State?

7 MS. SHEALY: No, Your Honor.

8 THE COURT: Any from the defense?

9 MS. FORD: Your Honor, at this time we would
10 move for a new trial based on the fact the evidence
11 just does not support the verdict.

12 THE COURT: Does the State wish to respond?

13 MS. SHEALY: Your Honor, I certainly think
14 that Mr. Deas received a fair trial and that
15 post-trial motion would be inappropriate.

16 THE COURT: Our case law is very clear that
17 where there is competent evidence to sustain a jury's
18 verdict, the Court may not substitute its judgment
19 for that of jury. That is out of State versus Frinz
20 (phonetic). Of course the ability to grant a new
21 trial is within the sound discretion of the Court,
22 and the grant or refusal of that will not be
23 disturbed absent a clear abuse of discretion.

24 This case was a credibility case. It came
25 down to who's version -- well, whether the jury

1 believed the State's witnesses, and gave them
2 credibility and gave them weight or did not. And
3 clearly they did.

4 There is substantial circumstantial as well as
5 direct evidence in the record establishing the
6 defendant's guilt. Clearly there was an eyewitness
7 who witnessed the event. The jury found her
8 testimony credible. It is not within the Court's
9 province to substitute, nor can I substitute, my
10 judgment where there is competent evidence to sustain
11 the jury's verdict.

12 The Court would find there is competent
13 evidence in the record to sustain's the jury's
14 verdict, therefore the motion for a new trial is
15 denied.

16 Now we need to wait. How long do we need to
17 wait on the sentencing sheets?

18 MS. SHEALY: She should be right back.

19 THE COURT: Okay. We can then continue with
20 the State's -- is there anything further from the
21 State regard sentencing?

22 MS. SHEALY: Your Honor, I would mention that
23 Mr. Deas does have a prior charge and conviction for
24 assault with intent to kill. He is facing a pending
25 murder charge. I know the Court has heard all the

1 testimony in the case. And you also had the ability
2 to listen to greater than which have been put in the
3 record of the jail phone recordings for when Mr. Deas
4 was arrested.

5 I think that you gleaned from that his total
6 disregard for what had happened. And the only thing
7 being on his mind being how he was going to beat this
8 charge. Never professing that he did not do so.

9 The victim's father, Leroy Simmons, Sr., is
10 present, Your Honor. And he is a fine gentleman.
11 And thankfully he cared enough, and was attentive
12 enough to come back into an area that he was familiar
13 with and try to find out what happened to his son.

14 And I will tell you, Your Honor, what I
15 thought was so compelling when he arrived on Line
16 Street after learning that his son had been killed,
17 he stooped his car, left it running. And he got out
18 of the car and he said, I need to know happened to my
19 son. And I want to handle it with him being
20 arrested. I don't want people on the street to
21 handle this.

22 He understood the retaliation that can
23 sometimes occur in those types of areas. He did not
24 want that, he wanted justice. If you would entertain
25 hearing from him.

1 THE COURT: Absolutely. I was going to ask
2 does he want to address the Court.

3 MS. SHEALY: Thank you, Your Honor.

4 THE COURT: Yes, sir. If you would state your
5 name for the record.

6 THE FATHER: Leroy Simmons.

7 THE COURT: Yes, sir.

8 THE FATHER: It's really hard because it's a
9 bittersweet day, because truly it's a double tragedy.
10 In my capacity as a minister, I have already found it
11 within my heart to forgive Mr. Deas, though I should
12 never forget the incident.

13 But, Your Honor, I also have to stand and
14 represent six children who shall never see or hear
15 their father's voice again. A mother that will never
16 see her son again. Grandparents that will never hear
17 their grandson.

18 He had sisters and brothers, a host of cousins
19 and friends. And because of their love for him and
20 what they have expressed for me, I have to ask that
21 justice be done in this case.

22 ~~Because we have an out-of-control situation in~~
23 ~~our community. And unfortunately we have a genocide~~
24 ~~being practiced against young black men where they're~~
25 ~~exterminating one another as we have today. One is~~

1 in the grave, and one is about to go away to prison.
2 Two families weeping. A generation destroying
3 itself. And they leave children behind that will be
4 lost and struggle through life without a father to
5 lead or guide them.

6 And even as it is in Charleston it is
7 throughout America. And it has to stop. But it will
8 only stop when people make a decision to get
9 involved. And within the black community we have to
10 quit closing our eyes to what happens in our
11 community to our neighbors, to our friends, and to
12 our family.

13 And hopefully this will be a turning point in
14 some small degree. And I just pray that my family,
15 those that are here and those that just couldn't bear
16 to come back today, will receive some kind of closure
17 for this. And that we will quit exterminating one
18 another, but learn to live together and help one
19 another. Thank you.

20 THE COURT: Thank you, sir.

21 MS. SHEALY: Your Honor, we have the
22 sentencing sheet.

23 THE COURT: Are there any other members of Mr.
24 Simmons's family wish to be heard? Is there anything
25 further from the State.

1 MS. SHEALY: No, Your Honor, thank you.

2 THE COURT: Be glad to hear from the defense.

3 MS. FORD: Yes, Your Honor, may it please the
4 Court.

5 THE COURT: Yes, ma'am.

6 MS. FORD: Richard Deas is 19 years old right
7 now. Next week he will be 20 years old. At the time
8 of the incident he was only 18. We do know he has a
9 prior record, AWIK, Your Honor. We would just ask
10 for your consideration that event involved a
11 situation with a person who molested a family member
12 for years and years and year. So that situation was
13 much, much different than the one that you find
14 before you today.

15 The solicitor mentioned you were able to
16 listen to some of the jail tapes. On that jail tape
17 at the end he is talking to his little boy. You can
18 hear the affection, he's saying, I love you, I love
19 you, I love you, I love you.

20 He has two children, Your Honor. He is a
21 family, a lot of family in the area. They have been
22 very, very supportive of him and of me. He, I know
23 that he may seem he is not a very emotional person,
24 Detective Osborn told you that as well. But I found
25 he is sincere, but he is, he is a very low-key type

1 of guy. He would never harass me in any way. He was
2 a model client actually.

3 He was sincere. He would go over his
4 discovery. He would answer questions. He was very
5 sincere and interested in his case, but he never
6 harassed me like unfortunately a lot of clients do,
7 they just constantly, constantly give me a hard time,
8 especially with a murder charge.

9 Just that he is a respectful person toward me
10 and I ask you to consider that. But I do find he
11 does care, Your Honor, he grew up in an environment,
12 he puts on a block. And he tries, but that's the way
13 he deals with things. He just tries not to show
14 emotion.

15 So we'd ask if that is what you are
16 considering in your sentencing. But he is only 18
17 years old, Your Honor. We would ask just for mercy,
18 if you consider 30 years. He has a lot of family
19 here. I talked to his mom a little. I think she is
20 too upset to speak.

21 THE COURT: Does the defendant wish the
22 address the Court?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Sir, if you would stand for your
25 sentencing.

1 I would like to say preliminarily, I very
2 rarely speak at sentencing. One because it is
3 discourage, it is generally operated by the adage, it
4 is better that your silence be misinterpreted than
5 your words be given more weight than you intended for
6 them to have.

7 But nevertheless, I wanted to say to Mr.
8 Simmons that you said more profoundly anything that
9 this Court could have said at sentencing. You really
10 in a way had -- not in a way, you have very
11 profoundly paraphrased what I have been thinking all
12 week.

13 I appreciate your candour. I appreciate your
14 ability to forgive. It says a lot about who you are
15 as a person. And I appreciate you sharing that with
16 the Court and sharing your thoughts with the Court.
17 It is appreciated.

18 And you said, really the Court needs to say no
19 more because of those remarks. And I wish that those
20 who are present would heed it. I wish that those who
21 are not present could have heard it, that it might
22 affect some change in our society. And that our
23 young people would have some semblance of the value
24 of life.

25 So I appreciate that and I wanted to thank you

1 prior to sentencing.

2 As regards, Mr. Deas, the charge of possession
3 of a firearm during the commission of a violent
4 crime. Sir, you are sentenced to the state
5 department of corrections for a period of five years.

6 As regards to the charge of murder. Sir, you
7 are sentenced to the state department of corrections
8 for a period of 40 years. You will get credit for
9 any time that you've served. And these sentences
10 will be concurrent with one another.

11 MS. SHEALY: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MS. FORD: Thank you.

14 THE COURT: Anything further for the record
15 from the State?

16 MS. SHEALY: No, Your Honor.

17 THE COURT: From the defense?

18 MS. FORD: No, Your Honor.

19 THE COURT: Thank you all very much.

20 (Whereupon, the proceedings in this matter
21 before the Court were adjourned.)

22 * * * * *

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in general sessions court the week beginning January 26, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD VERNON DEAS,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
1.	
The court erred by admitting a taped conversation of appellant from the county jail wherein he stated the seized gun was not the murder weapon since this was not relevant, and it was unduly prejudicial pursuant to Rule 403, SCRE especially where the state admitted it wanted this evidence before the jury so it could infer that appellant knew the seized gun was not the murder weapon because he knew where the murder weapon was located since this highly prejudicial evidence had the very real tendency to mislead and confuse the jury	5
Introduction	5
Relevant Facts	5
The Gun	7
Phone Calls	8
Closing Argument	9
Discussion	9
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<u>Associate Management v. E.D. Sauls Construction Company</u> , 279 S.C. 219, 305 S.E.2d 236	
(1983)	10
<u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989)	13
<u>State v. Bell</u> , 302 S.C. 18, 393 S.E.2d 364 (1990)	12
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	10
<u>State v. Gillian</u> , 373 S.C. 601, 609, 646 S.E.2d 872 (2007)	12
<u>State v. Groome</u> , 274 S.C. 189, 262 S.E.2d 31 (1980)	10
<u>State v. Lyles</u> , 379 S.C. 328, 337, 665 S.E.2d 201 (Ct.App.2008)	10, 11
<u>State v. McConnell</u> , 290 S.C. 278, 280, 350 S.E.2d 179 (1986)	10, 11
<u>State v. Pipkin</u> , 359 S.C. 322, 326, 597 S.E.2d 831 (Ct.App.2004)	10
<u>State v. Schmidt</u> , 288 S.C. 301, 303, 342 S.E.2d 401 (1986)	10
<u>Toole v. Salter</u> , 249 S.C. 354, 154 S.E.2d 434 (1967)	10
<u>Wimberly v. Sovereign Camp, W.O.W.</u> , 190 S.C., 2 S.E.2d 532 (1939)	10

STATEMENT OF ISSUES ON APPEAL

Whether the court erred by admitting a taped conversation of appellant from the county jail wherein he stated the seized gun was not the murder weapon since this was not relevant, and it was unduly prejudicial pursuant to Rule 403, SCRE especially where the state admitted it wanted this evidence before the jury so it could infer that appellant knew the seized gun was not the murder weapon because he knew where the murder weapon was located since this highly prejudicial evidence had the very real tendency to mislead and confuse the jury?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County grand jury for the offense of murder and possession of a firearm during the commission of a violent crime. R. 630.

A trial was held on January 26-30, 2009 before the Honorable Deadra L. Jefferson, and a jury. R. 1. Mary Ford and Andrew Grimes represented appellant. R. 1. Jennifer Shealy and Christopher Neely were the assistant solicitors. R. 1

On January 30, 2009, the jury found appellant guilty of both charges. R. 612, ll. 3-19-21; 613, ll. 3-5. Judge Jefferson sentenced appellant to forty years imprisonment for murder, and five years concurrent on the firearms charge. R. 623, ll. 2-10.

This appeal follows.

ARGUMENT

The court erred by admitting a taped conversation of appellant from the county jail wherein he stated the seized gun was not the murder weapon since this was not relevant, and it was unduly prejudicial pursuant to Rule 403, SCRE especially where the state admitted it wanted this evidence before the jury so it could infer that appellant knew the seized gun was not the murder weapon because he knew where the murder weapon was located since this highly prejudicial evidence had the very real tendency to mislead and confuse the jury.

Introduction

Prior to trial, defense counsel objected to any reference to the gun found on the night stand or even closer to appellant when he was arrested. SLED had determined that the seized gun was not the gun used in the crime. Defense counsel continued to argue that evidence regarding the seized gun should be excluded because it was not "relevant and it is more prejudicial than probative." R. 10, l. 5- 11, l. 16; r. 14, l. 25 - 17, l. 11; r. 315, l. 3 - 317, l. 22 r. 450, ll. 13-23; r. 538A, ll. 12-21. The defense stated, "all it does is try to prejudice my client," and she continued to argue, in addition to relevance, that it should be excluded pursuant to Rule 403, SCRE. R. 450, l. 22 - 451, l. 24.

Relevant Facts

Whitni Doctor testified that a few weeks before the shooting appellant's mother, Altida Deas, telephoned Doctor and asked her to place an automobile in her name. R. 415, ll. 21-22. Doctor agreed and went to the Yankos dealership in West Ashley to sign the papers. R. 415, ll. 24-25. Ms. Deas wrote a check for the green automobile's insurance. R. 416, ll. 7-8.

The dealership later informed Doctor that the vehicle she signed for had no insurance because the check was returned for insufficient funds. R. 416, ll. 9-14. The dealership employee informed Doctor that if anything happened to the vehicle she would be responsible because the automobile was in her name. R. 416, ll. 18-20. Doctor began texting and telephoning Ms. Deas but her calls were not returned. R. 416-417. Doctor then began driving around and looking for the automobile whenever possible. R. 417.

Doctor and the decedent, Leroy Simmons, II, were friends. The two "were talking" and "used to go out places." R. 418, ll. 7-8. The decedent told Doctor he had seen the vehicle on Isabella Street. R. 417-418. The two checked on Isabella Street but the green car was not there. R. 418, ll. 2-3.

Later another day, the decedent, and Doctor were conversing on Line Street and observed the vehicle parked in the Family Dollar parking lot on Hanover Street. The decedent and Doctor went to the parking lot and called the police. R. 419, l. 22. They observed appellant coming out of the vehicle. R. 419, ll. 8-10. By the time the police had arrived, appellant had already driven off in the automobile. R. 421, ll. 6-7.

The night before the shooting, the decedent called Doctor around 11:00 p.m. and told her he had seen the vehicle again. R. 421, ll. 15-20. Doctor again telephoned the police and went to where she was told the vehicle was parked on Line Street. R. 422. Doctor testified that while she and decedent were talking to the police appellant was standing on the corner of Line and Hanover near the vehicle. R. 423, ll. 2-9.

Appellant telephoned his mother and Ms. Deas came out "fussing." R. 423, ll. 17-18. The vehicle was eventually towed to Doctor's uncle's yard on the day of the shooting. R. 425, ll. 6-8.

Two eye-witnesses testified that they observed appellant approach the decedent as he was waiting for a cab in front of 25 Line Street. R. 196 ll. 15-16; 244, ll. 10-24. One of the witnesses, Shoreka Miles, admitted she lied to the police. She told them that she was in her apartment when she heard shots, and then "caught a little bit" of a man's face who was riding a bicycle. R. 260, l. 7 – 261, l. 29. She later gave a statement to Detective Osborne that she did not "know the person" who shot the gun that evening. R. 273, l. 23 – 274, l. 3.

By the time of trial Miles now testified that she observed two people coming up on a bicycle. The man on the handlebars jumped off the bicycle and started fighting with the decedent. R. 241, ll. 19-22. The decedent fell to the ground and as he was attempting to get back up "the guy pulled out a gun and shot him three times and he jumped back on the bicycle and they left." R. 243, ll. 4-8. Miles identified the guy on the handlebars who shot the decedent as "Little Ricky" -- appellant. R. 244, l. 24.

The second eyewitness, Shrod Young, alleged that he saw appellant approach the decedent on Line Street. R. 196, ll. 15-16. The two were talking and Young saw a gun. R. 196, l. 20. Young walked around the corner and then heard shots fired, but he did not observe the actual shooting. R. 198, ll. 21-25.

The decedent was shot three times. R. 487, ll. 12-13. The first wound was to his left waist area, the second to the front and side of his left thigh, and the third to the back of his right buttocks. R. 487-488.

The gun

Appellant was arrested at his girlfriend's residence at 31-C Franklin Street. R. 313, l. 11. During appellant's arrest, an officer observed a handgun in "plain view" and collected the weapon. R. 314, ll. 20-24. The handgun was found either on a nightstand next to the bed

in which appellant was sleeping or directly next to appellant. R. 315, ll. 6-9. This handgun was **not** the murder weapon. The murder weapon was never found. R. 299, ll. 23-25.

Phone calls

While appellant was in the county jail he made several phone calls to friends and family. In one such phone call from his mother, the state alleged appellant stated, "They think they got the murder weapon, but they ain't got the murder weapon." R. 315, ll. 21-22; r. 474, ll. 8-9. The assistant solicitor at trial alleged that this statement by appellant is "certainly suggestive of he knows it's not the murder weapon *not because he wasn't there but because he was there and he knows it will not be linked back up.*" R. 316, ll. 9-12. (emphasis added).

Defense objected to the introduction of the tapes on the grounds of prejudice and relevance. R. 10, l. 5- 11, l. 16; r. 315, l. 3 - 317, l. 22; r. 450, ll. 13-23; r. 538A, ll. 12-21. The trial judge strongly questioned why this evidence was relevant: "The conversation stands on its own. He can be referring to anything. He could be referring to the *gun they found* - I am just trying to figure it out, this gun was not, as I understand it, the murder weapon." The solicitor confirmed that the gun was not the murder weapon, and the ammunition was also not linked "to the gun that was used." R. 315, l. 18 - 316, l. 22.

Defense counsel argued appellant did not make any statement against interest and his statement regarding the state thinking "they have the murder weapon, but they don't" was not a statement against his interest. Counsel repeated that this taped conversation was irrelevant. R. 316, l. 23 - 320, l. 15. Counsel also argued that "all it does is try to prejudice my client." R. 450, ll. 22-23.

The judge ultimately ruled that portions of the taped phone calls were relevant and found that appellant's phone conversation about the gun was admissible as an admission against appellant's interest because the state *could argue* appellant was saying he knew where the murder weapon was in this case. R. 474, ll. 6-15. A redacted version of the tape was played in front of the jury over the objections of defense counsel. R. 538, ll. 6-7. The tape is on file with this Court. It is difficult to understand exactly what appellant was saying because of the quality of the audio tape but it is a reference to the seized gun not being the murder weapon. Appellant also said the state did not have any evidence against him when he was asked why he was charged with murder.

Closing argument

In her closing argument the solicitor stated the audiotape played for the jury showed appellant "knows where that murder weapon is. He knows where it was put. And someone says, but I don't know how [they can] charge you with murder, what evidence they got? What evidence they got? He says nothing. These conversations are as important for what they say as they don't say." R. 575, l. 15 – 576, l. 7.

Discussion

As seen, the defense continued to object that the taped jail telephone call about the gun was not relevant, and that it should also be excluded pursuant to Rule 403, SCRE. R. 10, l. 5- 11, l. 16; r. 14, l. 25 – 17, l. 11; r. 315, l. 3 – 317, l. 22; r. 450, ll. 13-23; r. 538A, ll. 12-21. The trial judge initially was correct in reasoning that this tape was not relevant, but erred by giving into the solicitor and admitting this taped conversation of appellant from the county jail wherein he stated the seized gun was not the murder weapon. Appellant's statement was not relevant and it was also unduly prejudicial pursuant to Rule 403, SCRE.

As seen, the solicitor *admitted this gun was not the murder weapon* and it is apparent the state wanted the jury to draw the inference that because appellant said the state did not have the murder weapon that he must have known where the murder weapon was located. Such a spurious inference was explosively prejudicial to appellant and if not excluded as irrelevant it should have been excluded pursuant to Rule 403, SCRE.

First, evidence must be relevant before it is admissible. Wimberly v. Sovereign Camp, W.O.W., 190 S.C., 2 S.E.2d 532 (1939). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986), *citing* Associate Management v. E.D. Sauls Construction Company, 279 S.C. 219, 305 S.E.2d 236 (1983). "Evidence which assists the jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." State v. Schmidt, 288 S.C. at 303, *citing* Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967). "Evidence is incompetent if it could create dangers such as prejudice, undue delay, confusion of the issues, tendency to mislead the jury, waste of time, or cumulative presentation." State v. Lyles, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct.App.2008), *citing* State v. Pipkin, 359 S.C. 322, 326, 597 S.E.2d 831, 833 (Ct.App.2004), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The same concerns are the heart of Rule 403, SCRE also.

"The admission of evidence is largely within the sound discretion of the trial court." State v. McConnell, 290 S.C. 278, 280, 350 S.E.2d 179, 180 (1986), *citing* State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). "A court's ruling on the admissibility of evidence will not be reversed . . . absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." State v. Lyles, 379 S.C. at 334, 665 S.E.2d at 204.

“To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence or lack thereof.” State v. Lyles, 379 S.C. at 334, citing State v. White, 372 S.C. 364, 374, 642 S.E.2d. 607, 611 (Ct.App.2007).

Appellant’s taped phone conversation was incompetent to establish that he knew where the murder weapon was located as the state suggested at trial. The state admitted the seized gun was not the murder weapon. The admission of the taped phone conversation had the strong likelihood to mislead the jury into believing that because appellant knew the seized gun was not the murder weapon, he knew what gun was the murder weapon and where it was located. This is the very type of evidence that is incompetent because it caused confusion. Unfortunately, the trial court allowed the jury to make an inference of guilt based on evidence that was not relevant because it was not competent to show what the state alleged it suggested. This caused great prejudice to the appellant.

In McConnell, our Supreme Court held that bullets recovered from the defendant’s home that did not match the caliber of the bullets used in the murder at issue “should not have been admitted because they were not properly connected with the incident, irrelevant, incompetent, and raised spurious inferences of prior bad acts.” State v. McConnell, 290 S.C. at 280. The Court held that the bullets should have been excluded because “[t]here was insufficient connection between the evidence and the crime with which appellant was charged.” Id.

The lesson of McConnell is that irrelevant evidence should not be admitted where it is intended to raise a spurious inference of guilt. While in McConnell the spurious inference of guilt was to other bad acts here it was more direct and more prejudicial.

The recovered gun had absolutely no relevance to the incident and only “raised spurious inferences” that the appellant knew where the murder weapon could be found. Not only is there an “insufficient connection” between the seized gun and the murder, there was absolutely no connection at all. The seized weapon was simply found near appellant when he was arrested. It was not found at the scene of the murder and it was not used to commit the crime.

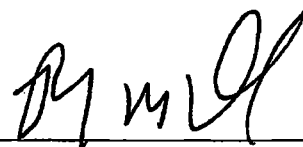
Secondly, and of equal importance, even if this Court should find that the taped phone conversation was relevant, it should have been excluded on Rule 403, SCRE grounds. Under Rule 403, “relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . .” Rule 403, SCRE. “The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.” State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007), citing State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990).

Because the admission of appellant’s statement during the taped phone conversation “raised spurious inferences” that were very likely to mislead or confuse the jury, there is a reasonable probability that the jury’s verdict was influenced by this evidence causing appellant great prejudice. The admission of the taped phone conversation was a substantial error, and the spurious inference the solicitor argued in closing the jury should draw from the admission of this evidence shows beyond cavil its unduly prejudicial effect. See State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed and this case remanded to the Charleston County Court of General Sessions for a new trial.

Respectfully submitted,

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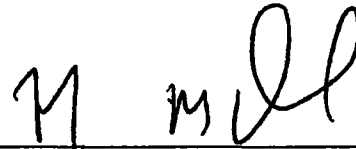
Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of February, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read 'M. Dudek', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

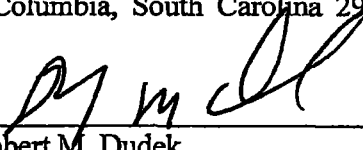
V.

RICHARD VERNON DEAS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 8th day of February, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of February, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

v.

RICHARD VERNON DEAS,

Appellant.

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TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL	vi
STATEMENT OF THE CASE	1
RESPONDENT'S STATEMENT OF FACTS	2
ARGUMENT	
Judge Jefferson did not err in admitting the one phone call in which appellant informed his mother that police did not have the murder weapon; and, even assuming <i>arguendo</i> error in the admission of this one piece of evidence, its admission was harmless	9
CONCLUSION	26
DESIGNATION OF MATTER	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

FEDERAL CASES

United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)	19
United States v. Peed, 714 F.2d 7 (4th Cir. 1983)	24
United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989)	19

STATE CASES

Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)	22
Bunch v. Cobb, 273 S.C. 445, 257 S.E.2d 225 (1979)	16
Elridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191, 211 (Ct. App. 1998)	16
Interest of Michael H., 360 S.C. 540, 602 S.E.2d 729 (2004)	20
State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000)	11
State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991)	11, 12
State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989)	10
State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)	9, 24
State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000)	15
State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)	10, 12
State v. Bell, 302 S.C. 18, 393 S.E.2d 362 at 372 (1990)	24
State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978)	24
State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)	9
State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (Ct. App. 2010)	9, 10
State v. Cheesboro, 346 S.C. 526, 548, 552 S.E.2d 300 (2001)	11, 19
State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009)	10

State v. Cope, 385 S.C. 274, 283, 684 S.E.2d 177 (Ct. App. 2009)	10, 12, 15, 21
State v. Dickerson, 341 S.C. 391, 396-97, 535 S.E.2d 119, 121-22 (2000)	21
State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004)	18
State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006)	24
State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)	11, 15, 18
State v. Edwards, 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009)	23
State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946)	12
State v. Finlay, 300 S.C. 196, 387 S.E.2d 88 (1989)	12
State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)	10, 15
State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998)	18
State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992)	10, 16
State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973)	12
State v. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000)	24
State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992)	10, 11, 12
State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001)	18
State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)	24
State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009)	17, 18, 19, 20
State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004)	18
State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999)	16
State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002)	11
State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004)	9
State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)	18

State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986)	17
State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004)	18
State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996)	10
State v. Miller, 367 S.C. 329, 626 S.E.2d 328 (2006)	22
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State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002)	22
State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008)	9
State v. Orozco, 362 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011)	19
State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)	9, 21, 22
State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006)	9
State v. Petit, 144 S.C. 425, 142 S.E.2d 725 (1928)	11
State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996)	25
State v. Pipkin, 359 S.C. 322, 597 S.E.2d 831 (Ct. App. 2004)	18
State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007)	10
State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980)	10, 11, 15
State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004)	12, 21
State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999)	10
State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001)	11
State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986)	11
State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991)	24
State v. Shorter, 85 S.C. 170, 67 S.E.2d 121 (1910)	10
State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)	11

State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005)	9
State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981)	12, 13
State v. Tillman, 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991)	12
State v. Turner, 117 S.C. 470, 109 S.E.119 (1921)	11, 15
State v. Waddle, 873 P.2d 171 (Idaho Ct. App. 1994)	19
State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005)	9
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State v. Wilson, 345 S.C. 1, 5-6. 545 S.E.2d 827, 829 (2001)	10
State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004)	9
State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995)	22

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting a taped conversation of appellant from the county jail wherein he stated the seized gun was not the murder weapon since this was not relevant, and it was unduly prejudicial pursuant to Rule 403, SCRE especially where the state admitted it wanted this evidence before the jury so it could infer that appellant knew the seized gun was not the murder weapon because he knew where the murder weapon was located since this highly prejudicial evidence had the very real tendency to mislead and confuse the jury?

STATEMENT OF THE CASE

Appellant, Richard Deas, murdered Leroy Simmons in Charleston on October 19, 2007. (Tr. pp. 7, 710). Deas was arrested and charged with the victim's murder on October 23, 2007. (Tr. p. 384). Deas was subsequently indicted by the Charleston County grand jury for murder and possession of a weapon during a violent crime (2008-GS-10-3339, 3340). (Tr. pp. 6-7). Deas was represented on the charges by Mary Ford and Andrew Grimes, Esquires. Jennifer Shealy and Christopher Neely prosecuted the case for the State of South Carolina. (Tr. p. 1).

Deas proceeded to trial on January 26, 2009 before the Honorable Deadra L. Jefferson, Circuit Court Judge, and a jury. (Tr. p. 1). At the conclusion of the trial on January 30, 2009, Deas was convicted of murder and possession of a weapon during a violent crime. (Tr. pp. 707-710). Judge Jefferson sentenced Deas to forty (40) years imprisonment for murder, and five (5) years concurrent for possession of a weapon during a violent crime.¹ (Tr. p. 723). This appeal followed.

¹At sentencing, Deas prior record was provided to Judge Jefferson. Deas had previously been convicted of assault with intent to kill (AWIK).

RESPONDENT'S STATEMENT OF FACTS

The Murder

Appellant Richard Deas murdered the victim Leroy "Miles" Simmons in the early morning hours of October 19, 2007. Appellant murdered the victim by shooting him with a firearm. Appellant shot the victim on Line Street in Charleston at approximately 2:30 a.m. The victim died after being transported to the hospital. The motive for the murder arose out of an incident, also on Line Street, that occurred just a few hours earlier at approximately 11:00 p.m. on October 18, 2007. That incident arose out of actions by appellant and his mother that occurred several days before. (Tr. pp. 7-710).

The Motive

Whitni Doctor ("Whitni") was asked by *appellant's mother*, Atila Deas, to place an automobile in her, Whitni's, name. Whitni agreed and went to Yankos dealership in West Ashley to sign the papers. Appellant's mother wrote a check for the automobile's insurance. (Tr. pp. 479-482).

The dealership later informed Whitni that the vehicle she signed for had no insurance because appellant's mother's check was returned for insufficient funds. The dealership informed Whitni that if anything happened to the vehicle she, Whitni, would be responsible because the automobile was in her name. (Tr. pp. 479-484).

Whitni immediately began texting appellant's mother who replied the car may need to be placed in someone else's name. Whitni then began telephoning appellant's mother, but her calls were not returned. (Tr. pp. 479-484)

At some point, Whitni decided she needed to get the vehicle back. Whitni began driving

around Charleston looking for the automobile whenever possible. On one occasion, the dealer told Whitney the car was located on Willams Street, but when Whitney got there the car was gone. (Tr. pp. 479-498).

Whitni and the victim, Leroy "Miles" Simmons, were romantically involved and had been for only a few weeks. The victim was aware of Whitney's problem with the vehicle and would inform her whenever he saw the vehicle. (Tr. pp. 479-485, 495).

Initially, the victim told Whitney he had seen her vehicle in the area of Line Street, and he also told her later he had seen it on Isabella Street. Whitney and the victim checked on Isabella Street but the green car was no longer there. (Tr. pp. 483-484).

The victim and Whitney were talking again, this time while they were sitting together on Line Street, when Whitney actually saw the car. She and the victim went together to the parking lot of the Family Dollar Store and witnessed appellant Deas getting out of the car. Whitney was upset because appellant was driving the car and did not have a driver's license. However, neither Whitney nor the victim approached appellant at this time. Instead, Whitney called the police in an attempt to repossess the vehicle. By the time police arrived at the location, appellant had moved the vehicle, and the car was gone. Whitney was unable to repossess the car on this date, October 16, 2007. Officer Barfield of the Charleston Police Department, who responded to this call, gave Whitney his card with his phone number on it. (Tr. pp. 479-487, 437-438, 493, 496, 499-500).

On the night of October 18th, at approximately 11:00 p.m., Whitney received a call from the victim that the car was in the same area again. Whitney called Officer Barfield and told him the car was in the same location. Officer Barfield told Whitney he would meet her at the location of the car. (Tr. pp. 487-488).

When Whitney arrived at Line Street, Officer Barfield was already there with the car. Barfield asked Whitney for permission to open the car, which Whitney gave him. Officer Barfield used a "Jimmy Stick" to open the car. (Tr. p. 488, 500-501).

While this was occurring, Whitney could see appellant Deas standing on a nearby street corner. Appellant was talking on his cell phone, apparently with his mother. (Tr. pp. 488-489, 491, 496, 501).

Whitney wanted to have the car towed. However, Officer Barfield informed her he would have to see proof of ownership. Whitney called her mother, who brought the paperwork to the scene. (Tr. pp. 488-490).

Appellant's mother, Atilda Deas, arrived on the scene, raced out of her car and began yelling and fussing at Whitney. Appellant's mother claimed the car was hers. Whitney claimed the car was hers and provided the paperwork to Officer Barfield. Appellant remained on the corner watching the altercation between Whitney and his mother. (Tr. pp. 487-492, 501-502).

After looking at Whitney's paperwork, Officer Barfield allowed Whitney to call a wrecker to tow the car. Whitney had the vehicle towed to her uncle's house because she was unable to get the keys to the car from appellant Deas. Whitney was afraid if the car was towed to her residence, appellant Deas or his mother could come and take the car. (Tr. pp. 487-491, 502).

At the conclusion of the incident on Line Street, appellant's mother was seen going to the same street corner where appellant was standing. She was seen talking with the men congregated there. (Tr. pp. 437-438, 487-491, 502, 505).

The Identity of the Murderer

Just a few hours later, at 2:30 a.m., October 19, 2007, two (2) witnesses saw appellant Deas approach the victim on Line Street. The victim was standing in front of 25 Line Street, outside his cousin's, Elaine Singleton's, apartment, waiting on a cab to take him to Whitney's apartment. (Tr. pp. 235-236, 487, 492, 497, 294-317).

One of the eyewitnesses, Shoreka Miles, saw appellant Deas riding on the handlebars of a bicycle, while another individual was peddling the bike. Shoreka saw appellant jump off the handlebars and confront the victim. Appellant and the victim began to fight, and the victim eventually fell to the ground. Appellant Deas produced a pistol and shot the victim three (3) times as the victim was trying to get up off the ground. Appellant then fled the scene. Shoreka Miles knew who appellant was prior to the shooting. (Tr. pp. 294-317).

Shrod Young, a close friend of the victim, saw appellant Deas as he was walking toward the victim. Shrod saw appellant begin to grapple with the victim. Shrod also saw appellant produce a pistol. Shrod walked away and then heard three (3) gunshots. After hearing the three (3) gunshots, Shrod called 911. (Tr. pp. 239-259). Shrod had known the victim approximately ten (10) years prior to his murder. Shrod had known appellant Deas for approximately six (6) months at the time Deas murdered the victim. (Tr. pp. 239-259).

Shoreka, who was afraid, initially told police at the scene that she did not see anything.² Shoreka eventually came to the police department, admitted she witnessed the murder, identified appellant from a photographic line-up as the shooter, and gave a written statement regarding the facts

²Shoreka was assisting the victim at the scene, applying pressure to one of the wounds, when police arrived. (Tr. pp. 238-239, 307-310). Her scarf, which she used to apply pressure, was found in the victim's clothes at the hospital. (Tr. pp. 308, 576-577)

she witnessed. (Tr. pp. 294-317, 363-369).³

Detective Osborne, the case detective, received information that Shrod Young had also witnessed the murder.⁴ Osborne received information that Shrod had told two (2) different individuals he witnessed the murder and knew who the shooter's identity, but stated "he wasn't no snitch." Police attempted to locate and talk to Shrod; however, Shrod would not talk to police. As a result, Shrod was arrested for obstruction of justice. After his arrest, Shrod agreed to tell police what he knew. He too identified appellant from a photographic line-up as the person who killed the victim, and Shrod gave a written statement to police regarding the events he witnessed. (Tr. pp. 239-259, 349-350, 358-361, 369-370, 399-403, 446).

At trial, both witnesses identified appellant as the perpetrator of the murder. Both testified appellant was wearing black clothing at the time of the murder. Both testified there were three (3) gunshots fired after appellant Deas produced the pistol. (Tr. pp. 294-317, 239-259).

The victim bled to death as a result of the gunshot wounds inflicted by appellant. One of the gunshot wounds severed the main artery in one of the victim's legs. The autopsy determined the victim was in fact shot three (3) times. (Tr. pp. 555-567).

When appellant was arrested in his girlfriend's apartment around 6:00 a.m. on October 23, 2007, police recovered a black t-shirt on the bedroom floor, and appellant was wearing black pants. (Tr. pp. 384-387). Police also seized a pistol that was not the murder weapon. The State did not

³Shoreka admitted to police she was sitting under a tent or canvass awning when she witnessed the murder. (Tr. pp. 294-317). When the first officer on the scene arrived within three (3) minutes of the shooting, he noticed chairs under this awning were overturned or scattered as if someone took off running. (Tr. p. 225, 231).

⁴Shrod left the scene after calling 911 and when the police arrived. (Tr. pp. 247-248).

introduce this weapon at trial and made no reference to it. (See Tr. pp. 7-704, State's Ex. 29 (Defendant's statement). The State never recovered the murder weapon. (Tr. pp. 357-358).

After his arrest, when questioned by police, appellant claimed he was not involved in the murder. Appellant claimed that he was with his girlfriend the entire night of the shooting. (Tr. pp. 394-395, 450).

Police had already questioned appellant's girlfriend prior to questioning him. (Tr. pp. 388, 398). She denied appellant spent the night with her the night of the murder. (Tr. pp. 388, 398 459-479). She specifically remembered appellant coming by the apartment in the early morning hours, but he stayed only a short time before he left with some men who had come to the apartment with him. (Tr. pp. 459-479). After questioning appellant, police interviewed appellant's girlfriend again, and she again confirmed appellant did not spend the night with her the night of the murder. (Tr. pp. 398, 459-479).

Appellant's statement claiming his girlfriend as an alibi was admitted in evidence at appellant's trial. (Tr. pp. 394-395). Appellant's girlfriend also testified before the jury that appellant did not spend the night with her the night of the murder. (Tr. pp. 458-467). Appellant's girlfriend further testified that appellant had offered her money since he was arrested for murder. (Tr. pp. 459-467). She testified appellant told her on the phone from jail that if she needed any money to get it from "Slick". (Tr. pp. 459-467).

The State also introduced appellant Deas' statement to police in which he discussed the vehicle his mother had purchased, the green car. In the statement, Deas tried to distance himself from the vehicle and its repossession by Whitney. In the statement, appellant Deas claimed he was not present when the vehicle was repossessed. (State's Exhibit 29 & Tr. pp. 394-399).

Additional Identity Evidence/The Phone Calls from Jail

At trial, the State proved not only the motive for the murder, appellant's identity, and that his alibi was false, but also that appellant made incriminating statements during phone calls from the Charleston County Detention Center. The phone calls were made the date of Deas' arrest, *October 23, 2007*. (Tr. p. 507, 543, 384). The phone calls were recorded by the jail, and the portions deemed relevant by the trial judge were played back for the jury. (State's Exhibit 40, Court's Exhibit 23 for Identification).

In the phone calls, appellant told his mother that police charged him with the murder weapon, but police did not have the murder weapon, the inference being he knew the location of the murder weapon.⁵ (See Tr. p. 543, ll. 6-15, State's Ex. 40, Court's Ex. 23). Appellant also told a friend, "Slick," that he was going to get his girlfriend to change her story and say he was with her on the night of the victim's murder, i.e. provide him with an alibi. Appellant also told "Slick" that two (2) people were involved in the murder and as long as the police could only find one [himself] he was not in any jeopardy. (See Tr. p. 542, ll. 11-18, State's Ex. 40, Court's Ex. 23).

On appeal, appellant challenges the trial judge's admission of one of the taped phone calls. Specifically, appellant claims Judge Jefferson erred in admitting the phone conversation in which he stated police did not have the murder weapon. Appellant does not claim the admission of the other phone conversation with "Slick" was error.

⁵In the phone calls, appellant repeatedly refers to the police as "them boys." (State's Ex. 40, Court's Ex. 23).

ARGUMENT

Judge Jefferson did not err in admitting the one phone call in which appellant informed his mother that police did not have the murder weapon; and, even assuming *arguendo* error in the admission of this one piece of evidence, its admission was harmless.

Appellate Court's Standard of Review

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). This Court does not simply re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (Ct. App. 2010). On appeal, the appellate court is limited to determining whether the trial court abused its discretion. State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982).

Standard of Review /Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008) State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of

discretion.” State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009); State v. Cope, 385 S.C. 274, 283, 684 S.E.2d 177 (Ct. App. 2009). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). The trial court’s decision will not be overturned unless controlled by an error of law resulting in undue prejudice. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (Ct. App. 2010).

“Whether evidence is relevant in a criminal prosecution is an issue within the trial judge’s discretion.” State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999); State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996). “The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude the evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice.” Cope, 385 S.C. at 286, *citing* State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). A trial judge’s determination of admissibility of evidence will not be disturbed absent a showing of abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989).

Admissibility of a Defendant’s Statements

As a general rule, it is an exception to the hearsay rule that a defendant’s out of court statement may be testified to by the witness who heard an oral statement, or received a written statement. State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); State v. Shorter, 85 S.C. 170, 67 S.E.2d 121 (1910); State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992); State v. Good,

308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992). "As a general rule, evidence of statements made by a person accused of a crime are admissible against him." State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992), *citing* State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980). Anything that a defendant has stated, which is relevant to any question involved in the trial, is admissible in evidence against him. State v. Pittman, 137 S.C. 75, 134 S.E.514 (1926); State v. Turner, 117 S.C. 470, 109 S.E.119 (1921).

"Relevant evidence" means evidence having *any* tendency to make, the existence of any fact that is of consequence to the determination of the action more *probable* or less probable than it would be without the evidence. Rule 401, SCRE. (emphasis added). "Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." State v. Cheesboro, 346 S.C. 526, 548, 552 S.E.2d 300 (2001); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002). All relevant evidence is admissible except as otherwise provided by law, the Rules of Evidence, or other rules as promulgated by the Supreme Court of South Carolina. Rule 402, SCRE. "All relevant evidence is admissible." State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Cope, 385 S.C. 274, 286, 684 S.E.2d 177 (Ct. App. 2009); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003).

Evidence which assists the jury at arriving at the truth of an issue is relevant and admissible, unless otherwise incompetent. State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991); State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986); State v. Petit, 144 S.C. 425, 142 S.E.2d 725 (1928). Evidence is relevant and admissible if

it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). "Evidence is relevant if it tends to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence." Rule 401, SCRE; State v. Cope, 385 S.C. 274, 286, 684 S.E.2d 177 (Ct. App. 2009). The evidence in question need not be sufficient in itself to establish the whole or any definite portion of a party's contention. State v. Finlay, 300 S.C. 196, 387 S.E.2d 88 (1989). Moreover, evidence relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused guilt of another crime. State v. Hambright, *supra*; State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973); State v. Tillman, 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991), *cert. denied*, (1991).

Furthermore, the destruction or attempted destruction of evidence is regarded as a relevant incriminating circumstance. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)(holding extinguished fire located behind defendant's residence day of murder was relevant and admissible, and argument that no evidence was found in the fire went to the evidence weight not its admissibility), *citing* State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946), *and* State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981).

In reviewing the challenge to the admissibility of such evidence, the inquiry must be an objective one. *See* State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004), *cert. denied* (2005). The defendant's statement, or that of his counsel, of why he did what he did or said what he said is not dispositive on the question of admissibility. *See* Robinson, 360 S.C. at 196, *and* Beckham, *supra*. If viewed objectively, there is a sufficient nexus between the defendant's statement to affirm the admission of the statement, then the trial court acted within its discretion. *See*

Robinson; *See also* Beckham (finding several of the defendant's challenges to evidence went to its weight not its admissibility), *citing* State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981).

What Occurred at Trial

The admissibility of the jail phone recordings of appellant was first taken up pre-trial. (Tr. pp. 4-5, 41-44, 46). Judge Jefferson decided to handle the matter *in camera* immediately before the attempted introduction of the evidence. (Tr. pp. 4-5, 41-44, 46).

Judge Jefferson was aware of this issue, because the Court had been made aware of the same in pre-trial filings. Judge Jefferson had researched the issue carefully. Judge Jefferson also carefully reviewed the phone conversations several times before allowing admission of only certain portions that she determined were relevant and admissible. (Tr. pp. 507-535, 541-543). Judge Jefferson did not admit all of the phone recordings the State sought to admit, finding some portions were not relevant. (Tr. pp. 541-543, 546-547, 549-551, 592-597). Judge Jefferson forced the State to redact portions of the phone recordings that she determined were not admissions against interest. (Tr. pp. 541-543, 546-547, 549-551, 592-597). Those she determined were admissions against interest were admitted and played before the jury. (Tr. pp. 541-43, 546-47, 549-551, 592-597, 598-612).⁶

The Lack of Merit of Appellant's Argument

Throughout his brief, appellant argues that the recorded conversation with his mother was irrelevant, and he was unfairly prejudiced by its admission because the State introduced a gun that was not the murder weapon, and this raised a spurious inference of guilt. **This is not true.**

⁶In determining admissibility, Judge Jefferson reviewed the phone recordings which were contained on a CD (Court's Exhibit 23). After determining that only certain portions of the phone recordings were admissible as admissions against interest, those portions were recorded onto a cassette tape so the jury could listen to them in the jury room. (State's Ex. 40).

Appellant is incorrect. (Tr. pp. 343-346, 371-383).

The State did not introduce a gun that was not the murder weapon. (See Tr. pp. 1-727 & State's Ex. 29).⁷ In fact, the State did not introduce a weapon at all. (See Tr. pp. 1-727 & State's Ex. 29). In his brief, appellant fails to inform this Court that the State did not introduce *any* evidence that a gun that was not the murder weapon was found in appellant's girlfriend's apartment. (See Tr. pp. 1-727 & State's Ex. 29).

Appellant Deas introduced the gun through cross-examination of an officer who was an evidence technician. (See Tr. pp. 580-584).⁸ Appellant did this in an attempt to give an innocent explanation for his incriminating statement made to his mother on the audio-recording. (Tr. pp. 371-383, 580-585). However, this attempt only further solidified appellant's identity as the killer.

The Evidence the State introduced was Relevant and therefore Admissible

As a result of the fact appellant introduced the only evidence a pistol that was not the murder weapon was found in his girlfriend's apartment or during the investigation, appellant is left to argue only that the admission of *the phone recording itself* was not relevant.

"The admission or exclusion of evidence is a matter within the trial court's sound discretion,

⁷Reference to the gun seized at appellant's girlfriend's apartment was redacted from appellant Deas' statement to police before being admitted to the jury by the State. (See State's Ex. 29). Detective Osborne, the case detective, made no reference to the gun found in appellant's girlfriend's apartment before the jury. (Tr. pp. 347-372, *in camera* pp. 372-384, Tr. pp. 384-403, 406-451). Appellant's girlfriend was not asked about the gun found in her apartment. (Tr. pp. 459-479).

⁸Appellant's counsel's questions informed the jury the gun was found during the arrest of appellant at his girlfriend's apartment. (Tr. pp. 583-584). The witness actually testified she was only aware that a gun was recovered during the investigation. (Tr. pp. 583-584). Appellant's counsel's questions also informed the jury this weapon was not the murder weapon. (Tr. pp. 583-584). Another officer testified the murder weapon was never recovered. (Tr. pp. 357-358).

and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" State v. Commander, Shearhouse Advance Sheets, Opinion No. 27062 (Filed October 31, 2001), *quoting* State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). "The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude the evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice." Cope, 385 S.C. at 286, *citing* State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

"As a general rule, statements or declarations by one accused of a crime are admissible against him." State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000), *quoting* State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980). Of course, such evidence must meet the threshold test of admissibility, i.e. relevance. Id., *quoting* Rule 401, SCRE ("Relevant evidence' means evidence having *any tendency* to make the existence of any fact this is of consequence to the determination of the action more *probable* or less probable than it would be without the evidence").(emphasis added). Anything that a defendant has stated, which is relevant to any question involved in the trial, is admissible in evidence against him. State v. Pittman, 137 S.C. 75, 134 S.E.514 (1926); State v. Turner, 117 S.C. 470, 109 S.E.119 (1921).

As Judge Jefferson correctly found after carefully reviewing the phone recordings, the statement appellant made to his mother was incriminating and a statement against interest, and there was inference from this statement from which the State could argue that appellant had knowledge of where the murder weapon was. (Tr. pp. 535, 541-544). When appellant stated police did not have the murder weapon, it was because he knew the location of the murder weapon. Judge Jefferson also noted the defense could argue a different interpretation, that appellant was discussing

the strengths and weaknesses of the State's case. Since there was an inference of guilt from the statement (Court's Ex. 23), if the jury viewed the evidence as Judge Jefferson did, the statement was an admission against interest, relevant, and admissible. Rule 801(d)(2), SCRE; State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992)(an out of court admission of a criminal defendant is admissible). *See also* Bunch v. Cobb, 273 S.C. 445, 257 S.E.2d 225 (1979)(admission against interest of a party opponent is admissible); Elridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191, 211 (Ct. App. 1998), *cert. denied* (1999) n. 17 ("The Rules of Evidence allow liberal introduction of a party's admissions and define them as non-hearsay, because of 'the incongruity of the party objecting to his own statement on the ground that he was not subject to cross-examination by himself, at the time'").

Furthermore, *appellant* introduced the fact that another weapon was found in the apartment when he was arrested or during the investigation. (Tr. pp. 583-584). Coupling this fact with appellant's statement to his mother on the same date as his arrest that police did not have the murder weapon, the jury could infer appellant knew police did not have the murder weapon because appellant knew the location of the actual murder weapon and that he did not use the gun police recovered at his girlfriend's apartment or during the investigation in the murder. The statement was an admission against interest, relevant, and admissible. *See* State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999)(statement of defendant while in jail that "he was going to kill him another white boy" was admissible as an admission against defendant's *own* interest and required no corroborating evidence), *citing* Rule 801(d)(2), SCRE. Judge Jefferson did not abuse her discretion in admitting

this evidence.⁹

The issue in the case was identity. Appellant's statement of knowledge regarding the murder weapon identified him as the killer. The recording clearly had a *tendency* to make appellant Deas identity as the killer *more probable*. It was therefore relevant and admissible. Rule 401, SCRE. Judge Jefferson did not manifestly abuse her broad discretion in admitting this evidence. Commander; Cope.

The 403 Objection

Appellant also alleges that the trial judge erred in admitting this evidence under Rule 403. Appellant argues that the trial court erred in admitting the recording of his stating police did not have the murder weapon because the danger of the testimony's prejudicial effect outweighed the probative value. Appellant is wrong..

"Rule 403 SCRE states, '[a]lthough relevant, evidence may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.'" State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009)(emphasis

⁹In his brief, appellant cites State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986) as authoritative for his position that he is entitled to a new trial. However, McConnell is not supportive of appellant's position for several reasons. First, in McConnell, the Court reversed the defendant's conviction because the State introduced physical evidence that was not connected to the defendant or even to the crime charged. *See Id.* In the present case, the State did not introduce *any evidence*, much less physical evidence, that a gun that was not the murder weapon was found at appellant's girlfriend's apartment. Additionally, McConnell held that the admission of this evidence found at the defendant's home created a spurious inference of prior bad acts. As previously shown, that did not occur in this case. The State did not introduce any evidence that a gun was found at appellant's girlfriend's apartment or anywhere else; appellant introduced this evidence. The State only introduced the phone recording of October 23, 2007 in which appellant stated to his mother, *them boys charged with the murder weapon, but they ain't got the murder weapon*. McConnell simply does not apply to the facts of this case.

added); State v. Pipkin, 359 S.C. 322, 597 S.E.2d 831 (Ct. App. 2004); State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). However, great deference is given to a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence, with the trial judge only being reversed in exceptional circumstances. State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004), *affirmed in part, reversed in part*, 369 S.C. 424, 632 S.E.2d 845 (2006); State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004); State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). "A trial [court's] balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise due to a differing view of the highly subjective factors of the probative value or prejudice presented by the evidence." Holland, 385 S.C. at 171, *quoting State v. Hamilton*, 344 S.C. 344, 543 S.E.2d 586, 593 (Ct. App. 2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). "The trial court's determination should be reversed only in exceptional circumstances." Id., at 172.

"Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." Holland, 385 S.C. at 171, *quoting State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998). "The determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case." Holland, 385, S.C. at 171, *citing State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008).

"Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998), *quoting*

United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993); United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989) (“[A]ll evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided.”). “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” State v. Orozco, 362 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011), *citing* State v. Cheesboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2011).

In this case, of course, identity was the main contested issue. Thus, since the evidence (the tape recording) properly went to appellant’s knowledge of the location of the murder weapon, and thus identity, any prejudicial effect did not *substantially outweigh* the probative value. Rule 403, SCRE; State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009); *See* State v. Braxton, 343 S.C. 629, 634, 541 S.E.2d 833, 836 (2001) (holding that the probative value of a witness’ testimony that he knew the defendant possessed a nine millimeter pistol, which tended to identify the defendant as the possessor of the murder weapon, outweighed any prejudice because the identity of the user of the murder weapon was the critical issue at trial). *See also* State v. Waddle, 873 P.2d 171 (Idaho Ct. App. 1994) (where defendant denies being the perpetrator, evidence tending to establish identity is always relevant).

Appellant’s statement to his mother on the phone was made on October 23, 2007, the date of his arrest. Appellant told his mother police did not have the murder weapon. The clear inference from this evidence was that appellant knew where the murder weapon was. This evidence showed appellant was involved in the murder of the victim. This evidence identified appellant as the killer.

There is also an inference from this evidence appellant had disposed or hidden the murder weapon. As previously stated, the destruction or attempted destruction of evidence is relevant in a

criminal prosecution. See Beckham.

Appellant also appears to argue that the tape recording was unduly prejudicial because it was evidence of a prior bad act showing appellant as a person of bad character. First, this issue was not raised at trial and is therefore not preserved for appellate review. (See Tr. pp. 1-727). In the Interest of Michael H., 360 S.C. 540, 602 S.E.2d 729 (2004). Second, there is nothing in the tape recording, *which is all the State introduced*, from which the jury could infer a bad act on appellant's behalf. Holland, 385 S.C. at 172-73. Third, appellant offered the evidence of the gun found in his girlfriend's apartment *or* during the investigation, so this issue could not be preserved for appellate review. Fourth, appellant cannot claim prejudice from evidence he himself introduced. Furthermore, *the testimony that appellant offered*, that a handgun that was not the murder weapon was found in appellant's girlfriend's apartment or during the investigation, did not indicate appellant possessed the gun, and even if it did, it did not indicate appellant's mere possession of a handgun was illegal or that appellant had used the gun to commit any bad acts prior to the incident, or that appellant had a criminal record involving weapon related offenses. Id. at 173.¹⁰ There simply is no merit to appellant's argument.

Further, even if a prior bad act could be inferred from the tape recording coupled with *appellant's* introduction of the fact that a weapon that was not the murder weapon was found in his girlfriend's apartment or during the investigation, "this evidence solidified" appellant Deas

¹⁰The State did not introduce any evidence that appellant had been convicted of AWIK, was on probation or parole, or could not lawfully possess a weapon. Additionally, the testimony appellant tried to introduce through his attorney was that the gun that was not the murder weapon was found in his girlfriend's apartment; and, actually, the witness, an evidence custodian, testified she did not know where the gun was found only that one was found during the investigation. (See Tr. pp. 483-484).

“identification as the person” who murdered the victim. Id. at 173. “The probative value of this identification evidence outweighed any prejudicial effect.” Id. “Hence, it was admissible under both Rule 403 and Rule 404(b), SCRE, which provides that evidence of other crimes, wrongs, or acts may be admissible to show identity.” Id. Therefore, the tape recording itself, along with *the evidence appellant offered*, did not constitute improper character evidence. Id. *Cf. State v. Dickerson*, 341 S.C. 391, 396-97, 535 S.E.2d 119, 121-22 (2000) (holding that a murder defendant’s drug use was admissible because the medical examiner’s testimony connected it to the violent “overkill” nature of the murder, which involved multiple stab wounds and thus it served to identify the defendant as the “overkill” murderer).

Additionally, even if the State had introduced the possession of the pistol, which it did not, and it constituted a prior bad act, the prior bad act was relevant and admissible in conjunction with the tape recording where appellant told his mother, police had charged him with the murder weapon, but they don’t have the murder weapon. The possession of the unrelated pistol in conjunction with his statement to his mother indicated appellant had disposed of the murder weapon or knew where it was, and thus identified him as the killer. *See Cope*, 385 S.C. at 284, *citing State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006) (To be admissible against a defendant in a criminal proceeding as evidence of identity, “the bad act must logically relate to the crime with which the defendant has been charged.”).

Furthermore, appellant was allowed to present and argue to the jury his alternative explanation for the statement. He did so by introducing the unrelated pistol himself. The probative value of the tape recording evidence was not “substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; *See also State v. Robinson*, 360 S.C. 187, 600 S.E.2d 100 (Ct. App.

2004), *cert. denied* (2005), *quoting* Rule 403, SCRE.

Harmless Error

Even assuming *arguendo* the admission of this one portion of this one phone call was erroneous, its admission was harmless. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." State v. Pagan, 369 S.C. at 212, 631 S.E.2d at 267, (*citing Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)); State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002)(listing factors in harmless error analysis).

In making a determination regarding harmless error, this Court will look at the entire record. State v. Miller, 367 S.C. 329, 626 S.E.2d 328 (2006). This Court will not set aside a conviction for an insubstantial error not affecting the result when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). "[A]n insubstantial 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." Pagan, 369 S.C. at 212, 631 S.E. 2d at 267 (*quoting State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)); State v. Adams, 354 S.C. 361, 381, 580 S.E.2d 785, 795 (Ct. App. 2003). In this case, no other rational conclusion could have been reached by the jury given the overwhelming evidence of appellant's guilt. *See State v. Commander*, Shearhouse Advance Sheets, Opinion No. 27062 (Filed October 31, 2011).

The State established the motive for the murder. The victim had assisted Whitney Doctor in retrieving her vehicle from appellant and his mother. The vehicle was taken away from appellant in the presence of appellant's friends who were congregated on a nearby street corner. The repossession of the vehicle also caused an altercation between Whitney and appellant's mother in

which appellant's mother shouted at Whitney, the victim's girlfriend, and appellant witnessed this altercation. After the altercation, appellant's mother went to the corner where appellant was standing and spoke to the men congregated there, which would have included appellant. The victim's murder occurred just a few hours after the repossession of the vehicle from appellant and his mother.

Appellant's identity as the killer was substantiated by two (2) eyewitnesses whose testimony was corroborated by the physical evidence. Both witnesses identified appellant from a photo line-up and both identified appellant at trial as the murderer of the victim. Both testified the victim was shot three (3) times. The autopsy confirmed the victim was shot three (3) times.

Appellant gave false statements to police regarding his whereabouts on the night of the murder. These false statements were admitted before the jury. These false statements were proved by appellant's girlfriend who testified before the jury that appellant did not stay with her the night of the murder, but was away from her apartment. She also testified appellant had offered her money since his arrest for murder. This corroborated appellant's own recorded statement to his friend "Slick" that he was going to get his girlfriend to change her story, thus giving him an alibi.

Appellant also incriminated himself in phone calls to his friend "Slick." These recordings were played for the jury. Appellant told Slick he was going to get his girlfriend to change her story and testify that he was with her the night of the murder. *See State v. Edwards*, 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009)(holding witness intimidation evidence if tied to the defendant, may be admitted to show consciousness of guilt). Appellant also told Slick that he was not worried about the murder charge because there were two (2) people involved and as long as police had only charged one (1) person [himself] and had not located or identified the other person, he was not in any jeopardy. Appellant does not challenge the admissibility of either of these statements.

Appellant also made other false statements in his written statement to police where he tried to claim he was not present and did not witness the repossession of the car by Whitney. Whitney testified before the jury that appellant was present when the car was repossessed just a few hours before the murder, and appellant witnessed the altercation between her and his mother.¹¹

“There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted.” State v. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000). There was abundant evidence in the record appellant was guilty of murder. State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985) (admission of hearsay testimony harmless given abundant evidence in the record from which jury could have found the appellant guilty). “Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial.” State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991); State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); see also State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (instructing that error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006). See also State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (Ct. App. 2006) (holding error in admission of some DNA evidence was harmless given other properly admitted DNA evidence and additional evidence of

¹¹Appellant also told police initially in his written statement that the repossessed car was his car, but he struck through this part of the statement and inserted the car was his mother’s. Appellant was driving the car when Whitney saw the car near the Family Dollar Store several days before the murder. Appellant was also near the car when it was repossessed. Appellant’s statement to police showed he repeatedly tried to distance himself from the car and its repossession, which was the motive for the altercation and eventual murder of the victim. (Tr. pp. 395-399 & State’s Ex. 29).

defendant's guilt), *referencing State v. Pickens*, 320 S.C. 528, 466 S.E.2d 364 (1996)("[W]here a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed."), *other citations omitted*.

Additionally, the State introduced only the tape recording, which was a bare-bones statement that *them boys* [the police] *they charged* [me] *with the murder weapon but they ain't got the murder weapon*. The State did not introduce the fact that another weapon, that was not the murder weapon, was seized from appellant's girlfriend's apartment or during the investigation. It is hard to see how the tape recorded statement standing alone, could have been prejudicial to appellant. Appellant introduced the fact that another weapon had been found when police arrested appellant in his girlfriend's apartment several days after the murder. (Tr. pp. 580-584).

Furthermore, even with the evidence appellant introduced, there were two (2) possible inferences from the challenged phone recording: (1) Appellant was aware police did not have the murder weapon because he knew the location of the murder weapon and knew the weapon police seized at his girlfriend's apartment was not that weapon; and, (2) that argued by appellant in his brief, that appellant was aware the gun found in his girlfriend's apartment was not the murder weapon because he was not involved in the murder. If the jury believed the inference the State argued, then appellant was not *unfairly prejudiced* because the statement identified him as the murderer. Gilchrist. If the jury believed the inference appellant argues, or any other such inference, then it could not have affected the verdict in this case; therefore, there could have been *no prejudice*. And, even if it did, appellant would not be entitled to reversal where any prejudice would have come from evidence he introduced. This appeal must be dismissed.

CONCLUSION

Based on the foregoing, appellant Deas' convictions and sentences must be affirmed and this appeal dismissed.

Respectfully submitted,

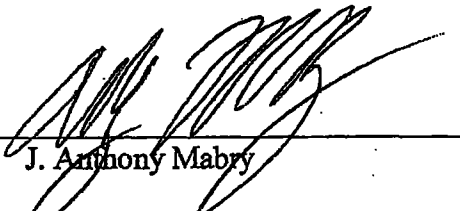
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Attorney General

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Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

By: 

J. Anthony Mabry

ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, SC 29211

October 31, 2011

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
The Honorable Deadre L. Jefferson, Circuit Court Judge
2008-GS-10-3339,3340

THE STATE,

Respondent,

v.

RICHARD VERNON DEAS,

Appellant.

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Respondent proposes the following be included in the Record on Appeal:

Transcript Coverpage

Tr. pp. 1-8;

Tr. pp. 34-37;

Tr. pp. 41-45;

Tr. pp. 46-148;

Tr. pp. 150-187;

Tr. pp. 207-281;

Tr. pp. 293-403;

Tr. pp. 406-452;

Tr. pp. 459-536;

Tr. pp. 540-612;

Tr. pp. 613-615;

Tr. p. 623;

Tr. pp. 624-627;

Tr. pp. 631-633;

Tr. pp. 704-721;

Tr. pp. 724-727.
State's Ex. 29 Defendant's Statement
State's Ex. 40 (Phone Recordings)
Court's Ex. 23 for I.D. (Phone Recordings)

I certify that this Designation contains no matter which is irrelevant to this appeal.

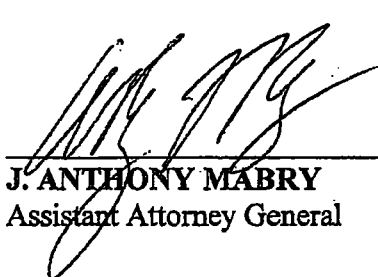


J. ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
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(803) 734-6305

October 31, 2011

CERTIFICATE OF SERVICE

I, **J. Anthony Mabry**, hereby certify that I have served the *Initial Brief of Respondent and Designation of Matter* in the foregoing action by depositing copies in the Interagency Mail to Robert M. Dudek, Chief Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 31st day of October, 2011.



J. ANTHONY MABRY
Assistant Attorney General

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Richard Vernon Deas, Appellant.

Appellate Case No. 2009-115986

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2012-UP-615
Submitted October 1, 2012 – Filed November 21, 2012

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, Assistant Deputy
Attorney General J. Anthony Mabry, all of Columbia;
and Solicitor Scarlett A. Wilson, of Charleston, for
Respondent.

PER CURIAM: Deas appeals his convictions of murder and possession of a firearm during the commission of a violent crime contending the trial court erred in finding (1) a taped conversation taken at the county jail in which Deas stated police did not have the murder weapon was relevant and (2) the taped conversation's probative value was not outweighed by unfair prejudice. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting irrelevant evidence: *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the [trial] court's decision will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support."); *State v. Cheeseboro*, 346 S.C. 526, 548, 552 S.E.2d 300, 311 (2001) ("Under Rule 401, SCRE, evidence is relevant if has a direct bearing upon and tends to establish or make more or less probable the matter in controversy."); *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999) ("The relevance, materiality, and admissibility of [evidence] are matters within the sound discretion of the trial court."); *State v. Sims*, 304 S.C. 409, 418, 405 S.E.2d 377, 382 (1991) ("Evidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent.").

2. As to whether the trial court erred in finding the evidence was not unduly prejudicial: *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); *State v. Holland*, 385 S.C. 159, 171, 682 S.E.2d 898, 904 (Ct. App. 2009) ("Rule 403, SCRE, states, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Unfair prejudice means an undue tendency to suggest a decision of an improper basis. The determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case." (internal quotation marks and citations omitted)); *State v. Gilchrist*, 329 S.C. 621, 629, 496 S.E.2d 424, 428 (Ct. App. 1998) ("In considering a Rule 403, SCRE, challenge, the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

trial court must consider the nature of the statement, as well as the context in which it was made."); *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Thus, an insubstantial 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." (citations omitted)).

AFFIRMED.

SHORT, KONDUROUS, and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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December 07, 2012

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Deas, Richard Vernon
Lower Court Case No. 2008GS1003340, 2008GS1003339
Appellate Case No. 2009-115986

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.
CLERK

cc: Robert Michael Dudek
J. Anthony Mabry

RECEIVED

DEC 7 2012

SC OFFICE OF
APPELLATE DEFENSE

AW
9

FORM 5

2013-CP-10-2302

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Richard Deas, #332943,)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

FILED
APR 22 PM 12:11
CLERK OF COURT
JAMES STRONG

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institutin, 990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-10-3339: murder
 - (b) 2008-GS-10-3340: possession of a firearm
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) January 30, 2009; 40 years (5 years concurrent)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 21, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2012-UP-615
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Ineffective assistance of trial counsel.
- (b) Ineffective assistance of appellate counsel.
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to conduct an independent investigation and review evidence with Applicant.
- (b) Failure to advise Applicant regarding possible defenses.
- (c) Failure to utilize defense witnesses.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Mary Ford, Charleston Public Defender's Office, 101 Meeting Street, 5th Floor,

Charleston, SC 29401

- ii. Andrew Grimes, Charleston Public Defender's Office, 101 Meeting Street, 5th

Floor, Charleston, SC 29401

- iii. Robert Dudek, SC Commission on Indigent Defense, 1330 Lady Street, Ste. 401,

Columbia, SC 29201

- (b) the proceedings at which each such attorney represented you:

- i. Trial.

- ii. Trial.

- iii. Direct appeal.

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of ~~Bishopville~~ ^{Lee})

VERIFICATION

I, Richard Deas, 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.

Richard Deas

SWORN to and subscribed before me this 11th
day of April, 2013.

Chris A. Pugh (L.S.)
Notary Public

My Commission Expires: 4/12/16

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Richard Deas, 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.

Richard Deas
Applicant

SWORN or affirmed to and subscribed before me this

11th day of April, 2015.
Chris A. Blum
Notary Public

My Commission Expires: 4/12/2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2013-CP-10-2306

Richard Deas, #332943,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 22, 2013, 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 Charleston County Clerk of Court. The Applicant was indicted at the April 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-3339) and possession of a weapon during the commission of a violent crime (2008-GS-10-3340). The Applicant was represented by Mary Ford, Esquire and Andrew Grimes, Esquire.

The Applicant proceeded to trial and was found guilty as indicted. On January 30, 2009, the Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of forty (40) years for murder and five (5) years for possession of a weapon.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Deas, No. 2012-UP-615 (S.C. Ct. App. filed December 21, 2012).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to conduct an independent investigation and review evidence with Applicant.
 - b. Failure to advise Applicant regarding possible defenses.
 - c. Failure to utilize defense witnesses.
2. Ineffective assistance of appellate counsel.

III.

In this application, the Applicant alleges 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.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by

the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). “For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy...” Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate 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).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AL WILSON
ATTORNEYS FOR RESPONDENT

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Dec. 5, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

RICHARD DEAS, #332943

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

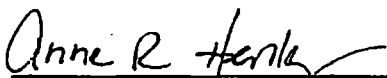
2013-CP-10-2306

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 by depositing same in the United States mail, postage prepaid:

Rodney D. Davis
 4000 Faber Place Drive
 Suite 300
 Charleston, SC 29405

DATED this 5th day of December, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306
Hearing of April 17, 2014
Before The Honorable R. Markley Dennis

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INDEX

TESTIMONY OF RICHARD DEAS

Direct Examination	5
Cross Examination	21

TESTIMONY OF MARY FORD

Direct Examination	25
Cross Examination	45
Redirect Examination	52

INTRODUCTION OF State's Exhibit 1	54

ARGUMENTS of Counsel	54

RULING by The Court	67

Certificate of Court Reporter	68

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306
Hearing of April 17, 2014
Before The Honorable R. Markley Dennis

3

1 THE COURT: This is Mr. Deas?

2 MR. DAVIS: Yes, Your Honor. I've
3 talked with my client and I believe that he
4 does want to go forward with ---

5 THE COURT: All right. Mr. Deas,
6 your lawyer has explained to you that the
7 best deal that you can hope for is to start
8 over, basically? You go back to square one.
9 Any benefits that you've obtained, if there
10 were any, are lost -- will be lost.

11 You basically had a forty-year
12 sentence, is that correct?

13 APPLICANT: Yes, sir.

14 THE COURT: Do you understand that
15 if you went back and were convicted that the
16 judge could impose a life sentence?

17 APPLICANT: Yes, sir.

18 THE COURT: And it is still your
19 desire to go forward?

20 APPLICANT: Yes, sir.

21 THE COURT: Thank you very much.

22 MR. DAVIS: Thank you, Your Honor.

23 We would call Richard Deas to the stand.

24 THE COURT: Okay. Do you want to
25 go ahead and get him on the phone.

Richard Deas v State of South Carolina

4

Case No. 13-CP-10-2306

Hearing of April 17, 2014

Before The Honorable R. Markley Dennis

1 MS. WILSON: Okay.

2 COURT REPORTER: Who are we getting
3 on the phone?

4 MS. WILSON: Robert Dudek.

5 COURT REPORTER: Last name?

6 MS. WILSON: Dudek.

7 COURT REPORTER: Spelling?

8 MS. WILSON: D-u-d-e-k.

9 COURT REPORTER: Thank you.

10 (DIFFICULTY WITH PHONE CONNECTION)

11 THE COURT: Why does he need to
12 hear it?

13 MS. WILSON: Because if he raises
14 some allegation about ---

15 THE COURT: You can tell him.

16 MS. WILSON: Okay.

17 THE COURT: You can tell him about
18 that.

19 MS. WILSON: That's fine.

20 THE COURT: You can tell him --
21 you can say, 'he just testified to such-and-
22 such.'

23 MS. WILSON: Okay.

24 THE COURT: Meanwhile, maybe we
25 can get it worked out. Let's move along.

Richard Deas v State of South Carolina

5

Case No. 13-CP-10-2306

Hearing of April 17, 2014

Before The Honorable R. Markley Dennis

1 You may continue.

2 MR. DAVIS: Judge, has he been
3 sworn?

4 THE COURT: He has been.

5 MR. DAVIS: Thank you. I
6 apologize.

7 THE COURT: No apology needed.

8 (WITNESS TAKES STAND)

9 RICHARD DEAS, having been sworn to
10 tell the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Mr. Deas, you went to trial and were
15 convicted on the charges of murder,
16 possession of a weapon -- or possession of a
17 firearm; is that accurate?

18 A. Yes, sir.

19 Q. Who were your attorneys at trial?

20 A. Mary Ford and Andrew Grimes.

21 Q. Can you speak up just a little bit?

22 A. Mary Ford and Andrew Grimes.

23 Q. Thank you. And it's my understand-
24 ing that you have filed a post-conviction
25 relief application against your trial

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

6

1 attorneys. Is that right?

2 A. Yes, sir.

3 Q. Did you appeal the conviction?

4 A. Yes, sir.

5 Q. And who was appointed to represent
6 you during the appeal?

7 A. Rob Dudek.

8 Q. Do you have a complaint about his
9 representation, as well?

10 A. Yes, sir.

11 Q. Okay. Let's go back to trial
12 attorneys. I want to talk first of all about
13 any complaints that you may have had in the
14 preparation of the case.

15 A. Yes, sir.

16 Q. Can you tell the court what
17 complaints that you have about the way that
18 your case was investigated by the Public
19 Defender's Office?

20 A. Yes, sir.

21 Q. I feel like she was ineffective
22 because she didn't do a proper investigation.
23 She didn't go out and investigate the crime
24 scene to check the light availability at
25 night.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

7

1 Q. You were identified as the shooter
2 in this case?

3 A. Yes, sir.

4 Q. On the scene of the crime?

5 A. Yes, sir.

6 Q. Okay. Was this alleged to have
7 happened in the daytime or at night?

8 A. Nighttime.

9 Q. Were you ever provided any infor-
10 mation from your trial attorney about any
11 investigation of that crime scene?

12 A. No, sir.

13 Q. Do you recall at trial how many
14 witnesses testified as being at the scene and
15 seeing you as the shooter?

16 A. Two.

17 Q. Were you advised about how those two
18 witnesses came to be in contact with law
19 enforcement, and gave law enforcement
20 information?

21 A. Yes, sir.

22 Q. How were they were provided to law
23 enforcement?

24 A. The daddy went out and he, the
25 deceased's father went out and he

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

8

1 investigated -- he was investigating it and
2 he somehow came about them two, and he took
3 them to the -- to the lead investigative
4 officer. I feel like she was ineffective
5 right then, too, because she didn't question
6 the witnesses to see how they came about with
7 the father. She didn't know exactly what
8 they talked about before they went to the
9 officers.

10 Q. The deceased was Leroy Simmons?

11 A. Yes, sir.

12 Q. And his father is also Leroy
13 Simmons?

14 A. Yes, sir.

15 Q. Were you aware of phone calls and
16 transcripts of phone calls from the jail that
17 you purportedly made?

18 A. Could you repeat that?

19 Q. Are you aware of phone calls from
20 the jail that you purportedly made?

21 A. Yeah, I -- I was aware of the phone
22 calls. But I felt she was ineffective right
23 then, too, because she had some phone
24 transcripts that I didn't get until I was
25 sentenced forty years.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

9

1 Q. We will come back to that issue in
2 just a second. Let's stay focused on
3 pretrial actions.

4 A. Okay.

5 Q. Did you discuss with your trial
6 attorneys about a potential alibi defense?

7 A. Yes, sir.

8 Q. Do you feel that there was any
9 misconduct with that defense?

10 A. Yes, sir. I feel that she was
11 ineffective then, too, because she didn't --
12 she said that -- she didn't call no
13 witnesses. She didn't want to call no
14 witnesses on my behalf to the stand because
15 she wanted the last arguments, that that
16 mattered the most because then the jury would
17 hear our last arguments.

18 Q. Did you understood what she meant
19 by that when she talked to you about last
20 argument?

21 A. I understand what she meant by last
22 argument, but I didn't really understand why
23 you can't call this person to the stand.

24 Q. What, if anything, were you aware
25 of in investigation done by your defense

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

10

1 attorneys, your trial attorneys, to
2 investigate the information that you gave
3 about an alibi?

4 A. Repeat that.

5 Q. What information were you made aware
6 of about -- that your trial attorneys did to
7 investigate the alibi you provided?

8 A. I didn't get no information about
9 that.

10 Q. Prior to the trial, did you discuss
11 with your trial attorneys the strategy of
12 defending you in this case?

13 A. No, we didn't have any discussion.

14 Q. Meaning that there was no evidence
15 presented in your defense?

16 A. There was evidence presented in my
17 defense by -- but she didn't offer. It was
18 DNA saying -- it was DNA under the victim's
19 fingernails. They took samples from me and
20 it wasn't mine, so -- actually that was a big
21 positive misidentification case and ---

22 Q. We will go into that in just a
23 second. That happened during trial, right?

24 A. Yes, sir.

25 Q. We will get to that in just a

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

11

1 second. Back to the pretrial, for just a
2 second, preparation. Did you have
3 discussions about an investigation done with
4 a witness named Sandra Green?

5 A. No.

6 Q. Did you have discussions with your
7 trial attorneys about any investigation that
8 they did on a witness, Tiana Lee.

9 A. Yes, sir.

10 Q. Did I say that right?

11 A. Yes, sir.

12 Q. Did you have any discussions about
13 that?

14 A. No, sir. No, no, -- could you
15 repeat that one more time?

16 Q. Did you have any discussions with
17 your trial attorneys about investigation that
18 they had done in speaking with Ms. Lee?

19 A. No, sir.

20 Q. Moving on to the actual trial and
21 your attorneys' performance at the actual
22 trial, were there any witnesses called on
23 your behalf?

24 A. No, sir.

25 Q. Did you wish for there to be

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

12

1 witnesses to be called on your behalf?

2 A. Yes, sir, I did.

3 Q. Who did you wish to be called on
4 your behalf?

5 A. Tiana Lee.

6 Q. Why did you wish for her to be
7 called?

8 A. Because I was saying that I was with
9 her, and she was saying I was with her, too.

10 Q. I believe that you have already
11 testified that there were two individuals who
12 testified, that identified you; is that
13 correct?

14 A. Yes, sir.

15 Q. Do you remember the names of those
16 two witnesses?

17 A. Sharod Young and Sharika Miles.

18 Q. Dealing with Sharod Young, do you
19 have any complaints about the way that your
20 trial attorneys dealt with his testimony?

21 A. Yes, sir.

22 Q. What is that?

23 A. I felt that she was ineffective
24 because he -- he had a bias to do what he
25 wanted to do, what they wanted him to do.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

13

1 Like, he -- they threatened him with murder
2 and armed robbery if he didn't tell them what
3 they wanted to hear. He say that he know
4 what they wanted to hear, he know who they
5 wanted to point out, so he did it just to get
6 back on -- because they threatened him with
7 murder and armed robbery.

8 Q. You mentioned just a moment ago --
9 you started speaking about DNA evidence. Can
10 you tell the court, was a sample taken from
11 you? A blood sample?

12 A. Yes, sir. They took a sample from
13 me at the Charleston County Detention Center.

14 Q. Do you know if that sample was send
15 for testing?

16 A. Yeah, it was sent to SLED and it
17 came back as saying that the DNA sample under
18 the victim's fingernail was not Richard Deas'
19 DNA.

20 Q. Was there an allegation that there
21 was a struggle before the shooting?

22 A. Yeah, Shenika Miles, she said -- she
23 testified saying, like, the suspect and the
24 victim, they were tussling and then the
25 suspect stand over the shooter and shot him.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

14

1 I think that -- they -- it was an
2 identification case and she's saying that
3 she's identifying me as the suspect. Then my
4 DNA -- if the DNA that they took from me is
5 not the DNA from under the deceased's
6 fingernails, then I'm not the suspect.

7 Q. Do you recall if the SLED analyst
8 who tested the DNA actually testified?

9 A. No, he did not testify.

10 Q. We will talk about a couple of other
11 issues talking about the jury. Do you recall
12 at some point in the trial that there was a
13 point when the jury asked about receiving a
14 transcript?

15 A. Yeah. I feel like she was
16 ineffective then because she didn't object to
17 the jury -- the juror -- during it's early
18 deliberations, when the judge said in the
19 beginning 'don't make no deliberations until
20 you have heard all the testimony.' All the
21 testimonies had not been made by -- again,
22 she's asking for court transcripts. That
23 means like they had already deliberated
24 before they heard all the testimony.

25 Q. The last issue about the jury, was

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

15

1 in fact one of the jurors excused during your
2 trial?

3 A. Yes.

4 Q. Can you tell the court why that
5 person was excused?

6 A. He was an uncle of the deceased's
7 father. He was excused because -- that
8 reason right there. I felt like she was
9 ineffective then because she didn't -- I feel
10 like she didn't handle the jurors properly.
11 I felt like she should have called the jurors
12 up one by one and questioned them. Like,
13 'Did you talk to him, did y'all talk about
14 the case', things like that.

15 Q. On either one of those juror issues,
16 did your trial attorneys ask for a mistrial?

17 A. I can't remember.

18 Q. Do you recall whether all of the
19 potential jurors prior to trial were asked
20 if they were related to Mr. Simmons?

21 A. Yes, sir, in voir dire.

22 Q. And the juror that was excused
23 during the trial, had he indicated that he
24 was related?

25 A. No, he didn't say nothing.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

16

1 Q. Following the conviction, you had
2 your case appealed; is that accurate?

3 A. Yes, sir.

4 Q. On appeal, do you recall how many
5 different arguments your appellate attorney
6 made?

7 A. Yeah, he had one argument. I wanted
8 him to add another argument dealing with the
9 juror being the victim's family and he sent
10 me a -- I was trying to call him but I
11 couldn't get in touch with him. So I sent
12 him a letter with the case law. He -- when
13 he responded, he was like he feel comfortable
14 with his argument and if I didn't like it,
15 then I could have him relieved. That if it
16 was a winnable issue, then I'd win it on PCR.

17 Q. Just to be specific, to be sure, you
18 had two different issues. You asked your
19 appellate attorney to file on the grounds
20 about which juror issue?

21 A. On the juror, Mr. Jackson, being the
22 victim's uncle.

23 Q. I want to go back to one thing that
24 I didn't discuss. During the actual trial of
25 the case -- forgive me, Mr. Deas. Uh, --

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

17

1 we've touched briefly on the phone calls that
2 were from you at the jail.

3 A. Yes.

4 Q. There were specific statements that
5 you are most concerned about, that was
6 actually played for the jury?

7 A. Yes, sir.

8 Q. Can you tell the judge about that?

9 A. It was a statement Mary Ford was
10 saying I said -- 'they think they got the
11 murder weapon.' But the phone transcripts
12 that I got from Mary Ford after I was
13 sentenced, was saying something totally
14 different. It was saying that they charged
15 me with the murder weapon but they don't got
16 no murder weapon.

17 Q. You ---

18 A. Those are the transcripts that I
19 didn't get until after I was sentenced, so I
20 didn't know what was really said until after
21 I was sentenced.

22 Q. Well, you heard -- the tapes were
23 played in the courtroom for the jury, right?

24 A. Yes, sir, but it wasn't really that
25 clear.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

18

1 Q. Okay. Did you have the transcripts
2 from these calls prior to the trial?

3 A. I didn't get it until after I was
4 sentenced.

5 Q. You were aware of the calls prior to
6 the trial?

7 A. Yes, sir.

8 Q. You and Ms. Ford did discuss them
9 prior to the trial?

10 A. Yes, sir.

11 Q. But you didn't have the transcripts?

12 A. No, sir.

13 Q. You recall -- do you recall the
14 statement, "They ain't got the murder
15 weapon"? Was that part played for the court
16 and the jury?

17 A. Can you repeat that?

18 Q. "They ain't got the murder weapon."
19 Do you recall that specific statement being
20 played for the jury?

21 A. No. I say they charged me with the
22 murder weapon but they don't have no murder
23 weapon. Jennifer Shealy was saying ---

24 Q. I am just saying, do you remember
25 the call being played?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

19

1 A. Yes, sir.

2 Q. Do you recall what the phrase was
3 that was played for the jury?

4 A. Yes, sir.

5 Q. And what was that phrase that was
6 actually played for the jury?

7 A. Uh, 'they charged me with the murder
8 weapon but they don't have the murder
9 weapon.'

10 Q. Did you testify at your trial?

11 A. No, sir.

12 Q. If you had reviewed the transcripts
13 with Ms. Ford about that statement prior to
14 trial, would that have changed your statement
15 about testifying?

16 A. Yes, sir, it certainly would've.

17 Q. What would have been your decision
18 if you'd had the transcripts to review prior
19 to trial?

20 A. If I had reviewed the transcripts
21 and I would have knowed what was really said,
22 I would have felt more comfortable, uh,
23 testifying.

24 Q. And what would you have told the
25 jury that that statement meant?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Direct Examination
Before The Honorable R. Markley Dennis

20

1 A. I would have told them, like -- like
2 I was charged with the commission of a
3 violent crime, I was charged with murder and
4 commission of a violent crime while with a
5 handgun. But I was just saying that I didn't
6 know that they charged you with the
7 commission of a violent crime with a handgun
8 when they charged you with murder. I didn't
9 know that. So that's what the statement
10 really meant, like 'they're charging me and
11 they don't have no murder weapon.' Like, I
12 didn't know what was going on.

13 Q. Were you talking about your gun that
14 they seized?

15 A. Yes, sir.

16 Q. And was that or was that not the
17 murder weapon?

18 A. No, it was not the murder weapon.
19 I know that it wasn't the murder weapon
20 because I didn't let nobody, a whole lot, use
21 it.

22 MR. DAVIS: Your Honor, if I could
23 have just a moment?

24 THE COURT: Yes, sir.

25 MR. DAVIS: Thank you, Mr. Deas.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Cross Examination
Before The Honorable R. Markley Dennis

21

1 That's all the questions that I have.

2 THE COURT: Cross-examine?

3 MS. WILSON: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. WILSON:

6 Q. Good morning, Mr. Deas.

7 A. Good morning.

8 Q. Do you recall how many times that
9 you met with Ms. Ford or Mr. Grimes before
10 you went to trial?

11 A. No, I don't remember.

12 Q. Did you get to meet with them
13 frequently enough?

14 A. Yeah. Yes, ma'am.

15 Q. Did you go over with them any
16 discovery that they'd received from ---

17 A. I didn't meet Andrew Grimes until
18 the day -- probably like the week that I was
19 going to trial.

20 Q. So most of your meetings were with
21 Ms. Ford?

22 A. Yes, ma'am.

23 Q And did you go over -- do you recall
24 Ms. Ford going over with you the discovery
25 that she received from the State, the

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Cross Examination
Before The Honorable R. Markley Dennis

22

1 evidence against you?

2 A. Yes, ma'am.

3 Q. And did she talk with you about
4 possible defenses that y'all could present at
5 trial?

6 A. No, ma'am.

7 Q. Did y'all not discuss it or did you
8 -- you just didn't have any defenses?

9 A. No, we didn't discuss it. She just
10 was talking about how she was going to show
11 that it was a weak case.

12 Q. What did she tell you that she was
13 going to use?

14 A. She didn't really tell me what she
15 was going to do. I can't really remember.

16 Q. When you testified that you spoke
17 with Ms. Ford about an alibi witness, ---

18 A. Yes, ma'am.

19 Q. What were your discussions with her
20 about that?

21 A. Like I told her that I was with
22 Tiana Lee. Tiana Lee was saying that she was
23 with me. She didn't go over to, like, talk
24 to her.

25 Q. Did you give Ms. Ford anybody else

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Cross Examination
Before The Honorable R. Markley Dennis

23

1 other than Ms. Lee?

2 A. No, ma'am.

3 Q. So just Ms. Lee?

4 A. Yes, ma'am.

5 Q. You testified today that Ms. Ford
6 didn't present anything about the victim may
7 -- your DNA not being under the victim's
8 fingernails; correct?

9 A. Could you repeat that?

10 Q. Sure. You testified today that Ms.
11 Ford didn't argue or present anything about
12 your DNA not being under the victim's
13 fingernails; is that correct?

14 A. She argued it, but she didn't argue
15 it the right way. She didn't argue that it
16 was not my -- she argued that it was not my
17 DNA, but she didn't call the SLED agent who
18 did the report(s) to the stand. I feel like
19 she was ineffective then.

20 Q. And you testified that you argued
21 with Mr. Dudek, on appeal, about one of the
22 jurors being related to the victim's family.

23 A. Right.

24 Q. You spoke to him about that, is that
25 correct?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Richard Deas - Cross Examination
Before The Honorable R. Markley Dennis

24

1 A. Yes.

2 Q. And you said that Mr. Dudek said
3 that he felt comfortable with the argument
4 that he was making; is that correct?

5 A. Yes, ma'am.

6 Q. And, lastly, you talked about the
7 statement that you made about the jail
8 conversation tapes that were played at trial.

9 A. Yes.

10 Q. Do you recall Ms. Ford arguing to
11 the jury that when you said that the State
12 didn't have the murder weapon that you were
13 -- that you were just simply saying, 'they
14 didn't have the murder weapon.' Do you
15 recall her arguing that?

16 A. Uh, -- yes, ma'am.

17 Q. Thank you.

18 THE COURT: Redirect?

19 MR. DAVIS: No, Your Honor.

20 THE COURT: You may come down now,
21 sir.

22 (WITNESS STEPS DOWN)

23 THE COURT: You may call your next
24 witness.

25 MR. DAVIS: That is the

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

25

1 Applicant's case, Your Honor.

2 THE COURT: Very well.

3 MS. WILSON: Your Honor, the State
4 would like to call Ms. Mary Ford.

5 (WITNESS TAKES STAND)

6 MARY FORD, having been sworn to tell
7 the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. WILSON:

11 Q. Good morning, Ms. Ford.

12 A. Hello.

13 Q. Can you tell the Court how long you
14 have been practicing law and what your
15 experience has been?

16 A. I've currently been practicing about
17 eight and a half years, at the Public
18 Defenders Office the whole time.

19 Q. Do you recall when you were
20 appointed to represent Mr. Deas?

21 A. I do.

22 Q. Can you tell us when?

23 A. I was appointed shortly after he was
24 charged with the murder, so that would have
25 been, I believe, in October of -- 2007? I

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

26

1 think.

2 Q. Do you recall how many times that
3 you met with him before trial?

4 A. I have noted in my file -- up until
5 January 15th, 2009, I saw him at least twelve
6 times at the jail, but I -- I stopped keeping
7 track a few weeks before the trial, but I
8 know that I saw him numerous times those few
9 weeks before the trial.

10 Q. Did you file Brady or Rule 5 Motions
11 on his behalf?

12 A. Yes.

13 Q. Did you review the materials that
14 you received from the State with him?

15 A. Yes, I did.

16 Q. Can you tell the court what type of
17 materials that you received?

18 A. I received the discovery, the police
19 reports, the statements. The jail
20 recordings, I didn't get until a few weeks
21 before the trial.

22 Q. Did you review those, listen to
23 those jail recordings with Mr. Deas?

24 A. Yes. I can't -- well, I can't
25 remember distinctly whether I played them for

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

27

1 him but I received them a few weeks before
2 the trial. I did go over in detail with him
3 what they said.

4 Q. Did you talk to him about the
5 elements of the charge that he was facing and
6 what the State had to prove?

7 A. Yes.

8 Q. Did he talk to you about his version
9 of the facts?

10 A. Yes.

11 Q. Did he mention to you an alibi that
12 he wanted to present?

13 A. Yes. He actually talked to the
14 police, as well. He told the police that he
15 was with his girlfriend Shenika -- Snenika
16 Williams at the time. That earlier in the
17 evening he'd -- he mentioned that he'd been
18 with Tiana Lee and his friend Leopold
19 Dickson.

20 The police did speak with both Ms.
21 Williams and with Ms. Lee and they -- they
22 verified that he was there at some point, but
23 they both indicated that he was not with them
24 -- well, actually, Shenika said that he
25 wasn't with her. That he'd come by briefly,

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

28

1 but that he was with some friends, so she'd
2 basically told him to leave. Ms. Lee
3 indicated that he came over around 11:00 in
4 the evening and they fell asleep and that
5 when she woke up, at 4:00 in the morning,
6 that he was not there. So she did not know
7 what time that he left.

8 My office did speak -- my investi-
9 gator spoke to Ms. Williams not long after
10 Mr. Deas was arrested and she just said --
11 she basically confirmed what she told police
12 and said, 'yeah, he was there but I don't
13 know what time' and that it wasn't long. I
14 personally spoke to Ms. Lee and she confirmed
15 the same thing, that he was there but that
16 he'd left at some point and when she woke up
17 at 4:00 in the morning that he wasn't there,
18 that she didn't know what time he'd left.

19 Since I think the murder happened --
20 I want to say that it happened around 2:00
21 a.m.

22 So he was basically unaccounted for
23 for -- and he also gave me the name of
24 Leopold Dickson. My investigator spoke to
25 him. He was, at the time, at SCDC because he

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

29

1 was serving a youthful offender sentence. He
2 said, 'I was with him on and off all day.'
3 He mentioned going to Ms. Lee's house. He
4 said that they left, then they took a cab and
5 then they parted ways and he didn't recall
6 the times.

7 So my analysis was that we didn't have a
8 solid alibi to present.

9 Q. Did you discuss that fact with Mr.
10 Deas?

11 A. Yes.

12 Q. Did you discuss any other possible
13 defenses with him other than the alibi
14 defense?

15 A. Well, he had maintained that he was
16 not there, so we were limited to that --
17 respect. And no one -- it didn't seem like a
18 self-defense case or anything like that.
19 Since he wasn't there, my strategy was just -
20 - there were two witnesses and both had given
21 numerous stories. I didn't think either one
22 was completely credible, so the defense was
23 basically to attack their credibility.

24 But there were some other things in play,
25 like his statements. From the beginning --

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

30

1 I told him that had he not made any comments
2 to anyone we would have had a much better
3 chance.

4 Q. And could you briefly characterize
5 the State's evidence against Mr. Deas?

6 A. Yes. The State had two witnesses:
7 Sharod Young and Sharika Miles. Initially
8 the police nobody -- Ms. Miles had been at
9 the scene but indicated that she didn't
10 really see anything. She'd heard the
11 shooting and came out. Sharod Young wasn't
12 there at the time, at the scene.

13 The victim's father did do a little
14 investigation himself, just word-of-mouth on
15 the street. He talked to Mr. Young and to
16 Ms. Miles and he did end up getting Ms. Miles
17 to talk to police. She ended up identifying
18 Mr. Deas from a photo lineup.

19 Mr. Young, he eventually identified Mr.
20 Deas as well but it was only after he had to
21 be -- he was charged with obstruction of
22 justice. Only after that time did he reveal
23 the name "Ricky Deas" and he identified him
24 from a phone lineup.

25 There was no forensic evidence, though,

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

31

1 so essentially it was the two witnesses.

2 Q. And you said that Mr. Young
3 identified the defendant after being charged
4 with obstruction of justice? Is that
5 something that you pointed out to the jury
6 during trial?

7 A. Yes, that was. From my review of
8 the transcript, that was definitely pointed
9 out, that he did not reveal the name until
10 afterwards, and then that the charges were
11 dismissed at a preliminary -- he got a P.R.
12 bond, with the help of the cop, Detective
13 Osborne, and then at the preliminary hearing
14 it was dismissed.

15 I also pointed out that the State could
16 have directly indicted him if they so chose.

17 I also was able to get out from Mr. Young
18 that he -- he said on the stand that he told
19 the detective anything that he wanted him to
20 say. So he outright said, 'yes, I need what
21 he wanted me to do and I did what he told me
22 -- what he wanted me to do.'

23 Q. Did Mr. Deas or any of these alibi
24 witnesses give you any leads of potential
25 people to investigate?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

32

1 A. No, just the witness -- Mr. Dickson
2 and the two ladies. I talked to his -- my
3 investigator talked to his sister, just
4 because he was found with a gun. But that
5 gun, ultimately it wasn't involved in the
6 murder. She said that the gun that he was
7 actually found with was actually her gun.
8 So, no, there's no other witnesses, I
9 believe.

10 Q. One of Mr. Deas' allegations is that
11 you failed to properly investigate in several
12 ways. Could you go through with the Court
13 what you did to investigate for Mr. Deas?

14 A. Sure. When I first got the case, I
15 asked my investigator to go out to the scene
16 and to see if any of the neighbors were
17 willing to talk, if they had seen or heard
18 anything. She was not able to find anybody
19 who was willing to talk to her.

20 I sent her to talk to Mr. Deas' sister,
21 as I said, about the gun that he was found
22 with. She talked to Ms. Williams at the
23 time.

24 She later talked to Mr. Dickson. I had
25 already talked to Ms. Williams but I -- I

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

33

1 talked to Ms. Williams, as well. I talked to
2 Ms. Lee.

3 We did go out to the scene to observe the
4 scene.

5 I looked at the evidence at the
6 solicitor's office.

7 Q. When you went out to the scene, did
8 you go out at night?

9 A. No, I went with my investigator
10 during the daytime. I want to say that I did
11 drive by sort of at night. It's not too far
12 -- actually it's down the street from the
13 courthouse, but I did not get out of the car
14 by myself at night.

15 Q. Is there anything else that you did
16 to investigate?

17 A. One moment, please, (reviewing
18 files). My investigator tried to call the
19 lead detective, Detective Osborne, and the
20 officers that worked with him but they never
21 returned her phone calls.

22 Also, uh, -- let me see (reviewing
23 file). I'm sorry. There was one more thing,
24 (reviewing file).

25 Oh, yeah, we attempted to speak to

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

34

1 witnesses. My investigator and I went and
2 saw Mr. Young. He was actually at the jail.
3 That was in May 2008. We went to the jail to
4 see him and he refused to talk to us. I had
5 asked the solicitor for the contact
6 information for Ms. Miles, and I have that e-
7 mail, but I believe that she did not want to
8 speak to us. So no contact was ever made but
9 there were attempts to speak to the
10 witnesses.

11 Q. Did you have adequate time to
12 prepare for Mr. Deas' trial?

13 A. Yes.

14 Q. Was Mr. Grimes brought in later on
15 towards the end, at Mr. Deas' insistence in
16 some way?

17 A. Yes. It's typical that we will get
18 a second chair to sit with us. I'd talked to
19 him about the trial that I was the one who
20 really did everything, for the most part.

21 Q. And I might have already touched on
22 this, but you were aware that the State's
23 witnesses were brought to the police by the
24 victim's father, Mr. Simmons; is that
25 correct?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

35

1 A. Yes, I was. The Solicitor actually
2 brought that out in her questioning of them.
3 I believe that I covered that in my closing
4 argument, as well, stressing that they were
5 trying to please him because they felt sorry
6 for him.

7 Q. You said that you referenced that in
8 your closing, but did you also bring that out
9 in cross-examination of those witnesses?

10 A. I know the solicitor did --
11 (reviewing file), -- I am not sure if I
12 actually went over that. But I know when I
13 read their testimony that it came out that
14 the father was actively involved.

15 Q. Do you recall a Ms. Sandra Green
16 being involved somehow in this case?

17 A. Sandra Green, I believe, was the
18 aunt of the victim. From my recollection,
19 she was at the hospital. She wasn't an
20 actual witness to anything but was at the
21 hospital -- I believe an officer talked to
22 her. I believe that she sort of gave them
23 the name of Sharod Young. He went by "Fish."
24 Said that she thought that he knew something,
25 but he was refusing to give the name 'Ricky

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

36

1 Deas.' He just kinda said that it would be
2 handled on the streets or whatever, but --
3 (pause).

4 Q. Did you by any chance speak to her?

5 A. No, I don't think that we did talk
6 to her.

7 Q. Did you feel like you needed to?

8 A. No.

9 Q. You testified that your trial
10 strategy was to attack the credibility of the
11 State's witnesses. Can you tell us your
12 thinking in going into cross-examination of
13 Mr. Young and Ms. Miles and the kind of
14 things that you tried to pick out of their
15 testimony?

16 A. Yes. Well, both of them gave
17 various statements. Ms. Miles, at first she
18 directly lied to the police, said that she
19 didn't see anything. And then when she first
20 talked to the victim's dad, she was like,
21 'When I looked out the window, I saw
22 somebody, the side of their face, but I
23 didn't get a good look.'

24 Then the father took her in and she
25 said, 'Yeah, I did see him' and she pointed

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

37

1 out Ricky Deas. But she said at that point
2 that she'd never seen him before that day.
3 That she had seen him earlier before the
4 shooting but not before that day. Then after
5 -- I believe at a pretrial hearing that it
6 came out that she said that she actually knew
7 who Ricky Deas was, that she just hadn't
8 revealed the name -- that she had revealed
9 that to the officer. So I pointed all of
10 that out with her.

11 With Sharod Young, I pointed out that he
12 had refused to tell the police anything until
13 they charged him with obstruction of justice.
14 He -- actually, he was very forthright. He
15 said, 'I only gave them -- basically the
16 officer told me that he'd make sure that I
17 didn't get a bond or that I got a really high
18 (sic) bond.' He implied that he could have
19 been charged with murder himself, so I was
20 able to get out that he basically told
21 Detective Osborne, like I said, whatever he
22 wanted he hear. He knew who he wanted him to
23 say because Mr. Deas had already been
24 arrested. I think that it was pretty clear
25 that he'd say whatever Detective Osborne

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

38

1 wanted him to say.

2 With both of them, I also had --
3 there was some robbery mentioned at one
4 point. Nobody was charged with the robbery
5 of the victims. Money was not taken, which
6 was evidence that there wasn't a robbery.
7 But I basically implied that they were
8 covering up for somebody; that there was
9 cocaine at the scene that nobody claimed, as
10 well; and that the two gave very different
11 stories from one another. For example, Ms.
12 Miles said that Mr. Young was at the scene.
13 However, Mr. Young adamantly, 'Ms. Miles? I
14 never saw her.' He asked like he -- you
15 know, that he was the only one out there. So
16 I pointed out that it was odd that he was
17 trying to distance himself from her so much
18 and that perhaps they were covering for
19 somebody, perhaps a boyfriend of Ms. Miles.
20 Just that there was something going on there
21 besides -- you know, that they weren't
22 telling.

23 Q. Did you also make any argument to
24 the jury about the fact that the defendant's
25 DNA wasn't found underneath the victim's

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

39

1 fingernails?

2 A. Yes. I remember -- when I reviewed
3 my closing, I saw where I had indicated that
4 somebody -- that an unidentified person's DNA
5 was there. That they didn't even -- that
6 they could have looked to see if it matched
7 one of the witnesses, but that they didn't do
8 that; that it was fresh and there was no time
9 to clean up any DNA. So I was able to get
10 that out in my closing.

11 Q. Do you also recall the portion --
12 well, do you also recall that at some point
13 in time during the trial agreeing with the
14 State that you didn't need the testimony of
15 the person that created the SLED report?

16 A. I don't recall that specifically. I
17 knew that it came out, because of my closing.
18 But I thought that it was sufficient to say
19 that his DNA was not -- that it was somebody
20 else's DNA. That was the important part to
21 get out.

22 Q. Do you also recall during the middle
23 of the trial the court excusing a juror?

24 A. Yes.

25 Q. What is your recollection of that?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

40

1 Do you have a specific recollection of what
2 happened?

3 A. From my review of the transcript,
4 the parts that I saw, he came forward. He
5 indicated that there was a family
6 relationship that he didn't realize earlier.
7 So the judge of course excused him.

8 I did bring up specifically that I wanted
9 the other jurors to be questioned. Judge
10 Jefferson said no. She questioned the
11 foreperson, because that's the person that
12 came to her with the note, to see if there
13 had been any other discussions. He said,
14 'No, I am the only one he talked to. No, he
15 didn't give me any details.' So she
16 questioned him.

17 Then I believe that she actually brought
18 the juror back later, at the end of the
19 trial, just to specifically ask him if he had
20 talked to anybody else.

21 But I -- I had asked her to talk to the
22 other jurors, but she denied that request.

23 Do you also recall the jury, in the
24 middle of the trial, asking if there was a
25 transcript of some of the testimony?

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

41

1 A. Yes, from when I reviewed the
2 transcript, I remember that.

3 Q. And do you think that her excusing
4 the juror or not questioning the jurors
5 individually, do you think that was the basis
6 for a mistrial?

7 A. No. As far as the transcript, I
8 think I also -- I did make a request that she
9 talk to them to see if there had been pre-
10 deliberations. She indicated that no, she
11 didn't want to ask them but that she'd charge
12 them to make sure that there wasn't any of
13 that going on. But, no, at the time I didn't
14 see the need to ask for a mistrial; because I
15 didn't have a particular basis at that time,
16 I didn't feel.

17 Q. Just to be clear, you didn't think
18 that there was a basis for a mistrial on the
19 fact of the jury asking for a transcript?

20 A. Right.

21 Q. Does that also apply for excusing
22 the juror?

23 A. Yes. At that time, I didn't -- it
24 didn't occur to me to ask for a mistrial
25 because at that point I didn't see

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

42

1 specifically anything that had been tainted,
2 that I had proof of.

3 Q. Do you also recall your argument to
4 the jury about Mr. Deas' statement in the
5 jail -- on the jail phone that they didn't
6 have the murder weapon? Do you recall what
7 you argued to the jury about that?

8 A. Yes. As far as the transcript, we
9 did not have the transcript until the last
10 minute. We didn't get the jail tapes until a
11 few weeks before the trial. The detective,
12 he'd actually reviewed them as well and wrote
13 a supplemental police report summarizing what
14 the jail report said. That way we were able
15 to direct ourselves to the appropriate
16 places. So the transcript that the solicitor
17 actually came up with, she did that, or her
18 law clerk did that, to give to the judge as
19 a guide. But we did not -- that did not come
20 about until the week of trial, so that's why
21 I was not able to get that to Mr. Deas
22 beforehand.

23 But, yes, that was always my thinking
24 when I heard that statement. What I had gone
25 over with Mr. Deas, because that was always

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

43

1 in my mind, exactly what Mr. Deas had
2 indicated, that they didn't have the murder
3 weapon. So that was my argument, that it was
4 the truth, that they didn't have it.

5 And I think that we did -- I think we did
6 -- he was arrested with a gun, and I believe
7 that was kept out because it wasn't relevant
8 and it would have been more prejudicial. And
9 I think that when I explained it to him that
10 I said, 'you know, that obviously makes it
11 more clear but I don't think trying to put
12 testimony to that effect would be worth the
13 prejudice', you know, that the jury -- that
14 would exist from the jury hearing that he had
15 a gun at his arrest. I thought from how it
16 sounded that we could argue that that was the
17 truth of the matter.

18 Q. Do you recall talking to Mr. Deas
19 about whether or not he should testify at
20 trial?

21 A. Yes.

22 Q. What was your advice to him with
23 regard to that?

24 A. I told him that I didn't think that
25 he should testify. First of all, he was

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Direct Examination
Before The Honorable R. Markley Dennis

44

1 saying that he wasn't there. So it wasn't a
2 case where he would have had to give a
3 different story. I was concerned about the
4 statements that he had made to the police
5 about the alibi, basically with Ms. Williams,
6 since it turned out that she was saying that
7 it wasn't true or she was saying that he
8 wasn't living with her. I was concerned
9 about the jail tapes just opening him up to a
10 lot. I was also concerned about his
11 demeanor. I just thought -- he's a very
12 chill guy. I just thought that if he were to
13 testify that he would -- I didn't think that
14 he would lose his temper or anything like
15 that, but I was concerned that the jury might
16 just think that he wasn't denying things
17 enough. That was just because of his
18 demeanor, not because of what the facts were
19 or the truth was.

20 MS. WILSON: Thank you, Ms. Ford.

21 THE COURT: Cross-examine.

22 MR. DAVIS: Thank you.

23 CROSS EXAMINATION

24 BY MR. DAVIS:

25 Q. Ms. Ford, do you know if you gave

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

45

1 copies of the investigator's reports to
2 Mr. Deas?

3 A. No, I don't believe that I sent him
4 the reports. No.

5 Q. As far as the influence of the
6 father, Leroy Simmons, Sr., can you tell the
7 judge again what was his involvement in this
8 case?

9 A. What I focused on -- I think my
10 thoughts with him were just to try to point
11 out that -- because he was just -- he wasn't
12 telling anybody who it is. He was just
13 trying to make sure that people came forward
14 with whatever information that they had. So
15 my strategy with him was just to say that
16 these people felt sorry for him; you know,
17 because he'd just lost his son, obviously.
18 That they felt awkward and were just kind of
19 getting to things that -- basically, they
20 just got in over their heads, that they were
21 just -- that they felt sorry for him.

22 Also I pointed out that Ms. Miles, in
23 order to attack her credibility, I said that
24 she may seem like a good witness on the stand
25 -- you know, she cried and everything. But I

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

46

1 said, you know, 'she also told the victim's
2 father that she didn't know who it was.' He
3 believed her. You know, she told multiple
4 people and they all believed her at the time.
5 I pointed that out to show that, that she was
6 not credible.

7 Q. You didn't attempt to suggest that
8 he had any improper influence on the two
9 witnesses?

10 A. I -- he never, from my understand-
11 ing, had a name. He basically was really
12 just trying to take them to the police
13 station, he was trying to get them to give
14 them information.

15 Q. You received some phone call
16 transcripts, I believe that you testified, a
17 few weeks before the trial; is that right?

18 A. No, I believe the -- Detective
19 Osborne had written a supplemental report
20 with some notes. I think the Friday before
21 -- I believe from the e-mail the Friday
22 before that Miss Julie sent me just -- just
23 pointed out the phone calls, which is
24 basically what the detective had done in his
25 report. She had noted the time of the calls

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

47

1 and did a little summary. So there was not
2 a word-for-word transcript but there was
3 something the Friday before the trial.

4 Q. But how close in time was that to
5 the CD of the calls themselves?

6 A. The CD -- from my understanding,
7 I've got an e-mail indicating that I got them
8 the middle of January. So I believe around
9 January 15th and I think the trial was January
10 26th.

11 Q. And it was not until the Friday
12 before the actual start of trial that you're
13 told exactly what conversations that the
14 State intended to use?

15 A. Well, I did -- again, Detective
16 Osborne had written a supplemental report and
17 he had noted the phone calls in that report.
18 So I think that I received that the same time
19 that I got the phone calls. I'm not a
20 hundred percent sure. He didn't write the
21 report until November of 2008. So --
22 (pause).

23 Q. Did you -- did you feel that you
24 needed more time to review the phone calls
25 that they were going to attempt to introduce

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

48

1 at trial?

2 A. No. No, I had a law clerk review
3 the phone calls in general just to see if she
4 heard anything outside those phone calls.
5 But since the State directed me specifically
6 to those phone calls, I felt that I had
7 enough time to review them.

8 Q. Receiving them just the Friday
9 before the trial, did you feel any reason to
10 suppress those for late discovery?

11 A. I received the calls, the tapes, a
12 few weeks before mid-January. It was just
13 that transcript that I got the Friday before.

14 Q. So -- but since I knew specifically
15 where they were looking, I felt that was
16 enough time to look at them and address those
17 issues.

18 Q. I believe that you have already
19 testified that you would have shared the
20 content -- a summary of the content with Mr.
21 Deas. You actually provided or played the
22 recordings for him? Do you recall?

23 A. I simply can't recall. I mean, I
24 think that I would have. But I think the
25 jail -- it was the old jail and it was more

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

49

1 difficult. Since there wasn't a whole lot of
2 time, I can't say for sure that I played them
3 but I did discuss them, because I was
4 concerned that it was bad for him.

5 Q. Is it accurate to say that the
6 strongest evidence that the State had against
7 Mr. Deas was the eyewitness identification by
8 the two witnesses who testified?

9 A. Yes.

10 Q. Did you consider -- you did not
11 bring in an ID expert?

12 A. Correct.

13 Q. Did you consider bringing in an ID
14 expert?

15 A. No, I don't believe I considered
16 that.

17 Q. You did conduct a Biggers hearing as
18 to Ms. Miles?

19 A. Yes.

20 Q. You did not, though, as to Mr.
21 Young?

22 A. I am not a hundred percent sure.
23 But I -- probably because he said that he
24 knew the defendant, I probably would have
25 done so -- or requested it now -- but -- I

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

50

1 think actually, though, that Mr. Grimes -- I
2 do remember because Mr. Grimes actually -- I
3 remember a pretrial hearing because that's
4 when Mr. Young first started saying all these
5 things about how he would have confessed to
6 anything, basically, to get the detectives
7 off his back. So I believe that Mr. Grimes
8 did that.

9 Q. However, do you recall not -- so you
10 had a Biggers hearing. Do you recall not
11 objecting to the testimony in front of the
12 jury when those two witnesses identified Mr.
13 Deas?

14 A. Now, I do -- from when I reviewed
15 it, I think that I did not object when they
16 did an in-court identification. I know that
17 I objected early -- Judge Jefferson basically
18 did this whole thing, she basically said, you
19 know, 'considering your objection.' I don't
20 think that the solicitor asked to put in the
21 ID with Sharika Miles but she did with Sharod
22 Young. I think so. But, no, I did not
23 object when there was an in-court
24 identification.

25 Q. Turning to the DNA evidence, you

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Cross Examination
Before The Honorable R. Markley Dennis

51

1 agreed with the State to have Detective
2 Osborne testify about the DNA results;
3 correct?

4 A. Yes.

5 Q. There was a SLED agent that had
6 actually done an analysis?

7 A. Yes.

8 Q. You didn't require the State to call
9 that witness?

10 A. Correct.

11 Q. You didn't called that witness
12 yourself?

13 A. Correct.

14 Q. During the testimony with Detective
15 Osborne, it was obvious that he was not an
16 expert in DNA analyses?

17 A. Correct.

18 Q. Just to be safe, I believe that you
19 testified to this, but -- there were two
20 different jury issues. You didn't believe
21 that there was a basis for a mistrial on the
22 request for the transcript. You didn't
23 believe that was grounds for a mistrial?

24 A. Correct.

25 Q. Then on -- when the juror revealed

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Redirect Examination
Before The Honorable R. Markley Dennis

52

1 that he was related to the family of the
2 deceased, you did not move for a mistrial at
3 that stage either?

4 A. Correct.

5 Q. You didn't feel that there was a
6 basis to do that?

7 A. Correct.

8 MR. DAVIS: Judge, may I have just
9 a moment.

10 THE COURT: Certainly.

11 MR. DAVIS: (Sidebar with
12 Applicant), -- thank you, Ms. Ford. No other
13 questions.

14 THE COURT: Redirect?

15 MS. WILSON: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. WILSON:

18 Q. Ms. Ford, did you think that you
19 were able to adequately challenge the State's
20 witnesses' identification without an expert?

21 A. Yes. They were both -- at the time,
22 they were saying that they knew him prior to
23 the incident.

24 Q. Also, did you think -- you didn't
25 think that the ALED DNA expert was necessary

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Testimony of Mary Ford - Redirect Examination
Before The Honorable R. Markley Dennis

53

1 to get in the fact that his DNA wasn't under
2 the victim's fingernails; is that correct?

3 A. Correct. I thought the important
4 part was to note that it wasn't his DNA. It
5 was somebody's -- an unidentified person's.
6 But I also knew that his DNA wouldn't have
7 necessarily have been on the victim even if
8 it were true that he was the shooter. So I
9 didn't feel the need to bring in the expert
10 for that.

11 MS. WILSON: Thank you.

12 THE COURT: Recross?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Do you wish now to
15 call Mr. Dudek?

16 MS. WILSON: Yes, Your Honor.

17 THE COURT: Let's take about a
18 five-minute break and get him on the phone
19 and we can go forward.

20 (BRIEF RECESS)

21 (APPLICANT PRESENT)

22 (OFF RECORD BENCH CONFERENCE)

23 MS. WILSON: We have a letter here
24 dated September 19th, 2012, addressed to Mr.
25 Deas from the -- basically the substance of

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

54

1 the letter, we stipulate to the fact that
2 Mr. Dudek told Mr. Deas that he was satisfied
3 with the issues raised in his brief. So we
4 just submit that for the court's review.

5 THE COURT: Any objection.

6 MR. DAVIS: No, Your Honor. In
7 fact, I talked with my client and that's a
8 letter that he received.

9 THE COURT: State's Exhibit 1.

10 (SO ENTERED AS STATE'S EXHIBIT 1)

11 THE COURT: Any additional
12 witnesses?

13 MS. WILSON: Nothing further from
14 the State, Your Honor.

15 THE COURT: Any reply testimony?

16 MR. DAVIS: Nothing, Your Honor.

17 THE COURT: Be happy to hear from
18 you.

19 MR. DAVIS: Thank you, Your
20 Honor. May it please the Court, you know, we
21 -- as you saw, there was not one singular
22 issue here. It was an ID case, there were a
23 few issues.

24 I will start with appellate counsel
25 and back up to the trial counsel. We argue

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

55

1 that, first of all, the requesting of the
2 court reporter's transcripts, while objected
3 to and raised by Ms. Ford at the time, we
4 would argue that it should have also been
5 raised on appeal. It's a fundamental right
6 to an impartial jury. If during
7 deliberations -- as Your Honor does, at every
8 break there's an admonition not to deliberate
9 about the case. As to Mr. Dudek
10 specifically, we argue that he should have
11 raised that issue. He was made aware of it.
12 In a letter response to the client, 'I aware
13 that you want me to but I am not going to.'
14 We think that was ineffective and we think
15 that it should have been raised. On that
16 ground, we would ask that you find the
17 appellate counsel ineffective.

18 As to trial counsel, starting with
19 that issue, while she did object to it
20 contemporaneously and the Court deal with
21 that, we would argue that -- first, it was
22 ineffective for her not to ask for a mistrial
23 at that point. The granting of a mistrial
24 would have caused the outcome of this case to
25 be different.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

56

1 As to the second jury issue, there
2 was a juror who indicated in the midst of the
3 trial he was related to the family of the
4 deceased. That was specifically asked in
5 voir dire and he did not respond. One
6 witness (sic) did respond and was excused.
7 The witness (sic) in question -- the juror in
8 question did not.

9 That, had it been disclosed, could
10 have arguably have been a strike for cause,
11 which could have changed the make up of the
12 jury and, therefore, could have changed the
13 outcome of the trial.

14 It also could have been a preemptory
15 decision by the attorneys for the defendant,
16 which they were not allowed to use, which
17 could have changed the make up of the jury,
18 which could have changed the outcome of the
19 trial.

20 We would argue that the concealment
21 of that relationship at the beginning was a
22 prejudice to my client. Ultimately, also, we
23 would argue that the trial attorney not
24 requesting a mistrial, that because of that
25 -- even though the judge did address it --

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

57

1 was ineffective and affected the outcome of
2 the trial.

3 We would argue -- a similar argument
4 on two different issues. One dealing with
5 the DNA analysis, what was addressed, we
6 would argue that the evidence and persuasive
7 argument would have been stronger had his
8 trial attorneys actually called the SLED
9 analyst or required the State to do so.

10 By stipulating and allowing the
11 detective to testify with his limited
12 knowledge of DNA, the argument made wasn't
13 the strongest argument that could have been
14 made.

15 Actually having someone knowledge-
16 able about DNA would have made it a stronger
17 argument, since especially it relied on ID
18 and that's what this case was about.

19 To that issue, we also argue that
20 the trial attorneys failed to object to the
21 in-camera *Biggers* hearing -- to object at the
22 time that both Mr. Young and Ms. Miles
23 identified Mr. Deas in front of the jury in
24 the courtroom. They did not preserve that
25 for appeal. That is the evidence in the

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

58

1 case. We feel that was ineffective and
2 affected the outcome of the case. That was
3 the strongest evidence against Mr. Deas.

4 There was no expert called in this
5 case when that was the sole issue at trial.
6 The expert could have talked about factors
7 such as it was at night, that there were
8 multiple different stories by the identifying
9 witnesses. There were things that could have
10 been inquired of an expert that could have
11 fleshed out that defense, and we believe that
12 was ineffective.

13 We also believe the bias of Mr.
14 Leroy Simmons, the father, who basically
15 rounded up the ID witnesses in this case --
16 again, it's completely an identification case
17 -- we don't believe that it was appropriately
18 argued, and since credibility is the issue of
19 any witness, we feel that was ineffective and
20 that it could have affected the outcome of
21 the case.

22 Finally, Judge, back to the juror
23 issue -- both of the juror issues for just a
24 moment. Ms. Ford did object on both
25 occasions. She certainly asked Judge

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

59

1 Jefferson for a polling of the jurors, I
2 believe in both circumstances, certainly in
3 the revelation that one of the jurors was
4 related to the victim's family. The judge
5 declined. We would argue that it was
6 ineffective not to conduct an inquiry of each
7 juror, as provided in case law, and Ms.
8 Ford's not requesting that was ineffective
9 assistance of counsel.

10 Judge, for all those reasons as a
11 summary of conduct -- because this was an ID
12 case only and we -- we would argue that the
13 deficient performance of his trial attorneys
14 and his appellate counsel in not raising the
15 issue about juror misconduct affected --
16 prejudiced my client, and we would ask that
17 you grant the application.

18 THE COURT: Ms. Wilson?

19 MS. WILSON: May it please the
20 court, Your Honor, the State just asks that
21 you deny this application for post-conviction
22 relief with prejudice.

23 With regard to Mr. Dudek raising the
24 issue on appeal, as reflected in his letter,
25 he presented to the court what he thought the

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

60

1 best argument was and most compelling.
2 Appellate attorneys have that discretion and
3 they don't have to present every issue raised
4 on appeal, they can choose what they believe
5 to be the most meritorious.

6 I ask that you deny the application
7 with regard to counsel's failure to request a
8 mistrial with regard to the juror issues.

9 With regard to the juror, I believe
10 it was Juror Jackson, being related to the
11 victim, the record reflects that he brought
12 it to the court's attention. The court then
13 excused him as a juror. There's no prejudice
14 to the defendant with regard to that, because
15 he was removed from the jury. Then out of
16 caution, the court then brought back the
17 juror to question him about whether or not he
18 had mentioned his relationship to anyone else
19 -- any of the other jurors. The Court also
20 questioned the foreperson and the foreperson.
21 Also in this case, Your Honor, there is no
22 proof that Juror Jackson's conduct was in any
23 way intentional.

24 Also, with regard to the jury
25 requesting a transcript, the Court several

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

61

1 times during the trial cautioned the jury not
2 to engage in any preliminary deliberations.

3 In regard to DNA analyses, Ms. Ford
4 gave credible testimony that she didn't think
5 that the SLED analyst was necessary because
6 she basically got out what she wanted, which
7 was that Mr. Deas' DNA was not present under
8 the victim's fingernails. She was able to
9 argue to the jury about it without that
10 testimony.

11 With regard to the witness ID and
12 having an identification expert, Ms. Ford
13 testified that she felt like she could
14 adequately challenge the ID without having an
15 ID expert and that both of those witnesses
16 testified that they knew the defendant. She
17 also was able to argue to the jury the fact
18 that one of the witnesses may have been under
19 the influence and that type of thing.

20 With regard to the bias -- about the
21 victim's father being involved in the
22 investigation, Ms. Ford argued to the jury,
23 and it was brought out by the State, that --
24 she testified that on cross-examination, and
25 it is pretty clear from the transcript that

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

62

1 everyone knew that Mr. Simmons had some
2 involvement with the investigation.

3 With regard to ineffective
4 assistance, we just ask that you dismiss this
5 application with prejudice.

6 THE COURT: Reply?

7 MR. DAVIS: No, Your Honor. Thank
8 you.

9 THE COURT: When you sit in the
10 position that we're in, Monday-morning
11 quarterback, you have to analyze everything
12 from the perspective of then. This case,
13 first of all we have to deal with all of the
14 witnesses that you think that she should have
15 called, there was an important strategy here.
16 It was a weak case. As you pointed out, Mr.
17 Davis, it was an ID case. There were
18 questions in both eyewitnesses, they
19 equivocated. All of that was brought out and
20 brought to the jury's attention. So that was
21 accomplished.

22 The problem that we have with the
23 expert is that this was -- if these were
24 witnesses that did not know the defendant,
25 then we get into the real crux of an expert.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

63

1 The power of suggestion, all of those things.
2 But when a person knows someone, that witness
3 is not as powerful, I don't think. I am not
4 suggesting that it doesn't have some credence
5 of probative value but then -- then as a
6 trial lawyer, you have to assess 'if I
7 present that witness, they may not be able to
8 address fully the issue that we want, we may
9 not accomplish that much or give us what is
10 important.' We all know as trial lawyers the
11 -- we can say what we want to say and the
12 State can't answer it. That is pretty
13 significant. That's not just a flippant
14 little statement. That is a real strategy.
15 In this case I think that it was a strategy
16 that was certainly appropriate. I think Ms.
17 Ford made -- Ms. Ford and Mr. Grimes made a
18 very legitimate decision.

19 In hindsight, would it have been
20 better to do something else? I don't know.
21 We tried that, it didn't work. So I guess we
22 try it another way. But that's not what
23 we're judging by. In fact, I think it may
24 have been -- may have been more beneficial
25 for a PCR if they've given him that

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

64

1 opportunity given this case.

2 And the DNA, it shows -- to bring
3 someone in to say it isn't his -- we don't
4 know whose it is. 'It could have been
5 anybody's, but it wasn't his.' Well, she
6 already had that out, she had the benefit of
7 that. Sure, there's an expert in DNA that
8 said that it wasn't his -- but nobody
9 challenged that. Nobody said that it was.

10 The problem is that the facts in
11 this case don't really lend itself to it
12 being -- whoever the -- a perpetrator shot
13 the victim. So -- and I know that there was
14 some altercation before, but that really
15 doesn't preclude his being involved. So
16 given it all, in the light -- considering it,
17 I don't believe that Ms. Ford fell below the
18 standard. She was -- what do you do as a
19 trial judge -- and I understand that you have
20 to protect the record, and I think that she
21 did. When a judge rules a certain way and
22 it's against what you ask them to do,
23 (pause).

24 I don't represent Mr. Dudek, but
25 that's a pretty critical issue. As I

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

65

1 understand, premature deliberations is the
2 only one that you are really raising. You're
3 not really raising the issue of appeal, the
4 dismissal of the juror.

5 MS. WILSON: Your Honor, my under-
6 standing is that he was raising, that he
7 should have appealed the dismissal of the
8 juror.

9 THE COURT: Dismissal of the
10 juror, as well? Or just that one?

11 MS. WILSON: It was my understand-
12 ing that it was just dismissal of the juror.

13 THE COURT: I thought that it was
14 premature deliberation. I could be confusing
15 it.

16 MR. DAVIS: Our position was that
17 Mr. Deas had contacted Mr. Dudek to raise the
18 issue about the specific juror who indicated
19 that he was a family member of the victim's
20 family.

21 THE COURT: While I personally --
22 well, I won't say personally because I'm not
23 in an appellate spot.

24 The question comes -- I agree with
25 you that there is no evidence that he

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

66

1 intentionally did it. But there's no inquiry
2 as to why he didn't disclose it. I under-
3 stand that he didn't talk about it. That is
4 clearly established, at lest the court
5 inquired about that.

6 I would agree with counsel that the
7 appellate attorney has to make an assessment
8 as to what interest is, so I -- I think that
9 the Court's inquiry -- if the Court wants to
10 change otherwise, they can do the -- they can
11 reverse me on that issue. I've been reversed
12 before for excusing a juror, in the Stone
13 case, so I'm very familiar with that one. In
14 this particular case, I think that the court
15 did everything in its power, short of
16 questioning everybody, but -- I don't think
17 that was necessary in this case. I think
18 Judge Jefferson handled it appropriately,
19 based on what the record reflects that she
20 did.

21 So I find -- I dismiss the claim
22 both as to the trial lawyer and as to Mr.
23 Dudek. You have thirty days to appeal.

24 If you will, prepare the appropriate
25 Order.

Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Ruling of The Court
Before The Honorable R. Markley Dennis

67

MS. WILSON: Yes, sir.

(HEARING CONCLUDED)

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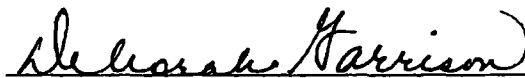
Richard Deas v State of South Carolina
Case No. 13-CP-10-2306 - Hearing of April 17, 2014
Certificate of Court Reporter
Before The Honorable R. Markley Dennis

68

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on April 17, 2014, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
September 10, 2014

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1387

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 19, 2012

Richard Deas, #332943
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: ~~Your phone call~~

Dear Mr. Deas:

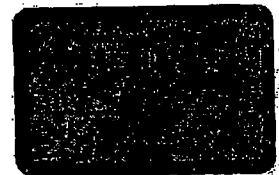
I received your message regarding amending your brief to add a second argument. I am satisfied with your brief as it is now. If I miss a winning issue, you will prevail in Post-Conviction Relief. If you are not satisfied with my representation, you can move to have me relieved as counsel and proceed pro se.

Should you have any further concerns, please do not hesitate to contact our office.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:kam



868
SOL
GS
AT
AG

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Richard Deas, #332943,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-2306

ORDER OF DISMISSAL

FILED
2014 JUL 16 PM 3:32
JULIE A. HARRIS
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable R. Markley Dennis
Rodney Davis, Esquire
Ashleigh R. Wilson, Esquire
Mary Ford, Esquire
April 17, 2014
Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 22, 2013. The Respondent made its Return on December 5, 2013. An evidentiary hearing on the matter was convened on April 17, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Mary Ford, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, the Applicant's appellate records, and one exhibit¹ submitted by the Applicant during the hearing.

¹ Applicant's Exhibit 1 was a letter to the Applicant from appellate counsel Robert Dudek, Esquire dated September 19, 2012.

RMG/11

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the April 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-3339) and possession of a firearm (2008-GS-10-3340). He was represented by Mary Ford, Esquire and Andrew Grimes, Esquire.

The Applicant proceeded to trial and was found guilty. On January 20, 2009, the Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for forty-years for murder and five years for possession of a firearm. The sentences are to be served concurrently.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire of the South Carolina Office of the Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Deas, No. 2012-UP-215 (S.C. Ct. App. filed December 12, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to conduct an independent investigation and review evidence with Applicant.
 - b. Failure to advise Applicant regarding possible defenses.
 - c. Failure to utilize defense witnesses.
2. Ineffective assistance of appellate counsel.

At the hearing, Applicant proceeding solely on the following allegations of ineffective assistance of trial counsel and appellate counsel:

1. Ineffective assistance of trial counsel.

- a. Failure to investigate crime scene or question witnesses.
 - b. Failure to investigate or present an alibi witness.
 - c. Failure to request a mistrial or object to early jury deliberation when the jury asked about receiving a copy of the trial transcript during trial.
 - d. Failure to request a mistrial or have the court properly question a juror who was related to the victim.
 - e. Failure to obtain the written transcript of the jail tapes and share with the Applicant.
 - f. Failure to call an expert witness on identifications.
2. Ineffective assistance of appellate counsel.
- a. Failure to raise the issue of a juror being related to the victim's family on appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

The Applicant was present at the hearing and testified he was convicted of murder and possession of a weapon during the commission of a violent crime. The Applicant testified he was represented by Mary Ford and Andrew Grimes at trial and by Robert Dudek on appeal. The Applicant testified he met with Ford frequently and met Grimes the week of trial. He testified he reviewed the discovery materials with counsel and did not recall discussing possible defenses with counsel.

The Applicant testified Ford did not properly investigate his case. He testified Ford did not go to the crime scene to check the visibility of the scene at night. He testified she never provided him with any information about her investigation of the scene. The Applicant also

mag 13

testified trial counsel did not investigate his alibi witnesses. He testified counsel did not discuss an alibi defense with him and she told him he had no defense. The Applicant testified he did not discuss investigating Sandra Green or Tiana Lee with trial counsel. He testified he wanted counsel to call Lee because she would have testified he was with her the night of the murder.

The Applicant testified two witnesses identified him as the shooter. He testified the witnesses were brought to the police by the victim's father. The Applicant testified counsel never questioned the witnesses about how they came to speak with police. He testified further counsel did not question Shrod Young about his bias.

The Applicant testified counsel also did not get transcripts of his recorded jail phone conversations. He testified he made a statement about police not having the murder weapons during a jail phone conversation. He testified he did not have the call transcripts until after trial. He testified that if he had the call transcripts prior to trial he would have felt more comfortable taking the stand to testify at trial.

The Applicant testified his blood sample was submitted for DNA testing and found not to match any evidence. The Applicant testified the SLED DNA person was not present to testify at trial. He testified counsel failed to present evidence that his DNA did not match at trial.

He testified the jury asked the court about receiving a copy of the trial transcript during trial. The Applicant testified counsel did not object to this request as early deliberation by the jury. He testified further a juror was excused because he was related to the victim. The Applicant testified counsel did not have the juror properly questioned and did not question the juror one on one. The Applicant testified counsel should have asked for a mistrial based on these juror issues.

Lastly, the Applicant testified he wanted appellate counsel to argue on appeal the issue with the juror being related to the victim. He testified appellate counsel told him he felt comfortable with the arguments he presented in his brief.

Also present was Mary Ford, Esquire. Counsel testified she has been practicing law as a public defender for over eight years. She testified she was appointed to represent the Applicant shortly after his arrest in October 2007. Counsel testified her notes reflect she met with the Applicant at least twelve times prior to trial. Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the materials received with the Applicant in detail.

Counsel testified she discussed with the Applicant the elements of the charges he was facing and what the State had to prove. She testified she discussed with the Applicant his version of the facts and he gave her Dixon, Lee, and Williams as potential witnesses. Counsel testified the Applicant spoke with police after arrest and told them he was with his girlfriend Shanique Williams the night of the murder and that he was with Lee and Dixon prior to that. Counsel testified they discussed presenting an alibi defense at trial. She testified she spoke with Lee and Dixon who said the Applicant was with them, but left at some point and they were unsure when he left. Counsel testified she spoke with Williams who confirmed her statement to police. Counsel testified the Applicant was unaccounted for at the time of the murder and did not have a solid alibi to present at trial.

Counsel testified there was no evidence of self-defense in the Applicant's case and their strategy was to attack the credibility of the State's witnesses. She testified the evidence included two eyewitness Miles and Young. She testified Miles identified the Applicant in a photo line-up

and Young identified the Applicant after being charged with obstruction of justice. Counsel testified during her investigation Miles and Young would not speak with her.

Counsel testified she used an investigator to visit the scene and track down Dixon and Lee. She testified she spoke with the Applicant's sister, Dixon, and Lee. She testified she reviewed the evidence and went to the scene during the day time and drove by the scene at night. Counsel testified she did not speak with Sandra Green, the victim's aunt, during her investigation because Green was not an actual witness to the murder. Counsel testified she did not give her investigator's reports to the Applicant.

Counsel testified she had ample time to prepare for trial and Andrew Grimes, Esquire, sat second chair with her during the Applicant's trial. She testified she recalled a juror being excused during trial because he was related to the victim. She testified the foreperson was also questioned by the Court about whether or not the excused juror had spoken to any other jurors. Counsel testified she also recalled the jury asking about access to the trial transcript during trial. Counsel testified she asked the Court to poll the jury on whether or not they had begun deliberations, but the Court refused her request. Counsel testified she did not have a basis to move for a mistrial on either jury issue.

Counsel testified she adequately cross-examined the two eyewitnesses at trial on their inconsistent statements. She testified she was able to elicit from Young that he told police whatever they wanted to hear because he wanted a low bond. She testified she also argued to the jury that Miles and Young were trying to cover for someone else based on their two different stories. Counsel testified she knew that the two eyewitnesses had been brought to police by the victim's father. She testified she brought this fact to the jury's attention in closing and argued Miles told the victim's father he did not know who the shooter was to challenge Miles'

credibility. She testified this fact was also elicited by the State on direct examination of the eyewitnesses. Counsel testified further that she did not consider obtaining an identification expert. She testified both witnesses said they knew the Applicant prior to the incident and she was able to challenge the testimony of both Miles and Young without an identification expert. Counsel testified she did not object to the witness' in-court identification of the Applicant.

Counsel testified the evidence indicated an unidentified person's DNA was found under the victim's nails. Counsel testified she agreed to allow Officer Osbourne to testify about the DNA results and did not require the State call a SLED DNA witness. She testified she felt Osbourne's testimony at trial was sufficient to show the Applicant's DNA was not under the victim's nails and she did not feel a SLED DNA witness was necessary.

Counsel testified she received a copy of the jail tapes the January before trial. She testified she had a law clerk review the tapes and the State directed her to specific calls. She testified she had enough time to review the tapes to address any issues raised by the State. Counsel testified she did not have a transcript of the jail tapes until shortly before trial. She also testified she doesn't recall if she played the tapes for the Applicant, but they discussed the tapes prior to trial.

Counsel testified a transcript of the jail tapes was given to the Court during trial as a guide and she was unable to get a copy of the transcript to the Applicant prior to trial. Counsel testified she argued to the jury that the Applicant's statement on the jail tapes about the police not having the murder weapon was true. She testified she was able to keep out the fact that the Applicant was arrested with a gun and explained to the Applicant she did not think it was worth putting up testimony about him having a gun at arrest.

Counsel testified she discussed with the Applicant his right to testify. She testified she advised the Applicant not to take the stand because he did not have a different story to give to the jury. She testified she was concerned about the statements already given by the Applicant. She testified she was also concerned that the Applicant's low-key demeanor might be received negatively by the jury.

Ineffective Assistance of Trial Counsel

The Applicant alleges that he received ineffective assistance of trial counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 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).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for

RMG/18

counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds counsel provided credible testimony while finding the Applicant's testimony was less than credible. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to investigate. The Applicant claims counsel did not go to the scene of the murder and did not investigate how the State's witnesses became known to police. This Court finds this allegation is without merit and counsel adequately investigated the facts of the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be

directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds counsel gave credible testimony that she visited the scene of the murder during the daytime and at night. This Court also finds counsel was aware that the State's two eyewitnesses became known to police after speaking with the victim's father. Counsel gave credible testimony that she knew prior to trial that the victim's father had encouraged Shrod Young and Shoreka Miles to speak with police about what they saw the night of the murder. The record reflects the State elicited testimony from both Young and Miles about speaking to the victim's father before giving statements to police. (T. 248:8-250:4, 310:22-314:10).

After this testimony was elicited by the State, the record reflects counsel was able to impeach Miles with her multiple inconsistent statements to the victim's father and police and elicit testimony from Young that the victim's father had pleaded with him to help him by naming his son's murderer. (T. 262:20-262:10, 319:3-320:1). This Court finds counsel used the victim's father's involvement in the case to the Applicant's benefit at trial. This Court also finds the Applicant has failed to show what any additional investigation in his case by counsel would have yielded. This Court finds the Applicant has failed to carry his burden of proving counsel's performance was deficient and affected the outcome of his proceeding.

The Applicant alleges counsel was ineffective for failing to investigate or call an alibi witness at trial. This Court finds this allegation is without merit and counsel adequately investigated the Applicant's alibi and discussed the alibi defense with the Applicant. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to

support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

This Court finds counsel provided credible testimony that she investigated the Applicant's two alibi witnesses and discussed the alibi defense with the Applicant prior to trial. Counsel testified after her investigation she concluded the witnesses given to her by the Applicant would not establish a complete alibi. This Court finds the Applicant has failed to carry his burden of proving counsel was deficient. This Court also finds the Applicant has not produced the testimony of any alleged alibi witness to carry his burden of proving prejudice resulted from counsel's decision not to present an alibi witness at trial.

The Applicant alleges counsel was ineffective for failing to object or move for a mistrial after a juror wrote a note to the Court during trial indicating he was related to the victim and one of the State's witnesses. This Court finds the juror was excused by the Court and there was no basis for counsel to object or move for a mistrial. The record reflects the jury foreman sent a note to the Court indicating Juror 137, Elmo Jackson was related to the victim and Shoreka Miles. (T. 285:25-286:7). Jackson told the Court he was closely related to the victim and Leroy and Shoreka Miles and he did not think he could be fair and impartial. (T. 287:15-288:5). Without objection from either the State or the defense, the Court excused the juror based on his representations (T. 288:9-289:10). Counsel for the Applicant expressed concern about the foreman's knowledge of the excused jurors note. (T. 289:13-20). The Court then took extra

precaution and inquired of the foreman about whom else the excused juror discussed the note with. (T. 290:8-17). The foreman indicated the excused juror only spoke with him about the note and that he could remain fair and impartial after his conversation with the juror. (T. 290:13-291:22). This Court finds this allegation is without merit and no further inquiry of the excused juror or foreperson was needed from the Court or the defense. This Court finds the Court properly excused the juror after he represented to the Court his inability to be fair and impartial based on his relationship to the victim. This Court finds the Applicant has failed to carry his burden of proving counsel's performance was deficient or affected the outcome of his proceeding.

The Applicant alleges counsel was ineffective for failing to provide the Applicant a copy of the transcript of his taped jail phone conversations. This Court finds this allegation is without merit. This Court finds the Applicant not having a copy of this transcript did not affect the Applicant's defense or counsel's representation of the Applicant at trial. Counsel provided credible testimony that she was given a copy of the jail tapes and discussed the contents of the tape with the Applicant prior to trial. This Court finds and the record reflects counsel was aware of the substance of the taped conversations and the transcript was only created to aid the trial court. Counsel also testified she received a transcript of the tapes shortly before trial and did not have a chance to provide a copy to the Applicant. This Court does not find credible the Applicant's claim that had he been able to review the transcript prior to trial it would have affected his decision to take the stand to testify during trial. This Court finds the Applicant has failed to carry his burden of proving counsel was deficient and that her performance affected the outcome of his proceeding.

The Applicant alleges counsel was ineffective for failing to call an expert witness to testify about eyewitness identifications at trial. This Court finds this allegation is without merit since the Applicant has failed to present the testimony of an expert witness at his evidentiary hearing. This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id. This Court will not speculate on the substance of an identification expert's testimony or its effect on the outcome of the Applicant's trial. This Court finds the Applicant has failed to carry his burden of proving counsel was deficient and that but for counsel's performance the result of his proceeding would have been different.

Ineffective Assistance of Appellate Counsel

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of

trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

This Court finds appellate counsel was not ineffective for failing to raise the issue of a juror being related to the victim's family on appeal. This Court finds appellate counsel exercised discretion and raised the issues on appeal that he thought were most meritorious. This Court finds the trial court's excusal of the juror appeared to be proper in light of the juror's representations to the Court and it is unlikely the court's excusal of the juror would entitle the Applicant to reversal on appeal. This Court finds the Applicant has failed to carry his burden of proving appellate counsel's performance was deficient and that he would have prevailed on appeal had counsel raised the issue of the juror being related to the victim's family on appeal.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, and appellate proceedings. Trial and appellate counsel were not deficient and the Applicant was

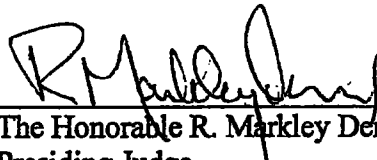
not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of July, 2014


The Honorable R. Markley Dennis, Jr.
Presiding Judge
9th Judicial Circuit

Moncks Corner, South Carolina.

JK S20071010978

WITNESSES

DAVID OSBORNE

Charleston City Police Department

AGENCY CASE NUMBER

0720810

ARREST WARRANT NUMBER

F969668

DATE OF ARREST

2007-10-23

ACTION OF GRAND JURY

TRUE BILL

Edo Cochran
 Foreperson of Grand Jury
 Date: APR 07 2008

VERDICT

Guilty

John Pugh
 Foreperson of Petit Jury

1/30/09
 Date:

INDICT.DOT

DOCKET NO. 2008GS1003339

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

VS.

RICHARD VERNON DEAS

DOB: [REDACTED]

B/M

Indictment for

Murder

CY

CLERK OF COURT

2007 APR 11 PM 4:05

07-6766-1

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

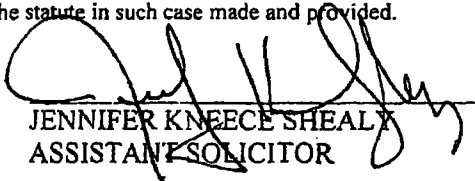
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about October 19, 2007, with malice aforethought, RICHARD VERNON DEAS did kill and murder Leroy Simmons, II by means of injuries sustained from gunshot wounds, and that Leroy Simmons, II did die in Charleston County as a proximate result thereof on October 19, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.RICHARD VERNON DEAS

AKA: _____

Race: B Sex: M Age: 2009DOB: 00-00-0000 SS#: _____Address: CHARLESTON, SC 294030000

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1003339A/W#: F969668Date of Offense: 10/19/2007S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murderin violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

WITNES:

Sheffy Jennifer Kneice

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 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: 2008-GS-10-3340☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 35.13 (Public Def/Prob) \$500

§ 73.3, 1B TP (Law Enforce. Funding) \$25

§ 33.7, 1B TP (Drug Court Surcharge) \$100

§ 50-21-114(BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5

TOTAL

\$ 133.75

_____ 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 Del J. [Signature]Judge Code: 21110218Sentence Date: 1-30-09

SCCA/217 (07/2008)

Clerk of Court Deputy Clerk

Court Reporter: A. Meyer

JkS20071010978

WITNESSES

DAVID OSBORNE

Charleston City Police Department

AGENCY CASE NUMBER

0720810

ARREST WARRANT NUMBER

F969669

DATE OF ARREST

2007-10-23

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 07 2008

VERDICT

Guilty

Foreperson of Petit Jury

1/50/09
Date:

INDICT.DOT

DOCKET NO. 2008GS1003340

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

vs.

RICHARD VERNON DEAS

DOB: [REDACTED]

B/M

Indictment for

Possession Of A Firearm During The
Commission Of A Violent Crime

BY

CLERK OF COURT

2008 APR 11 PM 4:09

07-6766-2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

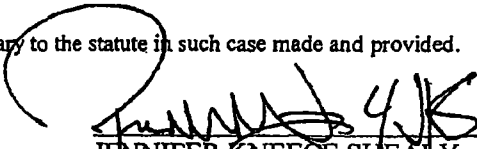
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about October 19, 2007, the Defendant, RICHARD VERNON DEAS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission of, Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.RICHARD VERNON DEAS

AKA: _____

Race: B Sex: M Age: 2009DOB: 00-00-0000 SS#: _____Address: CHARLESTON, SC 294030000

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1003340A/W#: F969669Date of Offense: 10/19/2007S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a Firearm During Commission of a Violent Crimein violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Shealy, Jennifer Kneese

Defendant

Attorney for Defendant

SC Bar#

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: 2008-GS-10-3339
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCA Surcharge)

TOTAL

\$	
\$	
\$100	\$ <u>100.00</u>
\$100	\$
\$12	\$
\$500	\$
\$25	\$ <u>25.00</u>
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$ <u>3.75</u>
\$5	\$ <u>5.00</u>
\$	\$ <u>133.75</u>

_____ 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 A. L. MeyerJudge Code: 21102018Sentence Date: 1-30-09

SCCA/217 (07/2008)

Clerk of Court/ Deputy Clerk

Court Reporter: A. Meyer