

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

VOL II OF II

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S.C. Supreme Court

TYRONE BEATY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000023

A P P E N D I X

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1 particular matter?

2 MR. BELLAMY: Yes, Your Honor.

3 THE COURT: All right, sir, if you wouldn't mind
4 standing, Mr. Beaty, if you would, please, sir, and Madam
5 Clerk, you will need to place him under oath for this,
6 please.

7 (MR. BEATY STANDS AND IS PLACED UNDER OATH BY THE CLERK)

8 THE COURT: All right, Mr. Beaty, the State has
9 rested in this particular case as far as the presentation
10 of its evidence. Therefore, we've reached the stage of
11 the trial where you can present your defense, and so at
12 this point in time I'm going to explain to you certain of
13 your constitutional rights and if at any point in time you
14 don't understand anything, you're unclear about it, you
15 don't know what I'm saying or have a question of any kind,
16 I need for you to stop me. You can raise your hand. You
17 can tell Mr. Bellamy, but in some way you need to bring
18 that to my attention. Are we in agreement there?

19 MR. BEATY: Yes, sir.

20 THE COURT: All right, very good. You have the
21 right to claim the protection given to you by the Fifth
22 Amendment to the Constitution of the United States of
23 America. Now, that amendment states in part that no
24 person shall be compelled in any criminal case to be a
25 witness against themselves. That means nobody can make

1 you testify. Nobody can force you to testify in this
2 case. You can testify if you want to; it's your right,
3 but you may exercise that constitutional right and not
4 testify in this matter. Do you understand that?

5 MR. BEATY: Yes, sir.

6 THE COURT: All right, sir. Also, if you decide to
7 testify, you'd be subject to the same rules that you've
8 seen all the witnesses who have testified in this
9 particular case. In fact, you would be examined by your
10 attorney. You would be cross examined by the Solicitor as
11 to facts that the Court would deem relevant in this
12 matter.

13 Does Mr. Beaty have a prior record that you would be
14 asking him questions about, Solicitor?

15 MS. VON HERRMANN: He does, Your Honor.

16 THE COURT: All right, and Mr. Bellamy, you've gone
17 over those issues of the prior record that he -- that Mr.
18 Beaty could be asked about, is that right?

19 MR. BELLAMY: Yes, sir.

20 THE COURT: And that's correct, Mr. Beaty?

21 MR. BEATY: Yes, sir.

22 THE COURT: All right, and the Court would allow the
23 State to ask you if you had been convicted of certain
24 crimes that are punishable by imprisonment for more than
25 one year or if a crime of dishonesty, and the Court

1 determines that the value of admitting that kind of
2 evidence outweighs any prejudice to you, meaning the Court
3 would allow it if I find the issue of credibility or
4 believability of a witness, as you've seen with all the
5 other witnesses that -- or some of the other witnesses
6 that have testified.

7 They had a criminal record; that's brought out, and
8 the jury can use that to weigh credibility or
9 believability, and I find in this particular matter that
10 the proper crimes that fall within that definition would
11 outweigh any prejudice to you, and I would allow the State
12 to do that on those crimes that are within ten years, that
13 are either crimes of dishonesty or crimes that have a
14 punishment of more than one year, all right, so if you
15 decide to testify now, you understand it's got to be your
16 decision. You've got to make that decision intelligently
17 with the knowledge of the information that we've just
18 talked about here and the guarantee given to you by the
19 Fifth Amendment to the Constitution of the United States
20 of America.

21 If you decide not to testify, I'm going to tell the
22 jury they can't give that fact any consideration
23 whatsoever. They can't even talk about it in the jury
24 room. I'll tell them it's not anything that they can use
25 to decide this particular case. Under- -- well, let me

1 ask you, do you understand everything we've talked about
2 here?

3 MR. BEATY: Yes, sir.

4 THE COURT: All right, sir. Before I ask you to
5 make your decision, do you have any questions of the Court
6 or questions of Mr. Bellamy that you need to ask at this
7 point in time?

8 MR. BEATY: No, sir.

9 THE COURT: All right, sir. Do you want to testify
10 in this particular matter?

11 MR. BEATY: No, sir.

12 THE COURT: All right, sir, very good. Thank you.
13 And as I told you then, I will tell the jury that they
14 can't give that fact any consideration whatsoever in this
15 case. Y'all can be seated. Thank you very much.

16 All right, Mr. Bellamy, with the State resting its
17 case in this particular matter, are there any motions that
18 you would like to make to the Court at this point in time?

19 MR. BELLAMY: Yes, sir, Your Honor. I would make a
20 motion for a directed verdict at this time of not guilty.
21 Taken in the light even in the most favorable to the
22 State, I do not believe that there is sufficient evidence
23 to convict my client of the crime of either murder or
24 armed robbery.

25 THE COURT: All right, sir, very good. As the

1 Defense has indicated, the Court would grant a motion for
2 a directed verdict when the State fails to produce
3 evidence of the offense charged, and here there's two
4 offenses, murder and armed robbery. I'm concerned with
5 the existence of evidence. It's not my job to judge
6 credibility or believability, not the weight of the
7 evidence, just whether or not it exists. That other part
8 is for the jury to determine.

9 If there's any kind of direct evidence or substantial
10 circumstantial evidence that reasonably tends to prove the
11 guilt of the accused, then the case should be properly
12 submitted to the jury. In this particular case, I find
13 that there is more than sufficient evidence that if that
14 evidence is so believed by the jury, and again, that's
15 their job, but I find that the evidence exists that would
16 reasonably tend to prove the guilt of the accused, and,
17 therefore, I'm going to submit it to the jury in this
18 matter and respectfully decline to grant your motion for a
19 directed verdict.

20 MR. BELLAMY: Thank you, Your Honor.

21 THE COURT: All right. Will the Defense be
22 presenting any evidence, or does the Defense rest at this
23 time?

24 MR. BELLAMY: The Defense would rest at this time,
25 Your Honor.

1 THE COURT: All right, sir. Would you then,
2 therefore, renew the motion you just made regarding a
3 directed verdict?

4 MR. BELLAMY: Yes, Your Honor.

5 THE COURT: All right, sir, very good. As far as
6 the standards and what I just explained, I'm going to
7 respectfully decline to grant your renewed motion for a
8 directed verdict at this time.

9 MR. BELLAMY: Thank you, Your Honor.

10 THE COURT: Anything further that we need to cover
11 before the jury comes in from the State?

12 MS. VON HERRMANN: Your Honor, did you make a
13 decision regarding some instruction on the proffer
14 agreement?

15 THE COURT: What I'm going to do is -- I made a copy
16 of just one of them, and I'm not even going to identify
17 which one of them. I'm going to say there were certain
18 proffer agreements that were introduced into evidence, and
19 I'll hold it up and I'll show them that I ordered that
20 certain parts of it be redacted or blacked out, and I'll
21 just tell them that was my decision because it contained
22 matters that has nothing to do with this particular case
23 and it was not proper evidence in this case.

24 MS. VON HERRMANN: Thank you, Your Honor.

25 THE COURT: And that's what I'll do in that regard,

1 okay? Any objection to that from the Defense?

2 MR. BELLAMY: No, sir; no, sir, Your Honor.

3 THE COURT: All right, very good.

4 MS. VON HERRMANN: And would you intend on telling
5 them that prior to closing arguments?

6 THE COURT: Well, I wasn't intending to. I was
7 intending to do it during the ---

8 MS. VON HERRMANN: That's fine, Your Honor. I
9 just ---

10 THE COURT: --- during the charge, just at the very
11 beginning of the charge, probably some -- right when I
12 talked about direct or circumstantial evidence before I
13 got into more of the substance of the charge, I probably
14 was going to talk to them about that at that point in
15 time.

16 MS. VON HERRMANN: Thank you.

17 THE COURT: All right, anything else from the
18 Defense at this point in time?

19 MR. BELLAMY: No, sir, Your Honor.

20 THE COURT: All right, very good. What we'll do is
21 we'll bring the jury in. I'll ask you, Solicitor, as far
22 as the presentation of the case, and you can tell me the
23 State rests. I will turn to you, Mr. Bellamy, and you can
24 tell me that the Defense rests, and so then we'll go into
25 the arguments and the charge, and then obviously with the

1 Defense not having -- having introduced any evidence in
2 this case, then the Defense would have the second or the
3 last argument in this particular matter, all right?

4 All right, ask the jury to come in, please.

5 Counsel, can y'all come up and talk to me, please.

6 (An off-the-record Bench conference was held by the
7 Court with Counsel for the State and the Defense regarding
8 a note received from Forelady of the jury.)

9 THE COURT: Dixie, can you mark this, please, ma'am.

10 NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 4.

11 THE COURT: Then I'll need for you to take that into
12 the jury room. Hand that to the bailiff to take in, and
13 then tell them once they've read it, ask them if they're
14 ready. Once they've read it, are they ready to come on
15 in.

16 (OFF THE RECORD)

17 ON THE RECORD

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
19 THE JURY.)

20 THE BAILIFF: They finally read it. Do you want me
21 to bring them on in?

22 THE COURT: Yes, sir, bring them in.

23 Solicitor, and Mr. Bellamy, could y'all come up for
24 one second, please.

25 (An off-the-record Bench conference was held by the

THE STATE RESTS
THE DEFENSE RESTS

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1 Court with Counsel for the State and the Defense.)

2 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right, Solicitor, your next witness,
5 please, ma'am.

6 MS. VON HERRMANN: Your Honor, the State would rest
7 at this time.

8 THE COURT: All right. Mr. Bellamy, the position of
9 the Defense at this point in time?

10 MR. BELLAMY: Your Honor, the Defense rests at this
11 time.

12 THE COURT: All right, very good.

13 All right, ladies and gentlemen, you have heard all
14 the evidence in this particular case. Now, that does not
15 end the case. What we're going to do now is we're going
16 to have the closing arguments of the attorneys, and again
17 I'm going to remind you, those closing arguments are not
18 evidence. You've already heard all that in this
19 particular case, but those closing arguments are
20 important. They are each side's summation to you, each
21 side's position, what they believe the evidence has shown
22 to you during the course of the trial, remembering, of
23 course, that collectively you are the judges of the facts
24 of this particular case.

25 After you've heard the closing arguments, I'm going

1 to give you the law that you are going to apply to the
2 facts and evidence that you find to be true in this
3 particular matter, and after that, then I'll submit the
4 case to you for your deliberations and your unanimous
5 decision in this particular matter, so I would ask at this
6 point in time that you would give your attention to the
7 attorneys when they give you their closing arguments.

8 All right, Solicitor.

9 MS. VON HERRMANN: Thank you, Your Honor.

10 THE COURT: Thank you, ma'am.

11 MS. VON HERRMANN: Good morning, ladies and
12 gentlemen of the jury. Y'all have been very patient this
13 week, and we appreciate all your attention to the
14 witnesses that have come up here and testified for you. I
15 will tell you one thing. I look over there every now and
16 again and kind of see what y'all are doing, and I see you
17 taking some notes, and I see you paying attention.

18 Judge John is an excellent Judge. He's our resident
19 judge here in Horry County, and he's allowed you to take
20 notes during the trial. That's something that not all
21 judges do, and I've never really understood why judges
22 would put you in a position where they don't let you write
23 stuff down and keep notes, because the fact of the matter
24 is what you're going to do as soon as you go back to that
25 jury room, is you're going to look through your notes and

1 you're going to discuss the consistencies and
2 inconsistencies that came from that witness stand, so I am
3 happy that you all have taken those notes and I hope that
4 you will refer to them when you get there.

5 I'm going to talk to you just a little bit about the
6 law in this case before I get to the facts. There are two
7 different kinds of evidence that are presented to you.
8 One kind is called direct evidence. That's evidence that
9 someone has actual knowledge of. If I have my pen sitting
10 here and I come over and I pick up that pen, you all have
11 direct evidence that I picked up that pen. You saw it.

12 There's a second kind of evidence, and that evidence
13 is called circumstantial evidence. Now, people you hear
14 all the time going, "Oh, that's just some circumstantial
15 evidence. It's just circumstantial evidence." There's no
16 difference in the law between direct evidence and
17 circumstantial evidence. Circumstantial evidence is just
18 a piece of information from which you make an inference.

19 I'll give you a good example of circumstantial
20 evidence. There is a then Judge, now a Supreme Court
21 Justice, named Costa Pleicones, and he had a good story
22 about circumstantial evidence. He said, "My grandson was
23 over at my house and it was almost dinnertime, and we had
24 a counter there in our house and there was a banana
25 sitting up on the counter, and my grandson said, 'Grandpa,

1 I want to eat that banana. I'm hungry,' and he said, 'You
2 can't eat that banana right now. We're getting ready --
3 grandmama is fixing dinner,'" and he left the room and he
4 came back, and he walked over and the banana was gone, and
5 he looked in the trash and the banana peel was in the
6 trash, and he called his grandson over and he said, "Let
7 me smell your breath." "Banana."

8 He didn't see him eat that banana, but there's no
9 doubt that child ate that banana, and that's
10 circumstantial evidence. That's what it is, and so you
11 can make that inference. That's allowed. The law allows
12 it.

13 Now, I want to talk to you also about reasonable
14 doubt, because it's an important concept. I want to talk
15 to you about what it is, but I also want to talk to you
16 about what it is not. Reasonable doubt is proof that
17 leaves you firmly convinced. This is something that we do
18 every day of our lives. It's common sense. We walk
19 around and we make judgments about things all the time.
20 It's not an absolute certainty. There are very few things
21 in life that we can know to an absolute certainty, and the
22 law doesn't require that in this case.

23 What it requires is that you are firmly convinced.
24 It's not beyond all doubt. It's not beyond all doubt.
25 It's not even -- it's not some uncertainty, and it's

1 certainly not beyond a moral certainty. It's something
2 when you walk out of the room you go, "Yeah, I'm convinced
3 of that. I'm convinced of that," so I want you to keep
4 that in mind, because it's a big concept in the law, but
5 don't make it bigger than the law requires that it is,
6 because this is it, proof that leaves you firmly
7 convinced.

8 The Defendant in this case, along with the co-
9 defendants that you heard from earlier, have been charged
10 with armed robbery and they've been charged with murder.
11 Here's the definition of armed robbery, taking or
12 attempted taking and carrying away of the personal
13 property of another with the intent to deprive him of
14 possession by use of force, threats, or intimidation while
15 armed with a deadly weapon, taking something, using a
16 weapon to take it. That's armed robbery.

17 He's also been charged with murder. What is murder?
18 It's the killing of another with malice aforethought.
19 What is malice aforethought? It's the intentional doing
20 of a wrongful act. It's ill will, hatred, or hostility to
21 another, or a reckless disregard for the lives and safety
22 of others. It's -- it's ill will. It's the intentional
23 doing of a wrongful act. If you are engaged in an illegal
24 or wrongful act and you are doing a wrongful act and
25 someone is killed during the course of that wrongful act,

1 that's murder. That's what murder is.

2 Now, one of the things that I want to talk to you
3 about that the Judge is going to charge you on is
4 something called a felony murder inference, and what the
5 felony murder inference is, is that if you are engaged in
6 a felony, and robbery is a felony, if you are engaged in a
7 felony and someone is killed during the course of that
8 felony, then there is an inference of malice, so you can
9 take that alone and infer malice from that intentional
10 felony, robbery, taking place.

11 And perhaps the most important concept of all is
12 this: It's something called the hand of one is the hand
13 of all. That's sort of what we lawyers call it, and what
14 it says is that if a crime is committed by two or more
15 people who were acting together to commit the crime, the
16 act of one is the act of all. For example, two people can
17 be responsible for killing another person when only one of
18 the two has a gun and only one of the two fires the shots
19 at him.

20 If you and I get together and we decide that -- let's
21 say three of us get together and we decide that we are
22 going to rob a bank, and I've got a gun. You may -- you
23 may not even know that I've got a gun, and one of you is
24 going to drive the car, and one of you is going to stand
25 outside the bank and be the lookout, and I'm going to go

1 in and rob it, and we get together beforehand and we say,
2 "All right, we're all in agreement here, right? We're
3 going to do the robbery.

4 I'm going in. You're standing at the door. You're
5 driving the get-away car." If I go into that bank and
6 while I'm in that bank I pull out a gun and I shoot that
7 teller, guess what; guess who's guilty of murder. Me, and
8 you, and you. That's the hand of one is the hand of all.

9 And so in this case, and we'll get to the facts more
10 a little later, let's just say, for example, that you
11 don't believe that Tyronne Beaty shot that man. I submit
12 to you that he did, but let's say you just don't even
13 believe that. If you believe that these individuals got
14 together and that they conspired to commit a robbery, they
15 are all guilty of murder. They are all guilty of armed
16 robbery, because the hand of one is the hand of all, and
17 the Judge is going to tell you that, and that is very,
18 very important, and I want to make sure that y'all
19 understand it. I'm going to harp on it. Y'all are going
20 to say, "Would she just please be quiet about the hand of
21 one is the hand of all," but it's very important to me and
22 it's important to this victim's family.

23 Now, that being said, I want to talk to you a little
24 bit about the victim. The co-defendants in this case are,
25 as you are aware, Corey Smalls, and Antonio Smalls, and

1 Neil Hill. Each of these individuals has entered into
2 something that's called a proffer agreement, and you all
3 will have these agreements back there in the jury room
4 with you, and I encourage you to read these. There is a
5 portion of this that has been redacted.

6 The Judge will tell you a little bit about that when
7 he instructs you. This is just some information that's
8 just not relevant to this case, and that's why you can't
9 have it. Mr. Bellamy is not trying to hide anything. I'm
10 not trying to hide anything. The Judge is not trying to
11 hide anything. It's just information that you just can't
12 see, but I want you to look at the remainder of that
13 proffer agreement, and what that proffer agreement says in
14 essence is that these people are going to come in and
15 they're going to testify truthfully, and they're going to
16 testify for the State.

17 Now, you've heard Corey Smalls up here, and he sat
18 behind Mr. Bellamy. "Are you going to plead guilty to
19 murder?" "No, I'm not going to plead guilty to murder.
20 I'll plead guilty to armed robbery. I'm guilty of armed
21 robbery, but I don't know if I want to plead guilty to
22 murder." Let me tell you this: That's not his choice.
23 It's my decision is what the charge is. That's not his
24 decision. That's my decision, and what sentence he gets
25 is the Judge's decision, so I don't want you all when you

1 get back there and deliberate to think about, "Man, I
2 mean, I wonder what's going to happen to Neil, and I
3 wonder what's going to happen to Antonio, and, you know, I
4 don't want to be unfair to Tyronne," and worry about what
5 this person or that person is going to get because you
6 don't need to be concerned about that. That's between me,
7 the Judge, and the defendants.

8 So what happened? What happened in this case? Well,
9 this is not a forensic case, as I am sure you are now all
10 aware. This is not CSI. This is not hair and fiber.
11 This is not blood. This is not DNA. We tried to get
12 those things, and sometimes it's there, and sometimes it's
13 just not, but that being said, what we do have and what
14 the heart of the matter is in this case, and where you
15 need to look for your evidence is from the witnesses who
16 testified, mainly the co-defendants, and also Daniel
17 Prater who was a fact witness as well.

18 And let me tell you, I would like with all of my
19 heart to be able to bring a nun, and a rabbi, and a
20 minister, and a teacher, and put those people up here and
21 have those people stand here and look at you and go,
22 "Yeah, I was out there at Butler Road and I saw Tyronne
23 Beaty kill Miles Slay," but you know what, nuns, and
24 rabbis, and ministers don't hang out with drug dealers.
25 Drug dealers hang out with drug dealers, and so when we

1 get our witnesses on these cases, we get the witnesses
2 that are there, and so we have to take them the way that
3 we find them. So what you have to do is look at that and
4 sort of judge their credibility from the witness stand.
5 What you should be focusing on, these witnesses'
6 testimony.

7 Let's talk about this. Their testimony was
8 different in some respect, but in large measure, it was
9 the same. Let's go over some of this. They all agreed
10 that they met up in Murrells Inlet at Corey's house, Neil,
11 Tyronne, Antonio. They all agree with that. They all
12 agree that Tyronne and Corey had some kind of
13 conversation. They all agree that they get into a gold
14 Maxima. They all agree that Antonio and Corey are in the
15 front, Neil and Tyronne are in the back. They all agree,
16 and you can look in your notes, that they agreed to rob
17 Miles Slay. They all agreed. Every one of them told you
18 that.

19 They agreed that Tyronne suggested going to the Food
20 Lion. They agreed that Tyronne had the cocaine. They
21 agreed that Tyronne went into the Food Lion. They agreed,
22 and you've got the Food Lion video and tape receipt, which
23 you will have back there in your jury room as well, and I
24 would encourage you to take a look at those, but he went
25 in, that he bought flour, that he bought baggies, that he

1 bought duct tape, and that he bought a big grocery bag, no
2 question about that. They all agree.

3 They agree that Tyronne got in the back seat of the
4 car and that he's bagging up the cocaine. They all see
5 that. They agree that they leave the Food Lion. They
6 agree that they go to the daycare center to go pick up
7 Antonio's daughter. They agree that the real cocaine was
8 thrown out at the daycare. How sad is that? Ridiculous,
9 but they all agree about this.

10 They left there and they realized that it was gone
11 and they had to go back. They had to go back and get it.
12 They all agree that they went back and they got it. They
13 agree that they went to Bridget's house and dropped
14 Antonio's daughter off, and they agree with the exception
15 of Neil, who falls asleep at this point, that they dropped
16 Corey off at Foxtrot, that he walked to the Wilco to meet
17 Miles.

18 We don't have Neil's testimony about that, but what
19 we do have is Daniel Prater. He's Miles' friend, and he
20 said, "Yes, I was with Miles. That was the arrangement.
21 Corey was coming over, and he came over from Foxtrot," and
22 then you have Corey and Daniel telling you that Corey was
23 on the telephone and he had a discussion with Tyronne
24 about the fact that Miles had two other people with him.

25 In addition to that, you've got that corroborated by

1 Antonio who said, "Yeah, I was in the car, and the
2 conversation between Corey and Tyronne was that Corey had
3 to tell Miles to get rid of those people because we can't
4 deal with three people; it's got to be just Miles," so
5 you've got your three witnesses on that. Both of those
6 people say that Tyronne instructed Corey that he couldn't
7 bring anybody there.

8 Now, Antonio tells you that he stops at the soccer
9 field, which is down the road from where the incident took
10 place. Neil confirms that. He wakes up; they're at the
11 soccer field. Neil tells you he was in the back seat of
12 the car, and Antonio says the same thing. They go in, go
13 to the bathroom, they come back out, and they change --
14 Neil and Tyronne change places. Neil is in the front
15 passenger seat. Tyronne is in the back.

16 The next thing that we hear from Antonio is that he
17 drives over to Butler Road, to the incident location.
18 While they are there, he tells you he sees a gun sitting
19 on Tyronne's lap. Let's think about this. There was a
20 gun there. There's no doubt about that. There was a gun
21 there. Drug dealers carry guns. It's common sense,
22 common sense, so they get there and Antonio sees the gun
23 sitting on Tyronne's leg. He says it's a big gun. I
24 asked him, "Do you think it was a little twenty-two?"
25 "No, no, no. A twenty-two is too small. This was a

1 bigger gun, maybe a forty or forty-five even." He sees
2 that gun, and he tells you he's nervous. He's nervous.

3 So they are there, and this is where the story is a
4 little different, but really not so much, because what
5 we've got is Antonio who says that he's talking to Neil,
6 that he hears gunshots, that he looks over, he sees Miles
7 being shot, and that Tyronne is the only person in the
8 area. He says he sees some conversation, he can't hear
9 it, but Tyronne is the only person in that area. He tells
10 you that Corey was at the back of the Maxima smoking a
11 Black & Mild.

12 I submit to you somebody who is making up a story
13 about, you know, where somebody is ain't going to come up
14 with "He's smoking a Black & Mild." They just say he was
15 back there, he was in the car, he was somewhere else, but
16 that's what we got from Antonio.

17 Neil -- and we'll get back to Neil in a minute. Neil
18 says, "I was asleep, heard the gunshots. I woke up. I
19 see -- hear the gunshots, and I see Corey and Tyronne
20 jumping into the car," and that's all he knows.

21 Corey tells you that he pulls up with Miles, that he
22 is in the car with Miles, that Miles goes, "I know that
23 guy," pointing to Tyronne, at which point Corey is like,
24 "All right, well, if you know him, then, we'll go ahead
25 and -- y'all go ahead and do the deal," so the fact of the

1 matter is Corey is no saint. Corey set this thing up. He
2 set it up. He was the middle-man. He was the guy who was
3 going to get the victim from Point A to Point B, and then
4 Tyronne Beaty was going to take over from there.

5 Tyronne goes up to the car, and Corey tells you, "I
6 see them -- I see them tussling over something. I see
7 them tussling over something," and Tyronne says, "He's
8 going for something." Now, let's think about this: If
9 Corey is just trying to pin this whole thing on Tyronne,
10 do you really think that he's going to tell you that
11 they're tussling over something and that Tyronne said,
12 "He's going for something"? Huh-uh. He's going to have a
13 story that's a whole lot better than that. He's going to
14 have a story that's going to be a lot better than that
15 one.

16 Now, we know from Dr. Schandl that Miles died of
17 those gunshot wounds, and we know that there were five
18 shots. We've got four shell casings, four projectiles
19 recovered, and you heard from Dan DeFreese, who has been
20 at SLED for a long time, a great guy, very, very smart,
21 and he tells you that there are four of those projectiles
22 that are exact matches, that there is a fifth projectile
23 that is damaged to the point where they can't make a
24 match, but that that bullet is the same type of ammunition
25 and it's consistent with the other projectiles that they

1 found, and the shell casings in all of those matched as
2 well, so I think that you can take whatever inference from
3 that that you will.

4 From there, they all agree that they would go back to
5 Bridget's house, and Antonio and Corey tell you that
6 Tyronne said he was keeping the money for bail, he was
7 going to hang onto it. The plan was originally that
8 people were going to get their cut, but Tyronne says, "No,
9 no. I'm going to keep the money and if we need bail, then
10 we'll use it for bail, and when things die down, then
11 we'll split the money."

12 Corey wanted some of that money, and he was honest
13 with you about it. He was like, "Yeah," he said, "That's
14 the way that it works. When you're in this business and
15 you set up a drug rip, you get a cut." That's your fee.
16 It's your finder's fee. He's a headhunter. He's a drug-
17 dealing headhunter.

18 He didn't get that money and, in fact, he told you
19 that he didn't even have the money to hire a lawyer. He
20 had a lawyer appointed to him through the Public
21 Defender's Office. If you're in this kind of trouble and
22 you've got money, you will hire a lawyer. You're not
23 going to get somebody appointed by the Public Defender's
24 Office. You're going to hire a private lawyer.

25 Now, Neil Hill, Neil obviously was very reluctant to

1 testify against his cousin. He told you they had a close-
2 knit family, this is something that has divided their
3 family, and he wants to minimize Tyronne's role. He wants
4 to. He also told you that he's not friends with Corey, he
5 doesn't really know him, and he's not friends with
6 Antonio, doesn't really know him either, and yet even
7 having said that, his testimony corroborates Corey's
8 testimony and Antonio's testimony.

9 He said that he was asleep during the critical
10 moment, and you know what, he wasn't asleep. I don't
11 believe he was asleep. Antonio told you he wasn't asleep.
12 He said he was laying back with his -- Antonio told you he
13 was laying back with his eyes closed. Maybe he didn't see
14 exactly what happened, but he did tell you, "I heard the
15 shots, and I saw Tyronne and I saw Corey jumping into the
16 car."

17 Antonio -- you can look through your notes and see
18 what Antonio talked about, basically all the things that I
19 discussed with you earlier.

20 Now let's get to Corey. He tells you, he tells you,
21 "I set it up." He puts himself in it. He puts Antonio in
22 it. He puts Neil in it. He puts Tyronne in it, and he
23 tells you, "We all agreed to do it." Once again, the hand
24 of one is the hand of all, and let's face it, let's think
25 about this: If I'm Corey Smalls and I want to rob Miles

1 Slay of Sixteen Thousand Dollars and I want to kill him,
2 what am I going to do? Am I going to call three other
3 people and get them involved? No. He's having a phone
4 conversation with Miles Slay. All he's got to do is say,
5 "Hey, Miles, I'll meet you at so and so. Come pick me up.
6 I'll take you over to drug dealer number A's house."

7 He knows Miles has got the money. The money is in
8 the car. He gets himself a gun. He takes Miles -- he
9 takes the money from Miles. He kills Miles, takes him off
10 somewhere to a remote location. He's done. Nobody knows
11 it. If he wants to kill Miles Slay and take that money,
12 this isn't the way that he does it.

13 He may not be a nice guy. He's in that environment
14 and he knows; he knows if he wanted to kill him, he could
15 have done it, but he didn't do that, and, in fact, what he
16 did do is when the detectives came around and wanted to
17 talk to him, he came in and he met with the detectives,
18 and he gave a statement.

19 The statement was not completely honest at first, but
20 he came out with it eventually. You know, let's face it,
21 these drug dealers don't -- they don't trust the police.
22 They don't trust them, and it took awhile for him to come
23 around, but he came around, and that led to Antonio, and
24 Antonio led to Tyronne, and Tyronne and Neil, altogether,
25 we now know were there.

1 If Corey -- if not for Corey Smalls, we wouldn't be
2 here today. If Corey Smalls had not opened his mouth to
3 the police and said anything, we would not be here today.
4 No fibers, prints, tire impressions, no DNA. We're here
5 because of Corey Smalls, and you may not like it, but he
6 is the reason that justice is going to happen in this
7 case.

8 And while I'm talking about justice happening in this
9 case, I talk with a lot of people about what I do in cases
10 that I prosecute and that sort of thing, and there are
11 people who say, "What kind of case is it, you know, that
12 you're trying?" In this case, I would say, "Well, it's a
13 case where the drug deal has gone bad," and people say,
14 "Oh, that's no great loss. That's just a drug dealer
15 killing a drug dealer."

16 Let me tell you something. That's not what our
17 system of justice is about. Our system of justice is set
18 up to protect the rights of Miles Slay. He may be a drug
19 dealer. He's somebody's son; he's somebody's daddy; he's
20 somebody's friend. And that man right there went out and
21 put a bullet in him, put a bullet in him. He saw Miles,
22 and he's dressed up in full star regalia. He's got on his
23 do-rag; he's got on his hat; he's got on his baggy pants;
24 he's got on his big ol' thug shirt. He's a thug. He
25 killed that man. He killed that man.

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1 When you go back there, you look at your evidence. I
2 don't think you're going to have any problem. I don't
3 think there's going to be any reasonable doubt in your
4 mind.

5 THE COURT: All right, Mr. Bellamy, your closing
6 argument.

7 MR. BELLAMY: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. BELLAMY: Your Honor, if I might just move the
10 easel before I start talking.

11 THE COURT: Yes, sir.

12 MR. BELLAMY: Madam Forelady, and ladies and
13 gentlemen of the jury, when we first talked to y'all,
14 Tuesday I believe it was, Tuesday morning, I believe, the
15 Solicitor told you that this would be simple, cut and
16 dried, that Tyronne got out and shot and killed him. Two
17 days later, eight or nine witnesses, and I didn't count,
18 and now we're talking about the hand of one is the hand of
19 all because maybe we don't know who did what.

20 Maybe we don't know what happened out there on Butler
21 Road, so let's lump them all in together. Let's put
22 Tyronne with Corey, and Antonio and Neil, and let's put
23 them all in there together, because under her theory, her
24 explanation of the bank robbery, every single one of them
25 should be in this courtroom being tried for murder if you

1 believe what she said, but we're only here with Tyronne,
2 because I believe in the last two days there's been more
3 questions about what happened than answers given.

4 Is the picture clear? Is the puzzle complete?

5 Before I go any further, let me say I'm going to disagree
6 with Ms. Von Herrmann about a lot of stuff in the next few
7 minutes. That don't mean I don't like her. She and I are
8 friends, so it's not a personal thing with her. It's an
9 honest disagreement about the facts of this case.

10 Is the picture clear today for you? Is the puzzle
11 complete? Are all the pieces there? I told you at the
12 beginning, and His Honor told you, I believe, at the
13 beginning that the burden of proof is on the State of
14 South Carolina to bring you the evidence. It's not on the
15 Defendant. It's not on the Defendant to bring anything in
16 this courtroom. The burden always rests with the State.
17 You start over here presumed innocent, but it's their
18 burden to bring it to you. It's their burden to clear
19 that picture, to paint it crystal clear for you, to put
20 the puzzle all together, to not leave out any pieces.

21 Now, I believe this case, as I told you two days ago
22 is about who you can trust, who you can trust with Corey
23 Smalls, Antonio, Neil; can you trust them? That's really
24 what this case at the end of the day is going to be about,
25 but there's some other things I want to talk to you about

1 as well.

2 Now, I'm going to talk to you about the three of them
3 a little bit later, but as I said, the burden of proof is
4 on the State to bring you evidence, and I said, I believe,
5 the other day that they should bring it all to you, not
6 just that which they want to bring you, not just that
7 which they think is important, or some of it, but if there
8 is evidence out there -- and let me tell you this, too,
9 that you wanted to hear that would have completed that
10 puzzle, cleared up that picture, and it's not here, that's
11 the responsibility of the State, so if there is something
12 out there that could have given you a better idea, could
13 have confirmed, make more credible or believable something
14 that they've said and it's not here, and they could have
15 brought it, hold them accountable because it's their
16 burden.

17 And there's a few things, I think, as the evidence
18 developed or the case developed that I think are important
19 for you to consider that weren't brought to you, and
20 again, I think this case rests on the trust of those three
21 individuals, but I think in totality I would like for you
22 to consider some of those things.

23 Number one, what police officers from Horry County
24 did we hear from? We heard from Peter Cestare and Robbie
25 Caulder, two crime scene people. Their role solely is to

1 collect things, bag them up, package them, send them off,
2 whatever. Well, whose job is it now -- and this other
3 person, excuse me, was Sergeant Kegler, the first to get
4 there. Basically his job was just to put the tape around,
5 you know. I asked him, "Do you go talk to neighbors and
6 witnesses, or do you" -- "No. The detectives do that,"
7 and as we went through the witnesses, it was clear, the
8 fellow sitting right over here, John Lewis, and I believe
9 he described a shorter, more heavy-set fellow, and I said,
10 "That would be Todd Cox," who interviewed all three of
11 these people on tape. We haven't heard from them this
12 week.

13 You know, Corey got up there, and why is that
14 important maybe? Corey got up, "I told -- yeah, yeah,
15 yeah," when I was cross examining. "The story you're
16 telling here today," I asked him, "and you never told that
17 to" -- "Oh, yes, I have," and something, and hemming and
18 hawing, and didn't want to really answer me. "Well, who?
19 Tell us who so we can -- maybe that person can confirm
20 what you are saying." "It was that short, more heavy-set
21 fellow, you know, sometime he" -- did he come in here and
22 tell you yeah, that's true what he said? No. Wonder why.
23 Wonder why.

24 Now, also in that same vein of these detectives who
25 are out there talking to people, we know at least from

1 these people that there's a lady by the name of Bridget
2 Allen who would have seen all four of these individuals
3 within minutes, minutes, of this happening, when this
4 supposed gold Maxima goes on back over there, and there
5 she is, to pick up this child, not only that, but would
6 have seen them before, too, but probably more important
7 afterwards and minutes, ten to fifteen minutes. Where is
8 she? Was she interviewed? Did she see a gun? Did she
9 see money? Did she see how people acted and reacted
10 minutes after all this supposedly happened? And again,
11 that's the State's burden. Would that aid you in figuring
12 out maybe something about this case? Is it the magic
13 bullet of the case, so to speak? No, but is that a piece
14 of evidence that you should hear from?

15 Then there's supposedly, according to Mr. Hill,
16 Tyronne's girlfriend living in Conway picked him up right
17 after. Where is she? Was she interviewed? Did she see a
18 gun? Did she see blood? Did she see the money? Where is
19 she? She ain't here. Would that maybe help you if you
20 could hear from the person who was with him moments later,
21 or what was he talking about, or what did he tell you?

22 And what about this Federal agent of Corey's, his
23 girlfriend, in Bishopville? Where is she? Where is she?
24 She supposedly talked to Corey that night, according to
25 him. Where is he? Where is she? Excuse me. She's the

1 one who spent his birthday, the next day, celebrating and
2 going to the beach, getting them a room at Sea Mist.
3 Where is she? Would these things possibly aid and assist
4 you? The State should have brought them. That's their
5 burden. That's their burden.

6 Then there's this -- all this business of back and
7 forth, who called who, Corey -- excuse me -- everybody --
8 Corey was talking at the Wilco station as he walked up to
9 that car to my client, Tyronne. Could we confirm that?
10 We've got Tyronne -- we've got Corey's phone. He told me
11 that, that they got his phone when he went in there, but
12 they could have got him in and got a number that would
13 have indicated that that call was made, or when supposedly
14 these calls were made earlier in the day. Do we have any
15 of those kind of things that confirm those sort of things?
16 Where are those things, and I suggest to you maybe it's
17 because it doesn't confirm them.

18 And there's enough in this case that contradicts
19 itself without all that, too, but sometimes when we try to
20 find out maybe what happened and take that picture when
21 we're not there, it helps to have things that aren't like
22 some of these witnesses that's got interests and biased,
23 and everything to gain and lose, but something like a
24 phone record, or an independent person, someone outside of
25 that loop that could confirm or not confirm things so we

1 can maybe figure out better what happened, but without
2 those things, we have to solely trust Corey Smalls,
3 Antonio Smalls, and Neil Hill.

4 What about the clothes that Mr. Slay was wearing,
5 taken off from him at the autopsy, given to the police.
6 Why are those important? Well, they didn't put them into
7 evidence. We didn't see them. They're there, and I'm
8 going to talk to you a little bit later about that, but
9 there was a wound to Mr. Slay, to the back of the leg,
10 traveling up, and we're going to talk about that angle in
11 a minute, but that would have gave you an idea. There's a
12 hole in it. The Doctor told you that, made a diagram of
13 it. There's a hole in it and everything. Wouldn't that
14 help you to know where that bullet went in? And I'm going
15 to talk about why that's important later, but they got it,
16 but they didn't put it in. Wonder why. That's their
17 responsibility.

18 Now, this Maxima came from I believe it was a client.
19 When did he get the Maxima? Who did he get it from?
20 Well, they know whose the Maxima was because they got the
21 Maxima. We know that. Where is that person? Could that
22 person confirm -- because as Corey tells us, and why is
23 that important, every bit of this was Tyronne Beaty's
24 idea, and I'm going to talk more about -- I mean,
25 everything, everything to the last detail, where did they

1 go, everything, get into the car. We had to tell who had
2 the Maxima. Wouldn't that help us, and he knows when that
3 call was made, when it was supposed to be done? Wouldn't
4 that help us know if Corey is telling the truth about
5 Tyronne telling him to do it or not? That's something
6 independent.

7 Now, let me talk to you about burden of proof just a
8 minute, and I'm going to talk longer than I should, and I
9 apologize. I'm going to repeat myself, and I apologize,
10 but this is extremely important for me and for Tyronne
11 Beaty, so if I do, I apologize for keeping you here, but
12 it is extremely important.

13 When we say burden of proof, we don't say obligation
14 to present proof, responsibility, duty. We use the word
15 "burden," and burden is a heavy word. Burden, a lot
16 heavier than duty and responsibility, and we should, and
17 hold them to that burden, and it's a tremendous burden
18 they bear, because when they, the State, our government,
19 tends to accuse a citizen, they should bear a burden, so
20 keep in mind that this is not a light thing for them to
21 bring you this evidence. It's a big thing.

22 The next thing I want to talk to you about is
23 evidence and police work that I think could have been done
24 a little bit better that might have helped you, or aided
25 you, or assisted you in trying to figure some of this

1 stuff out, and please in no way think that I'm criticizing
2 the police necessarily. They make mistakes. They're good
3 people; they're not bad people. My father was a policeman
4 for forty-three years here in Horry County. I have the
5 utmost respect for them. They're underpaid, overworked,
6 and under-appreciated, but they're humans, and sometimes
7 they do make mistakes. They don't put it all together
8 exactly right. They're just like the rest of us. We're
9 subject to human frailties.

10 But let's talk about some of the things maybe that
11 could have been done that could have helped us. The
12 Solicitor made a big deal about these clothes, that I was
13 so interested, and whether the victim's blood was on the
14 victim's clothes. Well, they're the ones who sent it to
15 have that test done. I didn't. Well, wanting to get to
16 them some things is, there's some items that possibly
17 could have been processed and tested that may have
18 enlightened us.

19 Number one, how about these shell casings. The
20 police had them. These were gathered out there at the
21 scene. This is that -- and I think y'all saw them. Y'all
22 will see them back there. The jackets are about that
23 long. Were these ever tested? Somebody put those in that
24 gun, and as -- if Corey Smalls is right, guess whose
25 fingerprints are going to be on those bullets, Tyrone

1 Beaty. They weren't ever processed. Nobody ever looked
2 for fingerprints. They were sent to Columbia to see what
3 kind of gun. Of course, they didn't have a gun to test it
4 to, other than the gun the victim may have had. We tested
5 it for that and we found out that the bullets were all the
6 same -- fired by the same gun, but while it was up there,
7 did we send it over there to the Latent Print Department
8 and say, "Is there any prints on here?" Would that have
9 assisted you? Would that have helped you?

10 Did we send it to the DNA Department? I'm not
11 talking about the bullets that went out, fired out. I'm
12 talking about the shell casings, and I believe it was
13 Peter Cestare yesterday said, "You don't have to extract
14 DNA. You can get it right off of there, off of the -- the
15 sweat off your fingers. We know somebody touched it, but
16 we never tested it to confirm what this witness was
17 saying.

18 Now, some baggage in this case. I know there was
19 some testimony, at least from these witnesses, that Mr.
20 Beaty was the one only -- the only one touching this, but
21 if fingerprints -- if I understood the testimony correct
22 from I believe it was Caulder, the first crime scene guy,
23 about they did some glue or something and sprayed some
24 things on it and did some things looking for fingerprints,
25 but there ain't no fingerprints that match my client in

1 this case, none, none. Did they test this for DNA, and
2 what kind of surface leads to those fingerprints, smooth,
3 not like dimpled. It's non-porous, shell casings. We
4 don't have that.

5 The other thing I'd tell you is the victim's clothes.
6 They went up there to test the blood on them to see if it
7 was the victim's. The Solicitor is right; that don't make
8 a whole lot of sense because we pretty much know it's his,
9 but did we send it to the department to test it for
10 gunpowder residue? Now, why is that important? Would you
11 want to know? Who cares? He was shot five times.
12 Because it helps confirm Corey Smalls' version, and that's
13 what you -- you know, you have these people telling a
14 story, and there's a whole lot of reasons not to believe
15 them, and we're going to talk about that in a minute, but
16 you look for those independent things that can confirm or
17 not confirm.

18 Corey says he's in the window with his hand, he can't
19 be very far from him, so there's going to be some soot, or
20 stippling, or something coming out the end of that barrel
21 left on those clothes or that body, but there was none on
22 the body. The doctor told you that, none at any wound,
23 and then she had looked at the clothes and didn't see any
24 on the clothes, but then sent them on to SLED for them to
25 do, I assume, what they do. She's a doctor and she

1 doesn't examine clothes. She examines bodies.

2 Did they test it for that because there should be
3 some there to confirm independent of what Corey says that
4 he's telling the truth, but they don't ever test it. The
5 doctor tested the body and there isn't any, but it should
6 be there, the body -- it should be on the body, and it's
7 not. Maybe it's on the clothes, since he was wearing
8 clothes, and didn't get to the skin, but we never tested;
9 we never tested. And again, these are things that I
10 believe the State should have done. They have the burden.

11 Another thing I would say to you about the evidence
12 and what may not have been done, and you'll have it back
13 there. There were a number of prints taken out there at
14 the scene, sixteen or seventeen, I believe, that were good
15 prints that could be compared. None of them came back to
16 my client, and all but three didn't come back to anybody,
17 but there were three, and you've got the report, that says
18 it might have been Antonio Smalls touching things at that
19 crime scene that he says he didn't -- couldn't have
20 touched, and what the report says is, and you'll have it,
21 send us something better to test. Send us better prints
22 of his and we can tell you for sure. That was never done.

23 Five years this case is, because what if those prints
24 are Antonio Smalls' on that car, in a bottle in that car,
25 various items. What does that tell you? He ain't telling

1 the truth, but we don't know, because there was enough
2 there that they couldn't rule him out, couldn't rule him
3 in, but we need better prints of Mr. Antonio, but we
4 didn't get them. We didn't get them. Could that help you
5 to confirm what Antonio says, "I didn't get out of the
6 car"?

7 Now, there's some things, and I talked about this two
8 days ago that the thing, that we are going to know, and
9 one thing, the first thing I want to talk about is with
10 the shell casings. Let me bring this over here. I'll
11 bring this over here. I believe this is the right one,
12 and if you'll recall, I believe this is Officer Caulder,
13 Crime Scene, the first guy who got there, I believe he
14 was, and I had him write down some things about what was
15 found, and what did he tell us, and let's talk about the
16 shell casings specifically right now.

17 He tells us, let's see, Number 3 is right here
18 outside the door. It's -- he says fifty-one feet on his
19 report, and fifty-nine inches. Now, I'll let you do with
20 that what you want. I -- probably it's a mistake on his
21 part. Instead of two lines, he put one, and, you know, so
22 I'm not harping on that at all, but it's like if you want
23 inches, fifty-nine inches, there's a casing right here.
24 It's like five feet. Fifty-nine inches is my middle son's
25 -- just turned -- he got to sixty inches, so he's happy to

1 be five feet, so that's about five feet away, Number 3.

2 Then we've got Number 5 -- what is that? Is that a
3 casing on Number 5? Is right here, and that's inside the
4 doorway, and there's some pictures of this, okay, so we've
5 got one about five feet, one inside the doorway. I
6 believe Number 9 is a casing, and that's got seventy-five
7 feet, but it's not that far, but it's further than three,
8 so it's further than five feet, so it's here, so that's
9 three of them.

10 Then we've got one, I believe Number 40, found here,
11 a spent shell casing, inside the passenger compartment on
12 the door. It's a little thing you can put a C.D., or I
13 guess credit cards, your license, over here. And then the
14 last one, right here, Number 29, a spent shell casing
15 under the victim, okay? Now why is that important, you
16 say, and I am sure as y'all listen to me talk, y'all
17 thought a lot of stuff I had to say wasn't important and
18 didn't make any sense. My ex-wife said the same thing,
19 but I think some of this is important because when a gun
20 shoots out these shell casings, according to Antonio, he's
21 standing right there with his hand in the door. Yet we've
22 got a shell casing more than five feet away here, five
23 feet away here, inside here, underneath the man. Now, how
24 could he get underneath if it happened like they said?

25 They say, and I'm talking about Antonio and Corey,

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1 the cousins, because Neil is asleep. He don't see
2 anything. They say that he never gets out of the car, the
3 door is never open. Is it possible that a shell casing
4 could be underneath him, because when it -- if he's
5 sitting in the car and is shot, how can he be sitting on
6 it?

7 Now, let me say this to y'all: I'm not a crime scene
8 person, and I can't -- and I ain't going to begin to
9 explain how all this happened because quite frankly it's
10 too confusing for me, but there's some things that I want
11 to point out that quite frankly don't fit the story of
12 these people, and it couldn't have happened. They're
13 lying to you about what happened, not because I say so,
14 not because of all the other reasons I'm going to talk
15 about them in a minute, but because this evidence says so.

16 How could it be here, here, underneath him, five
17 feet, more than five feet away? If the man is standing
18 right there at the door, all of them are going to be
19 within a relatively small area. They might go a little
20 bit left, right, maybe a little up and a little forward,
21 but they're all going to be right here. They ain't going
22 to be over here, ain't going to be back here, and God
23 knows how he can be sitting on it unless he wasn't sitting
24 when he was shot at least one time. That's the only way
25 that can happen, so what Corey and Antonio says can't be

1 true based on what we know, and that's one of the things I
2 asked you to consider the other day about believing them.
3 We're going to know some things, and that's one of them.

4 And I had him write it down, and you can see it is, I
5 believe, impossible to believe what Corey and Antonio says
6 about what happened out there based solely on this, and
7 there's more. You've got -- the powdery substance is
8 here, I believe, 1 and 2, and another one right here, and
9 I can't -- there's one right inside there with Number 5 --
10 oh, is that 4? Yeah, 4, so according to Corey and them,
11 he hands him the stuff and he's got it in the car, and
12 then -- well, how did -- how did that substance -- how did
13 this stuff get over here? Why is that over there?

14 Certainly whoever is doing the deal doesn't want the
15 flour back, because that's what it was. Why would the
16 shooter want the flour back? Of course, it also leaves
17 about an ounce, or a little less than an ounce, of cocaine
18 right in there, too, but why -- or is it maybe more likely
19 that whatever is going on with the drugs may have happened
20 here, which is consistent with the -- here is your stuff,
21 1 and 2, and here are these shell casings. Maybe whatever
22 happened happened right out there. Does that fit? Maybe.

23 Mr. Slay got out of the car and was going back this
24 way, and this being his left side as he got out of the
25 car, went this way and somebody shot him from the

1 passenger seat in the back of his leg, leaving the shell
2 casing here, and maybe that's the shell -- the bullet that
3 was taken out of his shirt, because these things don't
4 fit. They don't fit.

5 Now, another thing I want to talk to you about, Dr.
6 Schandl, and I'm probably pronouncing it wrong, but the
7 pathologist -- well, before I get into that, let me talk
8 to you -- we know that there were sixteen or seventeen
9 prints on the car or right around there, that three of
10 them we don't know about Antonio, but the other ones, they
11 are somebody's, but they're not Mr. Prater; they're not
12 Mr. Carr. We never did hear from Mr. Carr. He was there
13 supposedly at the Wilco, but whose are those? We don't
14 know, but let's talk about Dr. Schandl, or the
15 pathologist.

16 And she talks about the different wounds, you know,
17 that some could have been in, out, and then back in, out,
18 so we're 5, 6, or 7, and quite frankly, the reasonable
19 assumption is probably five because we've got five shell
20 casings. We've got five bullets, so her assessment of the
21 one going through here and here probably went through here
22 and here, and it makes more sense, but I'll leave that up
23 to you.

24 But the one that I am -- that doesn't make sense to
25 me is Number 7, left to right, sixty degrees up, and I'm

1 -- and that's flat, that's ninety degrees. Sixty degrees
2 is past forty-five and on up about like that, kind of an
3 angle, but y'all use your common sense. Now, the Doctor
4 wouldn't tell us where the person -- the shooter was
5 because we do move, no question about it, and it would be
6 impossible, but we do have a position of his body when he
7 was found.

8 And I know these aren't necessarily pleasant to look
9 at, but we can see where he's sitting. We've got that,
10 and I believe I had Dr. Schandl come down, and she pointed
11 out if it's not in this area, but it's underneath here,
12 and she said lateral, lateral, right there, posterior, the
13 back of that leg, and she pointed to right about here,
14 okay?

15 And if we would -- if I was standing up, it would be
16 going in here, going up sixty degrees. Now, straight up
17 is like this, and going from the front of my body to the
18 back of my body, going back. Now, you look how he's
19 seated. If he was sitting in that car, and keep in mind
20 if you believe Corey and Antonio, that door is closed.
21 You close that door and tell me how it is even humanly
22 possible to have shot back up this -- well, let me use an
23 example.

24 If I am sitting in a seat and I'm shot directly
25 straight across as I'm sitting, it's going to go straight

1 in, straight out in theory. To give it the upward angle
2 of sixty degrees, my hips must be tilted at sixty degrees
3 if I'm shooting straight across. Then you will get the
4 appearance of an upward angle because the body is not in
5 an incomparable position, but his hips aren't at sixty
6 degrees, and that's assuming that you're shooting straight
7 across.

8 If that door is closed and what they've said, there
9 ain't no way it's possible for him to have been shot in
10 that car with that shot with what Corey and Antonio say,
11 not what Scott says. It's what the evidence says.

12 Corey says he was shooting right-handed, and y'all
13 can get back there and adjust yourself and figure out how
14 it works, too, but sixty degrees from front to back, so
15 you're going in in the back of the leg and it's still
16 going back, and it comes out above the upper buttock on
17 the right side.

18 And these are things, folks, that I think are
19 important for you because these are scientific sort of
20 facts that we know, and then we take these and try to
21 match them up to what we really aren't sure about, and
22 what they say happened based on these facts, it can't have
23 happened that way. He couldn't have been right on top of
24 him with his arm inside the window without soot and
25 stippling. A shell casing could have never got up

1 underneath the body according to what they're saying. He
2 had to have been out of that car when that gun was shot.
3 A shell casing couldn't have been on the other side in the
4 passenger side. It couldn't be. Something ain't right.
5 Somebody is lying.

6 Now, I want to talk to you about the three people,
7 these three people, Corey, Antonio, Neil, and I told you
8 at the beginning, and I've talked a long time about this
9 stuff because I do think it relates to that, but it really
10 doesn't matter. I mean, Mr. Slay -- and Heather is right,
11 Ms. Von Herrmann is right, a man is dead and that's wrong.
12 It don't matter if he was selling dope or not, and I, too,
13 like her, will tell you, you know, nobody deserves to be
14 killed in this situation, but when you look at these
15 three, there was some things that I talked about Tuesday
16 that I think I asked you to consider as you listened to
17 people.

18 I didn't know what they were going to say, but when
19 you try to figure out -- and the Judge will tell you,
20 you're really judging the State and their witnesses.
21 Let's judge these witnesses. Can we trust them? And some
22 things I asked you to consider, one, what interest might a
23 person have, and I gave you -- told you about my
24 grandmother and the ball, the magic ball and the bicycle.

25 What about Corey Smalls, has he got any interest?

1 Yeah, he's got a lot of interest in this case. He's
2 charged with murder and armed robbery. How about the fact
3 that he's got charges carrying thirty years in Georgetown
4 that he got after this? Does he have an interest in this
5 case? Is he trying to get something? Has he got
6 something to gain or to lose? Did you consider that?
7 Absolutely.

8 The second thing I ask you to consider, well, let's
9 look at his history or past as to maybe giving some
10 indicator of what he might be doing now or whether he
11 might be telling us the truth. The Solicitor read his
12 record out, and I'm not going to read it. I'm sure you've
13 got your notes, and, of course, if something you didn't
14 remember or y'all remember differently, the Court Reporter
15 can play it back for you, if that's the case.

16 He's got a record for all kinds of things. Is that
17 an indicator of whether he's going to be truthful? I say
18 it is, and I ask you to consider has he been truthful and
19 forthright, honest and consistent through and through, and
20 he and I -- I had a tough time with it. He didn't -- he
21 didn't remember five years ago whether he told -- what he
22 told these people. I said, "You didn't tell these people
23 the story you're telling today. This is the first time"
24 -- "Well, I don't -- that's five years. I don't
25 remember."

1 Of course, now, when Ms. Von Herrmann asked him, he
2 remembers very clearly, "Yes, yes, yes, yes," but the
3 truth is, he finally -- well, I showed him some pictures,
4 but that story he told Tuesday he ain't never told before.
5 If he had, somebody would come up here; some of these
6 officers would have told you. That's the first time he's
7 ever told that. That's what he told them that day, the
8 last -- we asked him at the beginning, "Now, you lied at
9 the beginning of the statement with the police, but at the
10 end of that statement, five hours, and three videos, you
11 finally told the truth?" "Yep, yep." "And that's the
12 same truth -- you can listen to it if you want to, and
13 that's just as much truth as what you've told us today?"
14 "Yes, sir."

15 And then when I started asking him, "Well, you didn't
16 tell them -- you told them you jumped out of the car?"
17 "Uh, uh, well," -- he just makes it up as he goes. And
18 probably one of the most telling parts of my cross
19 examination was when he went on and on about his Federal
20 agent girlfriend, Felicia, and how he had told her
21 everything about this and she had told him, "Go down there
22 and be the good fellow and tell the truth," you know, and
23 somehow the Solicitor wants you to think he went down
24 there to be the good citizen and tell the truth. Well,
25 his picture was in the paper because Mr. Prater and Mr.

1 Carr had already identified him as being with him, so
2 they're looking for him because there's a dead man, and he
3 was the last one with him.

4 Well, he don't go down there and tell them the truth.
5 He lies for the first two to three hours, but when I asked
6 him, he went on and on about this Felicia girl, "A Federal
7 agent told me to tell the truth, the whole truth, nothing
8 but the truth, to go down there and tell them," but when I
9 said -- and this is live testimony in here, folks. He's
10 telling you the truth. And I said, "Didn't she text you
11 right before you walked in there and said, 'Act like you
12 don't know what they're talking about'?"

13 He come in here two days ago and looked right --
14 y'all right in the eyes and lied to you. He -- "But, you
15 know, oh, well, I guess she might have changed her mind."
16 Come on; come on, y'all believe that? It's July, and
17 Santa Claus might come walking in, too. He can't tell the
18 truth. The only time he told the truth to the police, or
19 part of it, they played him a cell -- asked him, "You lied
20 about ever even talking to Miles Slay." They played him a
21 voice mail where he's calling Miles, and they've got
22 Miles' phone, "Well, yeah, yeah, yeah, yeah, I did talk to
23 him. Yes, yes, I did talk to him, but then he went his
24 separate ways."

25 Then they walked in with a video tape and they throw

1 it down on the table and ask him about this, so he thinks
2 they've got him on video tape ---

3 MS. VON HERRMANN: Objection, Your Honor.

4 THE COURT: I'm going to allow it. Continue on.

5 MR. BELLAMY: Then he said, "Well, yeah, yeah, yeah,
6 yeah, I did," so all he tells is what he thinks he has to
7 tell. The truth ain't in him. It just ain't in him.

8 And then lastly, I asked you to consider in trying to
9 judge whether you can trust somebody, does what they say
10 fit with what we know, and that's what I just went over,
11 the shell casings, the gunshot wound, it don't fit, how
12 close he was, and this is Corey now, it don't fit to what
13 we know.

14 And lastly, does what Corey say -- says fit the other
15 evidence of the State? Oh, here's another thing about
16 Corey. "Did you ever call Daniel Prater to get dope that
17 night?" "No, no, no, no, no. They called me wanting to
18 know where Miles was, and Daniel might have got on the
19 phone, but Tyronne was in the car. Tyronne was in the
20 car, and I wanted to act like, you know, there was nothing
21 wrong," or something like that, but the evidence in the
22 case, that was nine o'clock according to Daniel Prater.
23 Tyronne was long gone, but Corey was wanting to make you
24 think he was with Tyronne.

25 He just saw a murder, according to him, or he

1 committed the murder, and he's calling somebody wanting
2 some dope, and he flat out denied ever calling Daniel
3 Prater. Daniel Prater said, "Yeah, I talked to him,
4 called him, and he didn't know where Miles was. Then he
5 called me back an hour and a half later, about nine," and
6 he sat right up there and denied it to you, so is his
7 story strengthened or weakened by the other evidence in
8 the case?

9 You know, he gets up here and tells you that Tyronne
10 Beaty picked the spot. His own cousin says, "No, Corey
11 picked the spot where we were supposed to meet." Does
12 that strengthen -- or is Corey's statement strengthened by
13 Antonio's? No.

14 Now, Corey says, "I was in the car. I was sitting in
15 the car when whatever happened." Antonio said, "No, he
16 was standing out of the car." Neil says he was out of the
17 car and came in through the driver's side after he heard
18 shots, and there's some drawings on there between Corey
19 and Antonio about where the cars were that don't fit at
20 all. They don't fit at all, so is Corey's statement
21 strengthened or weakened, and this is the State's
22 evidence.

23 This isn't something I put up there to try to
24 contradict somebody. This is their own evidence, folks.
25 It is inconsistent, and the Judge is going to tell you

1 that you can consider the strength of a testimony by
2 whether it's strengthened or weakened by that.

3 And this is Antonio's. He talks about it being
4 eighteen feet the cars facing each other apart, and
5 whoever was shooting, one to two feet from the car.
6 That's what Antonio says. Well, this is Corey puts them
7 side by side about eight feet away, and that he's looking
8 right across at it. It's right over here.

9 Well, folks, this is, I would hope, an event that
10 people would remember, and they're so divergent on what
11 happened, who was in the car, who was out of the car,
12 somebody come running around here and jumped in this side,
13 and Corey wants to minimize everything. He ain't done
14 nothing. You know, it was Tyronne about to get in the car
15 and everything.

16 Well, Neil, he tells you, "There ain't been no talk
17 about no robbery. There ain't been no talk about that."
18 Even Antonio doesn't say anything about any robbery.
19 That's all Corey saying that Tyronne convinced -- "Tyronne
20 just convinced me. I couldn't help myself, so I went
21 along."

22 And let me -- let me diverge just for a second here.
23 The Solicitor said, you know, if Corey had wanted to kill
24 him, he wouldn't have brought these people here. He would
25 have done it somewhere else, and he would have got him by

1 himself, something. Well, doesn't the same logic hold for
2 Tyronne Beaty? If he's going to kill him, why has he got
3 Corey and Antonio there? Why has he got Neil there? Why?
4 That doesn't make any sense. It doesn't make any more
5 sense than Corey taking him out there with other people
6 either, so quite frankly, there's no reason to believe,
7 you know, he don't know this guy, and the evidence
8 suggests that Corey owed him money, and according to his
9 cousin he said earlier that day before Tyronne got there,
10 "F--- this man. I need the money," but Antonio said,
11 "Now, let's don't -- let's don't get in no deal." "F---
12 this man. I need the money," which is consistent with
13 what Neil says of that, "We went there to collect some
14 money he owed Tyronne," and he told Tyronne, "I've got
15 something I've got to do later on, and I'll get you your
16 money."

17 This is all Corey's deal, folks. He set it up. He
18 set it up. He knew the guy. He made the calls. He
19 switched the cars. He picked the location, and I agree
20 with the Solicitor in this respect; I don't think he went
21 there to kill him, because here's the thing, there's four
22 of them there. Corey knows he's got the money. He's seen
23 it. This is a -- they're trying to trick him. If you
24 want to kill him, you don't go to the trouble to put flour
25 and try to fake it, and hopefully you get your money and

1 he rides off, you ride off, you got the money, he got the
2 flour, and everybody is maybe not happy, but you trick
3 him.

4 You don't go to all that trouble. You just get him
5 to go to this location, get out of the car and shoot him,
6 so I agree with the Solicitor, but this wasn't nothing
7 about robbing. It was about trying to trick him with
8 this, because you can rob him without anything. You don't
9 need to try to put flour up there to hopefully trick him.
10 That's clearly -- there ain't no doubt about it, that's
11 what it was. It was to trick him.

12 Neil said and Antonio said this wasn't about robbing
13 him. It was about tricking him. It wasn't about putting
14 a gun to his head and, "Hey, give me the money." "We're
15 going to hand him something and hope he believes it and
16 hope he hands us the money back," but this is Corey's
17 deal.

18 Now, what about Antonio, do you trust him? Do you
19 trust Antonio? Well, he's got a -- he's got a record.
20 He's got an interest in this whole thing. He was totally
21 inconsistent with the police when he went in for his
22 interview, about five hours, but the real thing
23 interesting I pointed out I hope you heard, and I want you
24 to hopefully pay attention to me, the Solicitor asked the
25 question, "Was the day of this you talked to Tyronne,

1 didn't you, the day you came to see us, the date of this
2 interview?" "Yeah, I called." "What did Tyronne tell
3 you?" "He told me to go in there and tell the truth and
4 clear this up," and the Solicitor said, "Don't you mean
5 Corey told you that?" This is Antonio now, and you can
6 listen to it. "No, that was Tyronne that told me that."
7 "Go in there and tell the truth. Clear this matter up."

8 Does a murderer do that? Does Tyronne Beaty tell a
9 witness who saw him kill somebody, "Go tell the truth and
10 clear this matter up?" And what, in fact, did Antonio
11 tell them when he went in there? He told them that it was
12 Corey, that Corey was the only one out of the car, and
13 that when the shots were heard, it was only Corey out
14 there.

15 Well, the police didn't like his story, and he
16 answered yes. When I said, "They told you you were on a
17 sinking ship, and you ain't got a life jacket, you changed
18 your story then, didn't you?" "Yeah." All of these
19 people are out for themselves, ain't no question about it.
20 Every one of them has got an interest. Every one has got
21 a bad background. Every one of them has been
22 inconsistent.

23 Even the Solicitor during her cross examination told
24 Mr. Hill he was lying. "That ain't what you told me or
25 somebody else before, the police? You're lying. You're

1 lying. You broke your agreement," and all that kind of
2 stuff, and that proffer agreement that she's put in
3 evidence about telling the truth, the whole truth, and all
4 that stuff, they're going to lose their deal, signing that
5 piece of paper don't mean they're telling you the truth
6 here because we already know that Corey lied about that
7 girlfriend up there, so we've done caught him in a lie.

8 The Solicitor has done accused Neil Hill of lying and
9 broke his agreement, so that proffer agreement is no
10 evidence that they're going to tell you the truth. It's a
11 deal between the State and them.

12 What did Neil Hill tell you? He's Tyronne's cousin.
13 "I ain't never saw -- went there to get money that was
14 owed, never saw a gun, never saw the money, saw Corey get
15 in the car with something, not Tyronne, and we wanted to
16 get out of there," and this whole business of throwing the
17 bullets and flour out of the car, I believe Corey is the
18 only one that ever said that. Nobody else said that.

19 Neil tells you, "There wasn't no talk about robbing.
20 Ain't nobody said nothing about robbing or killing nobody,
21 maybe trick him," and, in fact, that's supported more by
22 the fact you go get flour, you go to that trouble to put
23 flour in a bag is you're going to trick somebody. You're
24 not going to kill them and rob them. You're tricking
25 them.

1 Now, I want to talk to you a little bit about the
2 law, and then I'm going to close and get out of here. His
3 Honor will tell you that knowing that a crime is going to
4 be committed, a drug deal, and being present there does
5 not make you guilty of murder. It doesn't.

6 There's no evidence that anybody was planning to be
7 killed, and when one of the parties acts outside of the
8 plan, and quite frankly, I don't know what happened, but
9 the law says -- and His Honor will give you the law, that
10 it's more than being present and more than knowing that a
11 crime is going to be committed. You have to be part --
12 you know, if we all planned to go kill somebody, but that
13 weren't the plan.

14 If that were the case, every one of -- if -- under
15 the facts of this case, every one of these fellows are to
16 be up here tried for murder, and I think as His Honor
17 gives you the law, the hand of one, hand of all, you'll
18 find that this isn't a case that fits, where you can have
19 one person pull a gun out when something goes bad and do
20 something that nobody planned, and that everybody who
21 happens to be there is guilty of it. This isn't a case
22 that fits that because this was a trick, and nobody had
23 planned for any of this to happen except the person who
24 did it.

25 And let me go back. This is about trust, what can

1 you believe; who can you trust? Tyronne Beaty is presumed
2 innocent. He's all the way, but he is that best friend,
3 that person you have the most confidence in today, and
4 that person in your life, whoever it is, is being tried in
5 this courtroom this week, and the witnesses against that
6 person for you are Antonio Smalls, Corey Smalls, and Neil
7 Hill. Would you trust them to convict your person in your
8 life of murder? Would you trust any of these people out
9 of this courtroom with any money of yours, jewelry, your
10 children, do work at your -- you wouldn't trust them to do
11 anything.

12 You can't trust them. They have lied consistently.
13 They've led a life of drugs, but the State -- and I know
14 they want some of those Masons out there to come out there
15 and be witnesses, and they are stuck with what they're
16 stuck with, but folks, when a case rests squarely upon the
17 shoulders of three fellows like Corey, Antonio, and Neil,
18 all who -- every one of them went out and got new charges
19 after this, every one of them. Every one of them has got
20 a history. Every one of them lied to the police
21 consistently, been accused in this courtroom of lying even
22 by the Solicitor, and we're going to trust them? We're
23 going to trust them with this person who means more to you
24 than anything in this world to convict him of this crime?

25 A man is dead, but justice isn't convicting someone

1 on that kind of evidence. Ask yourself individually,
2 collectively, would you trust any of the three of them,
3 and I've been through the forensic evidence, and the angle
4 of the wound. None of it fit. We know they're lying
5 because of the evidence.

6 What evidence haven't you heard? Consider that.
7 What could have made the picture clearer? What could have
8 put the last piece in the puzzle that you don't have, and
9 I went through some of that stuff in the beginning of
10 things I thought were important that you didn't have.

11 His Honor will tell you, and the Solicitor went over
12 what reasonable doubt is or isn't, and all that kind of
13 stuff, and I don't know that I need it, but she probably
14 is going to tell it to you again, let you see the big red
15 letters, and all this stuff, but let me tell you what the
16 Judge is going to tell you it is. He's going to tell you
17 it's the kind of doubt that would cause a reasonable
18 person, and I believe y'all are reasonable people, and I,
19 like the Solicitor, y'all have taken notes; y'all have
20 paid close attention, but that would cause a reasonable
21 person to hesitate to act, just for a second, just for a
22 moment.

23 When you walk out of here if you say, "I don't --
24 well, what have I" -- that moment is reasonable doubt.
25 That which would cause a person to hesitate, that means

1 you're not sure. You don't know. That's reasonable
2 doubt. That which would cause a reasonable person to
3 hesitate to act is reasonable doubt. His Honor is going
4 to tell you that. She told you what it wasn't. I'm going
5 to tell you what it is.

6 Now, His Honor will also tell you that verdict in a
7 case comes from the Latin word "veredicto," and I don't
8 know much Latin, but I've heard that in the courtroom from
9 Judges, and verdict, veredicto, the Latin word, means to
10 speak the truth, and that's what your verdict should be,
11 His Honor will tell you.

12 Two days ago I told you that sometimes in life, and
13 certainly in this courtroom, we listen to evidence, we
14 look at evidence, and at the end of the day, out on the
15 street, at home, work, school, we just don't know. We
16 can't figure it out.

17 It used to be in England that you were either
18 innocent or guilty. Innocent was "We know one hundred
19 percent they didn't do whatever it is they are accused,"
20 or "We knew one hundred percent they did," but over here
21 in America because of the protections that we have, if you
22 don't know they did it, if you fall between here and
23 there, it would be "I don't know." We combine those
24 verdicts, and not guilty is "I know they didn't do it" or
25 "I don't know what happened," but as you go into your jury

CLOSING ARGUMENT BY MR. BELLAMY FOR THE DEFENSE

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1 room, if you question the trustworthiness of those three
2 people, and I hope you do, and I think there's reasons,
3 valid reasons, not reasons I've just conjured up, I think
4 they're lying, but I pointed out a lot of reasons and
5 things that they've done in this courtroom.

6 They've lied to you here, before, and everywhere, but
7 if you are unsure, the State has the burden to paint the
8 clear picture of exactly what happened. If you are
9 unsure, if you hesitate, if you hesitate to act, the
10 verdict is not guilty.

11 There's all kinds of reasons to hesitate. A man has
12 died, and that's a tragedy. It's a tragedy for these
13 folks in the courtroom, but to convict Tyronne Beaty on
14 the evidence and lack of evidence, and the questions that
15 are still left is equally a tragedy, and you may not like
16 Tyronne Beaty because he may have been down there with
17 drugs, but just like the Solicitor said that you can kill
18 Miles Slay just because he was down there with drugs,
19 doesn't mean he's guilty of murder.

20 There's all kinds of reasons to hesitate, to
21 question. Keep in mind presumption of innocence, the
22 burden of proof, and I believe at the end of the day trust
23 is the issue. Can you trust them? And if you don't know,
24 because you can't trust, the verdict in this case is not
25 guilty, not guilty of armed robbery, not guilty of murder.

1 Thank you.

2 THE COURT: All right, ladies and gentlemen, we'll
3 take a break. If you will leave your pads and pens and go
4 to your jury room for a while. Don't talk about the case.
5 It's not submitted to you for your deliberations. We'll
6 do that after you know the law, so you go take a break and
7 we'll come back. Thank you.

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
9 THE JURY.)

10 THE COURT: All right, we'll be back in about ten
11 minutes. Thank you.

12 (OFF THE RECORD)

13 ON THE RECORD

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
15 THE JURY.)

16 MS. VON HERRMANN: Your Honor, we are still working
17 on trying to get that Food Lion video. It shouldn't be
18 too much longer, and ---

19 THE COURT: Well, we'll just continue on and we'll
20 just give it to them when we get it.

21 MS. VON HERRMANN: I do have -- I have it on a disk.

22 THE COURT: How are you going to play it? How are
23 they going to play it?

24 MS. VON HERRMANN: They could play it on a computer.

25 THE COURT: Do you have one for them?

1 MS. VON HERRMANN: I can get a computer for them if
2 I can ---

3 THE COURT: Okay. I need a laptop, and they can
4 play it if they want to.

5 MS. VON HERRMANN: Okay.

6 THE COURT: Okay. Well, why don't you see if you --
7 do you have anybody you can call? Do you need to call
8 your office or ---

9 MS. VON HERRMANN: I will just run out there and see
10 if they can ---

11 THE COURT: You can use the phone if you need to
12 call. That will be fine.

13 MS. VON HERRMANN: I can just go out here and
14 see ---

15 THE COURT: All right, very good.

16 (Pause)

17 THE COURT: Have you got somebody working -- working
18 on that, Solicitor?

19 MS. VON HERRMANN: Yes, sir, Your Honor. They're
20 going to run downstairs and get a laptop.

21 THE COURT: Okay, great.

22 All right, is the Defense ready for the jury?

23 MR. BELLAMY: Yes, sir, Your Honor.

24 THE COURT: All right. Ask the jury to come in,
25 please.

1 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
2 **JURY.)**

3 THE COURT: All right, ladies and gentlemen, it's
4 now my responsibility to give you the law that you're
5 going to apply to the facts and evidence you find to be
6 true in this case.

7 Now, in this matter I have not indicated to you in
8 any way what I believe the facts and evidence in this case
9 are because that's not my job. That's not my
10 responsibility. That is your job. That is your
11 responsibility. As I indicated to you earlier,
12 collectively you are the judges of the facts of this
13 particular case.

14 Now, if you came into this courtroom with any
15 preconceived ideas of what the law is, what it ought to
16 be, what it should be, what you hoped it would be, you
17 will disregard that. You will take the law as I now give
18 it to you and apply it to the facts that you find to be
19 true in this particular matter.

20 I indicated to you at the very beginning one of your
21 jobs, and duties, and responsibilities was to judge the
22 credibility and the believability of the witnesses that
23 have testified before. In doing so, you can believe one
24 witness against several, several against one. You can
25 believe a portion of what a witness says and disregard the

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1 remaining portion of it.

2 If you've got a good and sound reason for doing so,
3 you could disregard in its entirety the testimony of a
4 particular witness. Now, how do you do this? You're
5 judging the credibility and believability of the
6 witnesses. You look at whether or not that witness had
7 exhibited to you any kind of interest, bias, prejudice,
8 motive they might have in giving you the testimony they
9 gave you.

10 You can consider the demeanor of the witness. That
11 is how did they appear when they gave you the testimony
12 they gave you in this particular case, and, of course, you
13 consider the opportunity for knowledge, how did they come
14 about that information that they gave you from the witness
15 stand. Your objective, ladies and gentlemen, is to find
16 the truth of this matter, find the evidence which
17 convinces you of its truth.

18 In judging the credibility and believability of the
19 witnesses, if you think about it, it is something you do
20 every single day of your life. When somebody tells you
21 something, you are automatically judging whether or not
22 you believe them, and you do that by using your good
23 common sense, and the good common sense that you use in
24 conducting your ordinary and everyday affairs, and that's
25 what we are asking you to do here today, take your good

1 common sense, apply it to the facts and evidence that
2 you've heard in this case, and find that evidence which
3 convinces you of its truth, and then you will take that
4 evidence you find to be true and weigh it against the
5 State's burden to prove the Defendant guilty beyond a
6 reasonable doubt.

7 You don't have any friends to reward. You don't have
8 any enemies to punish. Your verdict can't be the result
9 of any kind of passion, prejudice, or sympathy. It has to
10 be an examination of the evidence and find that evidence
11 which convinces you of its truth.

12 Now, in this case, I allowed certain witnesses to
13 give their opinion. Sometimes they're called expert
14 witnesses. What I do is qualify the witness to give their
15 opinion, because normally we don't allow witnesses to give
16 their opinion. They've got to tell you what they know,
17 not what they think or they believe, but when you've got
18 certain experience, training, knowledge in a
19 particularized area, we will allow certain witnesses to
20 give their opinion.

21 Now, just because the Court qualifies certain
22 witnesses to give their opinion doesn't give them any
23 special status. You judge all the witnesses the same.
24 You look at all the witnesses, judging their credibility
25 and believability, and find that evidence which convinces

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1 you of its truth.

2 I told you about taking notes, and I told you about
3 that at the beginning, and I allowed you to take notes in
4 this, but I ask you to remember obviously some people take
5 notes better than others. Sometimes, you know, we have a
6 Clerk in here and they ask me how can I look at a
7 computer, and take notes, and hear what the attorneys are
8 doing. It's because I've been doing it for so long, but
9 if you don't have that training, then some people might be
10 taking better notes than others.

11 You've got to remember just because you've got it
12 written down on a piece of paper, you have to think about
13 the collective wisdom also of the jury in a particular
14 matter. Someone's recollection is considered just as
15 reliable as the notes somebody else put on a piece of
16 paper.

17 The prior record of a witness, the South Carolina
18 Rules of Evidence provides that the testimony of a witness
19 may be discredited or impeached by showing the witness has
20 been convicted of a crime for which that person could have
21 been imprisoned for more than one year or a crime that
22 involved dishonesty. Now, as to this evidence, it goes to
23 the issue of credibility or believability and no other
24 purpose.

25 The Defendant in this case did not testify. I

1 instruct you and emphasize the fact that the Defendant did
2 not testify in this case is not, is not a factor to be
3 considered by you in any way. It is not part of this
4 case. It cannot be considered by you in any way in your
5 deliberations, either mentally or in your discussions. It
6 cannot come up. It is not part of this case. The State
7 has the burden of proof to prove the Defendant guilty
8 beyond a reasonable doubt. The Defendant has nothing to
9 prove to you.

10 In this case, as in virtually every case that is
11 tried, there were presented two types of evidence, direct
12 and circumstantial evidence. Direct evidence, that's the
13 testimony of a person who asserts or claims to have actual
14 knowledge of a fact. Circumstantial evidence is proof of
15 a chain of facts indicating the existence of a fact. The
16 law doesn't make any distinction between the two. The law
17 doesn't require a greater degree of proof of one over the
18 other. You look at all the evidence in the case and find
19 that evidence which convinces you of its truth.

20 In this case, there were certain documents, proffer
21 documents, that were introduced and by direction of the
22 Court, I had a certain portion of it blacked out. The
23 reason I did that was because it didn't have anything to
24 do with this case, had nothing to do whatsoever with this
25 case, so it was blacked out, and that's the only reason,

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1 is because it's not a part of the evidence in this case.

2 I told you at the beginning, and I'm telling you
3 again now, the Defendant has pled not guilty to the
4 charges the State brought against him, so that has put
5 that burden of proof on the State to prove the Defendant
6 guilty beyond a reasonable doubt. This is called the
7 presumption of innocence.

8 A person charged with committing a crime is never
9 required to prove themselves innocent. No matter what the
10 charge may be, a defendant is always presumed to be
11 innocent of the crime for which the indictment was issued
12 until and unless guilt has been proven to you by evidence
13 that satisfies you of that guilt beyond a reasonable
14 doubt. This presumption of innocence didn't end at the
15 beginning of the trial. It hasn't ended now. It does not
16 end until you find evidence that you believe to be true
17 and from that evidence believe the State has proved the
18 Defendant guilty beyond a reasonable doubt.

19 This presumption of innocence is not just some legal
20 theory. It's not just some legal phrase. It's a
21 substantial right to which every defendant is entitled
22 unless you, the jury, are satisfied from the evidence
23 presented, of the Defendant's guilt beyond a reasonable
24 doubt.

25 Now, what's reasonable doubt? Reasonable doubt is

1 the kind of doubt that would cause an ordinary, reasonable
2 person to hesitate to act. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt. Now, there are very few things that we
5 can know with absolute certainty and the law doesn't
6 require the State to give you that kind of degree of
7 proof.

8 What is required is if based upon your consideration
9 of the evidence, evidence you find to be true, you are
10 firmly convinced that the Defendant is guilty of the crime
11 charged, you must find the Defendant guilty. On the other
12 hand, based upon your view of the evidence you are not
13 firmly convinced that the Defendant is guilty of the crime
14 charged, you must give the Defendant the benefit of the
15 doubt and find him not guilty.

16 Now, the State has charged the Defendant with two
17 crimes, and I'm going to go over the elements of the
18 crimes that the State has to prove to you beyond a
19 reasonable doubt, the first one being murder. The State
20 must prove beyond a reasonable doubt that the Defendant
21 killed another person with malice aforethought.

22 Now, malice is hatred, ill will, hostility towards
23 another person. It's the intentional doing of a wrongful
24 act without just cause or excuse and with the intent to
25 inflict an injury under circumstances or under

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1 circumstances that the law would infer an evil intent.

2 Now, malice aforethought does not require that this
3 malice exists for any particular time before the act is
4 committed, but malice has to exist in the minds of the
5 defendant immediately before or just before and at the
6 time an act is committed. Therefore, there has to be this
7 combination of evil intent and the act.

8 Now, malice aforethought can be express or inferred,
9 and it can be shown to you by direct or -- direct evidence
10 or by inference from the facts and circumstances which
11 have been proved to you beyond a reasonable doubt. The
12 law states if one intentionally kills another during the
13 commission of a felony, the inference of malice may arise.

14 If facts are proved beyond a reasonable doubt
15 sufficient to raise an inference of malice to your
16 satisfaction, this inference would simply be an
17 evidentiary fact that you would take into consideration
18 along with all the other evidence and you give it the
19 weight that you decide it should receive.

20 The Defendant has also been charged with the crime of
21 armed robbery. In order to prove this offense the State
22 must prove beyond a reasonable doubt that the Defendant
23 took personal property from the person or presence of
24 another person. Legal or illegal property may be the
25 subject of an armed robbery. Property is within the

1 presence of a person if it's within that person's reach,
2 inspection, observation, or control so that the person
3 could, if not overcome by violence or prevented by fear
4 to, keep possession of that property.

5 The State also has to prove beyond a reasonable doubt
6 that the defendant carried the property away intending to
7 permanently deprive the owner of the property and to keep
8 the property for the defendant's own use. The slightest
9 removal of the property or the complete possession of the
10 property, even for an instant by the defendant, is
11 sufficient to show a taking and carrying away of the
12 property.

13 The taking and carrying away of that property must
14 have been done with violence or by putting the owner of
15 the property in fear of violence, and finally, the State
16 has to prove to you beyond a reasonable doubt that the
17 defendant was armed with a deadly weapon during the
18 robbery.

19 A deadly weapon is any kind of article, instrument or
20 substance which is likely to cause death or great bodily
21 harm. Whether an instrument has been used as a deadly
22 weapon depends on the facts and circumstances of each
23 case.

24 Mere presence at the scene of a crime is not
25 sufficient to prove someone guilty of that crime. The

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1 burden is on the State of South Carolina to prove every
2 element of the crime charged. If you find after reviewing
3 all the evidence that the State has proved the Defendant
4 was only present at the scene of a crime and they have not
5 proved beyond a reasonable doubt any other kind of
6 participation in the crime, then you must find the
7 Defendant not guilty. The law is that proof at the scene
8 of the crime is not sufficient to find someone guilty of
9 that crime.

10 There's another principle of law that's called the
11 hand of one is the hand of all. If a crime is committed
12 by two or more people who are acting together in
13 committing a crime, the act of one is the act of all. A
14 person who joins with another to accomplish an illegal
15 purpose is criminally responsible for everything done by
16 that other person which occurs as a natural or probable
17 consequence of the act done in carrying out that common
18 plan or purpose. The act of one is the act of all, or it
19 is sometimes said the hand of one is the hand of all.

20 Prior knowledge that a crime is going to be committed
21 without more is not sufficient to make someone guilty of
22 that crime. Mere knowledge that another person is going
23 to commit the crime, even if the defendant is present, is
24 not sufficient to convict the defendant. The State has to
25 prove to you beyond a reasonable doubt the theory of the

1 hand of one is the hand of all.

2 A principal in a crime is one who either actually
3 commits the crime or who is present, aiding, abetting, or
4 assisting in committing the crime. When a person does an
5 act in the presence of and with the assistance of another,
6 the act is done by both. Where two or more acting with a
7 common plan or intent are present at the commission of a
8 crime, it does not matter who actually committed the
9 crime. All are guilty. The hand of one is the hand of
10 all.

11 Present at the commission of a crime means to be
12 sufficiently near, to aid, abet, or assist in the
13 commission of that crime. Again, mere presence at the
14 scene of the crime is not sufficient to convict. Intent
15 is a necessary element. There must have been some common
16 design or intent to commit a crime, and the crime must
17 have been committed pursuant thereto with the person
18 aiding and abetting by some overt act. Intent means
19 intending the result which actually occurs, not
20 accidentally or involuntarily. And intent can be shown by
21 acts and conduct of the defendant and any other
22 circumstances from which you could naturally and
23 reasonably infer intent.

24 Now, as to all these elements again, the State has to
25 prove all that to you beyond a reasonable doubt, because

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1 again, in everything the State has the burden of proof to
2 prove the defendant guilty beyond a reasonable doubt.

3 Now, that, ladies and gentlemen, is the law that
4 you're going to use to apply to the facts that you find to
5 be true in this particular case.

6 Now, the Court has prepared for you a verdict form
7 for your use and I believe it is fairly straightforward.
8 It has the caption of the case. It has on here murder.
9 "On the charge of murder, we, the jury, by unanimous
10 consent, find the Defendant, Tyronne Beaty," and there's
11 two choices. We put one before the other. Obviously
12 don't assign anything to that -- not guilty or guilty, and
13 once your jury has reached a unanimous verdict on that
14 particular charge, Madam Forelady, sign your name, check
15 the appropriate block, and put today's date.

16 And once you have reached a verdict on that
17 particular charge, you go to Count Two, armed robbery.
18 "On the charge of armed robbery, we, the jury, by
19 unanimous consent, find the Defendant, Tyronne Beaty," and
20 again, two choices, not guilty or guilty, and again, Madam
21 Forelady, when your jury has reached a unanimous verdict,
22 you will check the appropriate block, sign your name, and
23 put today's date to indicate your jury has reached a
24 unanimous verdict, and then you will knock on the door and
25 let the bailiff know that the jury has reached a unanimous

1 verdict on both of the charges.

2 I have said unanimous I don't know how many times.
3 It means exactly what you think it means. It means
4 twelve/zero. It doesn't mean eleven/one, ten/two, any
5 combination thereof. Whatever the verdict is, it must be
6 unanimous; everybody agrees to that verdict, so Madam
7 Forelady, when you check the blocks and you sign your
8 name, you're telling the Court every single member of the
9 jury agrees that is their verdict.

10 All right, what I'm going to have you do, Madam
11 Forelady, is take your jury -- Madam Alternate, you will
12 stay with us. Don't go anywhere. Take your jury to the
13 jury room. Do not -- do not begin your deliberations
14 until the bailiff brings in to you the verdict form and
15 the exhibits. When the bailiff does that, then you may
16 begin your deliberation. You obviously may take your pens
17 and note pads with you at this point in time. Thank you.

18 Madam Alternate, please stay with us. You sit; have
19 a seat.

20 (THE JURY RETIRES TO THE JURY ROOM AT 12:07 P.M., AND
21 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, as to the alternate, is there
24 any reason that the alternate should not be excused at
25 this time?

EXCEPTION TO THE JURY CHARGE

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1 MS. VON HERRMANN: No reason from the State, Your
2 Honor.

3 THE COURT: From the Defense?

4 MR. BELLAMY: None, Your Honor.

5 THE COURT: All right, ma'am, and I'm sorry I've
6 forgotten your name. I need to look it up. Hold on one
7 second. Ms. McDowell, your job in this particular case
8 was to step in the shoes of one of the twelve members of
9 the jury should they become ill or some other way unable
10 to serve in this particular matter. It seems all twelve
11 of them are ready, willing, and able to accomplish the
12 purpose that the Court needs them. Therefore, I'm going
13 to be able to excuse you from your jury service in this
14 particular case and from your jury service for this
15 particular week. You've been with us the majority of the
16 week, so I'm going to excuse you from your jury service at
17 this point in time with my thanks. Thank you, ma'am. The
18 pad and the pen, if you would just give that to the
19 deputy. Thank you.

20 Exceptions, deletions, additions to the charge from
21 the State?

22 MS. VON HERRMANN: None from the State.

23 THE COURT: From the Defense?

24 MR. BELLAMY: Your Honor, I would object to the
25 portion of which the felony murder rule, I guess, as I had

1 previously done in chambers. Thank you.

2 THE COURT: All right, very good. Other than that,
3 any other ---

4 MR. BELLAMY: No, sir.

5 THE COURT: All right. Solicitor, Mr. Bellamy, I
6 want to thank both of you. Both of you did an excellent
7 job representing the interest of your respective party or
8 client, did everything the Court would have expected you
9 to do in all these matters, and I want to commend both of
10 you for that.

11 MS. VON HERRMANN: Thank you.

12 MR. BELLAMY: Thank you.

13 THE COURT: All right, please get with the Court
14 Reporter as to the exhibits and make sure we've got all
15 the exhibits before we send them in.

16 MS. VON HERRMANN: We've already done that.

17 MR. BELLAMY: We've already done it, ready to go.

18 THE COURT: Y'all have already done that, ready to
19 go, okay.

20 MR. BELLAMY: With the exception of the drugs.

21 THE COURT: You're right, and we told them about
22 that, so we'll just keep that one out. Obviously that we
23 will keep out, and then the Food Lion ---

24 MS. VON HERRMANN: We need the video, Your Honor.
25 Can we get that re-marked.

1 ORIGINAL FOOD LION VIDEO MARKED AS STATE'S EXHIBIT
2 NUMBER 29 IS RE-MARKED AS COURT'S EXHIBIT NUMBER 5.

3 EDITED FOOD LION VIDEO IS MARKED IN EVIDENCE
4 AS STATE'S EXHIBIT NUMBER 29.

5 (THE EXHIBITS AND VERDICT FORM ARE TAKEN TO THE JURY AT
6 12:10 P.M. TO BEGIN DELIBERATION.)

7 (OFF THE RECORD)

8 ON THE RECORD

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
10 THE JURY.)

11 THE COURT: All right, ladies and gentlemen,
12 pursuant to a note from the jury, they had some question
13 about the charge. I wrote them a note and asked them to
14 be more specific what they wanted. The return notes
15 states that the jury would like to hear the entirety of
16 the law presented to us, so I intend to have the jury come
17 back and charge them. I will go over everything that I
18 did. I might not be as expansive as I was regarding
19 credibility and believability, but briefly go over that
20 and probably just skim over the note-taking, but go over
21 everything else that I talked about.

22 All right, ask the jury to come in, please, sir.

23 NOTE FROM THE JURY AND JUDGE'S RESPONSE MARKED

24 AS COURT'S EXHIBIT NUMBER 6.

25 NOTES FROM THE JURY MARKED AS COURT'S

1 EXHIBIT NUMBER 7 AND COURT'S EXHIBIT NUMBER 8.

2 **(AT 2:50 P.M., THE FOLLOWING TAKES PLACE IN THE**
3 **PRESENCE OF THE JURY.)**

4 THE COURT: All right, Madam Forelady, and ladies
5 and gentlemen of the jury, regarding the notes that you
6 have given to me, I am going to go back over the law that
7 I charged to you previously.

8 As I told you at the very beginning, I am just going
9 to skim over this part very briefly. You understand your
10 job is to judge the credibility and believability of the
11 witnesses, and again as I told you, it's your job to find
12 the evidence that convinces you of its truth in this
13 particular matter.

14 And what I told you about the note-taking, you
15 obviously take everything into consideration and just
16 don't pay a particular part to any particular witnesses.
17 Regarding the expert witnesses, you look at all of the
18 witnesses the same.

19 I remind you about the rule of evidence that provides
20 that testimony of a witness can be discredited or
21 impeached if that witness has been convicted of a crime
22 for which they could have been imprisoned for more than
23 one year or the crime involves dishonesty. Again, that
24 goes to credibility and believability alone.

25 And the fact that the Defendant didn't testify, again

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1 not a factor in this case and can't be considered by you
2 in this matter.

3 There's two types of evidence, direct and
4 circumstantial evidence, remembering there's no
5 distinction between the two. You judge it all the same.
6 You look at all the evidence the same. You find that
7 evidence which convinces you of its truth, nothing
8 different between the two.

9 Presumption of innocence, you understand the
10 Defendant comes into Court and remains -- as he has pled
11 not guilty to this, he's presumed innocent unless and
12 until you find there is sufficient evidence to convict the
13 Defendant of the crimes charged beyond a reasonable doubt.
14 That remains with the Defendant throughout the entirety of
15 the trial and remains now until you make that decision.

16 Reasonable doubt, the kind of doubt that would cause
17 a reasonable person to hesitate to act. Perfect proof
18 isn't required by the State. What's required is that they
19 provide you with proof that if based on your consideration
20 of the evidence you are firmly convinced the Defendant is
21 guilty of the crime charged, you must find him guilty. If
22 you are not firmly convinced that he is guilty of the
23 crimes charged, you must find the Defendant not guilty.

24 Murder. The Defendant is charged with the crime of
25 murder. The State has to prove to you beyond a reasonable

1 doubt that the Defendant killed another person with malice
2 aforethought. Now, malice, that's hatred, or ill will, or
3 hostility. It's the intentional doing of a wrongful act
4 without some just cause or excuse with an intent to
5 inflict an injury, or it's under circumstances that the
6 law infers an evil intent.

7 Now, that malice aforethought does not require that
8 malice exists for any particular time before the crime is
9 committed, but malice has to exist just before and at the
10 time the act is committed. It must be there just before
11 and at the time the act is committed. There has to be
12 this combination of evil intent and the act.

13 Malice aforethought can either be shown to you by
14 direct evidence or by inference from the facts that have
15 been proved to you beyond a reasonable doubt.

16 I told you if one intentionally kills another during
17 the commission of a felony, a crime, the inference of
18 malice may arise. If facts are proved beyond a reasonable
19 doubt sufficient to raise an inference of malice to your
20 satisfaction, again that's just an evidentiary fact that
21 you take into consideration along with all the other facts
22 and you decide what weight, if any, it would be given.

23 The Defendant is also charged with the crime of armed
24 robbery. The State has to prove to you beyond a
25 reasonable doubt that the Defendant took personal property

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1 from the person or the presence of another. Legal or
2 illegal property can be the subject of armed robbery.
3 That can be the property. Legal property or illegal
4 property can be the subject of an armed robbery.

5 Property is in the presence of a person if it is
6 within that person's reach, inspection, observation, or
7 control so that the person could keep their property if
8 they weren't overcome with violence or prevented by fear
9 from keeping their property.

10 The State has to prove to you beyond a reasonable
11 doubt that the Defendant carried the property away
12 intending to permanently deprive the owner of the property
13 and to keep the property for their own use. The slightest
14 removal of the property or the complete possession of the
15 property, even for an instant, by the Defendant is
16 sufficient to show a taking and carrying away of the
17 property.

18 The taking and carrying away of that property must
19 have been done with violence or putting the owner of the
20 property in fear of violence, and finally, the State has
21 to prove to you beyond a reasonable doubt that the
22 Defendant was armed with a deadly weapon during the
23 robbery, and again, deadly weapon is any kind of article,
24 instrument, substance which is likely to cause death or
25 great bodily harm, and whether it is a deadly weapon or

1 not depends on the facts and circumstances of each case.

2 Now, regarding these particular matters, the crimes
3 charged, mere presence at the scene of the crime is not
4 sufficient to prove someone guilty of that crime. The
5 burden is, and I told you it always is on the State of
6 South Carolina, to prove every element of the crime
7 charged beyond a reasonable doubt.

8 If you find after reviewing all the evidence that the
9 State has only proved to you beyond a reasonable doubt
10 that the Defendant was only present at the scene of the
11 crime and they haven't proved to you beyond a reasonable
12 doubt any other participation in the crime, then you must
13 find the Defendant not guilty.

14 And I also told you about the theory of law of the
15 hand of one is the hand of all. If a crime committed by
16 two or more people who are acting together in committing a
17 crime, the act of one person is the act of all. A person
18 who joins with another to accomplish an illegal purpose is
19 criminally responsible for everything done by that other
20 person which occurs as a natural or a probable consequence
21 of the act done in carrying out that common plan or
22 purpose. The act of one is the act of all, or it is
23 sometimes said the hand of one is the hand of all.

24 Now, prior knowledge that a crime is going to be
25 committed without anything else is not sufficient to make

1 a person guilty of that crime. Mere knowledge that
2 another person is going to commit a crime, even if the
3 defendant is present when the crime is committed, is not
4 sufficient to convict a defendant. The State has to prove
5 to you beyond a reasonable doubt the theory of the hand of
6 one or the hand of all.

7 A principal participant in a crime is one who either
8 actually commits the crime or who is present, aiding,
9 abetting, or assisting in committing the crime. When a
10 person does an act in the presence of and with the
11 assistance of another, the act is done by both. When two
12 or more acting with a common plan or attempt are present
13 at the commission of a crime, it does not matter who
14 actually committed the crime. All are guilty. The hand
15 of one is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near, to aid, abet, or assist in the
18 commission of the crime. Now, again, mere presence at the
19 scene of the crime is not sufficient to convict somebody.
20 Intent is a necessary element, for there must have been
21 some common design or intent to commit a crime, and the
22 crime must have been committed pursuant with the person
23 aiding and abetting by some overt act.

24 Intent means intending the result which actually
25 occurs, not accidentally or involuntarily. An intent can

1 be shown by acts and conduct of the defendant or other
2 circumstances for which you could reasonably infer the
3 intent.

4 That, ladies and gentlemen, is the law that you need
5 to apply to the facts as you find to be true in this case,
6 and remembering again it is the State's burden of proof to
7 prove the Defendant guilty beyond a reasonable doubt based
8 on the evidence presented in accordance with this law, all
9 of the totality, all of the things I told you, using that
10 law, and again, your decision has to be unanimous.
11 Whatever the decision is, it has to be the decision of all
12 twelve of you. All twelve of you must agree. That is the
13 decision, whatever it is, whatever y'all agree, the
14 decision.

15 All right, Madam Forelady, take your jury back to the
16 jury room and proceed with your deliberations. Thank you
17 very much.

18 (AT 3:03 P.M., THE JURY RETURNS TO THE JURY ROOM, AND
19 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 THE COURT: Exceptions, deletions, additions to the
22 charge from the State?

23 MS. VON HERRMANN: None from the State.

24 THE COURT: From the Defense?

25 MR. BELLAMY: No, sir, Your Honor.

1 THE COURT: All right, very good. All right, we'll
2 be at ease until the jury needs us.

3 (OFF THE RECORD)

4 ON THE RECORD - 6:15 P.M.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
6 THE JURY.)

7 THE COURT: All right, Solicitor and Mr. Bellamy, at
8 the Court's instruction the Clerk of Court inquired of the
9 jury and they have requested to go home for the evening
10 and come back tomorrow morning and resume deliberations.
11 It was the jury's apparent belief from that that they
12 would be better served by doing that, and I would tend to
13 agree, giving them an opportunity to approach the matter
14 again fresh in the morning, so ask the jury to come in,
15 please.

16 (AT 6:15 P.M., THE FOLLOWING TAKES PLACE IN THE
17 PRESENCE OF THE JURY.)

18 THE COURT: All right, ladies and gentlemen, in
19 response to the Court's inquiry of you and your response
20 and request of the Court, I am going to recess for the
21 evening and have y'all go home now with these cautionary
22 instructions.

23 Obviously you cannot discuss the case with anyone.
24 By the chance that you would see one of your fellow
25 jurors, if you went out to dinner or something like that,

1 obviously you can't discuss the matter. You cannot
2 discuss the matter until all twelve of you are there
3 present in the jury room, so when you reconvene tomorrow
4 morning and five, six, ten of you are there, you still
5 can't talk about it.

6 Until all twelve of you are there, you may not
7 discuss any aspect of the case. It must be done with all
8 twelve of you able to hear and participate in those
9 discussions, and again, don't talk about it with anybody,
10 don't allow anybody to talk to you about it. You can't do
11 any research on your own. You've got the law that I have
12 given you. You have to apply that law, and you've got the
13 evidence as you so find it to be in this matter, and you
14 have to make your decision based solely and completely on
15 that and from no other source, so with that, I'll see you
16 back tomorrow morning at nine o'clock.

17 I would ask that y'all be back in your jury room at
18 nine o'clock and reconvene, and we'll start back again.
19 Probably what will happen is the bailiffs will wait until
20 all twelve of you are there and then they will bring in
21 all of the exhibits and the note pads and pens, and all
22 that, so we will make sure we're all there when everything
23 is discussed, okay? See you back tomorrow morning at nine
24 o'clock. Thank you very much.

25 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**

1 **THE JURY.)**

2 THE COURT: Anything further from the State at this
3 point in time?

4 MS. VON HERRMANN: No, sir.

5 THE COURT: For the Defense?

6 MR. BELLAMY: No, sir, Your Honor. I would just
7 request that -- obviously my client is going to be in
8 custody overnight, ---

9 THE COURT: Yes, sir. The jury is deliberating, so
10 he is in ---

11 MR. BELLAMY: When he is returned tomorrow, if they
12 would make sure they bring clothes. I know they're going
13 to take his clothes, but that they bring his clothes back
14 so he can get re-dressed either here or wherever so that
15 he has some clothes to come into the courtroom.

16 THE COURT: All right, sir, or if you want to have
17 something different for him in the morning ---

18 MR. BELLAMY: We're going to have something else
19 here for him.

20 THE COURT: --- I'll certainly, you know, -- we're
21 reconvening at nine o'clock, so maybe if you could have
22 that here before then ---

23 MR. BELLAMY: Yes, sir.

24 THE COURT: --- so that, you know, -- but if you
25 want to bring that, that will be great, too.

1 MR. BELLAMY: Thank you, Your Honor.

2 THE COURT: All right, thank you very much.

3 NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 9.

4 (OFF THE RECORD - End of Day)

5 FRIDAY, JULY 16, 2010

6 ON THE RECORD - 11:50 A.M.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
8 THE JURY.)

9 THE COURT: All right, Solicitor and Mr. Bellamy, I
10 understand the jury has reached a verdict in this matter.
11 Is the State ready to receive it?

12 MS. VON HERRMANN: Yes, sir, Your Honor.

13 THE COURT: And Defense?

14 MR. BELLAMY: Yes, sir, Your Honor.

15 THE COURT: All right, thank you.

16 Let me just say to the persons in the courtroom, as I
17 always do, we asked this jury to do a very difficult task,
18 that is to render a unanimous verdict in this particular
19 matter. I do not know what the verdict is. We will all
20 find out what their verdict is together.

21 Whatever the verdict is, it will be received with
22 respect and silence. The Court will not tolerate any kind
23 of show of emotion or any outburst of any kind. If that
24 does occur, you will be detained by a Deputy Sheriff from
25 Horry County and I will hold a contempt of court

VERDICT OF THE JURY

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1 proceeding thereafter. If you cannot follow these
2 instructions, please leave the courtroom. Thank you very
3 much.

4 Ask the jury to come in.

5 **(AT 11:55 A.M., THE JURY RETURNS TO THE COURTROOM**
6 **WITH ITS VERDICT, AND THE FOLLOWING TAKES PLACE IN THE**
7 **PRESENCE OF THE JURY.)**

8 THE COURT: All right, Madam Forelady, has your jury
9 reached a verdict in these two matters?

10 THE FORELADY: We have, Your Honor.

11 THE COURT: All right, thank you, ma'am. If you can
12 hand the verdict forms to the Clerk, please, ma'am.

13 (The Clerk hands the verdict forms to the Court.)

14 THE COURT: You may publish the verdicts.

15 THE CLERK: Indictment Number 2006-GS-26-1747,
16 Indictment Number 2006-GS-26-1748, State of South
17 Carolina, County of Horry versus Tyronne Beaty, "On the
18 charge of murder, we, the jury, by unanimous consent, find
19 the Defendant guilty. On the charge of armed robbery, we,
20 the jury, by unanimous consent, find the Defendant
21 guilty," dated July 15th, 2010, signed by Foreperson
22 Arline Elston, Juror Number 370.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, so signify by raising your right hand. (All
25 jurors raise their right hand.) Thank you.

1 THE COURT: The jury having affirmed their verdict
2 by -- as indicated by the Clerk of Court, does the State
3 wish the jury polled at this time?

4 MS. VON HERRMANN: No, sir, Your Honor.

5 THE COURT: Does the Defense wish the jury polled at
6 this time?

7 MR. BELLAMY: Yes, sir, Your Honor.

8 THE COURT: All right. Madam Clerk, if you would
9 poll the jury, please.

10 THE CLERK: When I call your name, if you will
11 please stand.

12 Juror Number 58, Doris Campbell. Is this your
13 verdict?

14 DORIS CAMPBELL: Yes, ma'am.

15 THE CLERK: Is this still your verdict?

16 DORIS CAMPBELL: Yes, ma'am.

17 THE CLERK: 11, Angela Archambault. Is this your
18 verdict?

19 ANGELA ARCHAMBAULT: Yes.

20 THE CLERK: Is this still your verdict?

21 ANGELA ARCHAMBAULT: Yes.

22 THE CLERK: Thank you.

23 309, Shirley Smothers. Is this your verdict?

24 SHIRLEY SMOTHERS: Yes.

25 THE CLERK: Is it still your verdict?

POLLING OF THE JURY

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1 SHIRLEY SMOTHERS: Yes.
2 THE CLERK: Thank you.
3 138, Shanna Graham. Is this your verdict?
4 SHANNA GRAHAM: Yes.
5 THE CLERK: Is this still your verdict?
6 SHANNA GRAHAM: Yes.
7 THE CLERK: 83, Thomas Curry. Is this your verdict?
8 THOMAS CURRY: Yes.
9 THE CLERK: Is this still your verdict?
10 THOMAS CURRY: Yes.
11 THE CLERK: Thank you.
12 Number 281, Sirrena Riotto. Is this your verdict?
13 SIRRENA RIOTTO: Yes.
14 THE CLERK: Is this still your verdict?
15 SIRRENA RIOTTO: Yes.
16 THE CLERK: Thank you.
17 303, David Singleton. Is this your verdict?
18 DAVID SINGLETON: Yes.
19 THE CLERK: Is this still your verdict?
20 DAVID SINGLETON: Yes.
21 THE CLERK: Thank you.
22 370, Arline Elston. Is this your verdict?
23 ARLINE ELSTON: Yes.
24 THE CLERK: Is this still your verdict?
25 ARLINE ELSTON: Yes.

1 THE CLERK: Thank you.
2 115, Ella Floyd. Is this your verdict?
3 ELLA FLOYD: Yes.
4 THE CLERK: Is this still your verdict?
5 ELLA FLOYD: Yes.
6 THE CLERK: Thank you.
7 335, Kandis Todd. Is this your verdict?
8 KANDIS TODD: Yes.
9 THE CLERK: Is this still your verdict?
10 KANDIS TODD: Yes.
11 THE CLERK: Thank you.
12 318, Barbara Stanko. Is this your verdict?
13 BARBARA STANKO: Yes.
14 THE CLERK: Is this still your verdict?
15 BARBARA STANKO: Yes.
16 THE CLERK: Thank you.
17 46, Lisa Brown. Is this your verdict?
18 LISA BROWN: Yes.
19 THE CLERK: Is this still your verdict?
20 LISA BROWN: Yes.
21 THE CLERK: Thank you.
22 THE COURT: All right, the jury having been polled
23 and affirmed their verdict, is there any- -- anything
24 further as to the jury from the State?
25 MS. VON HERRMANN: Nothing from the State, Your

MOTIONS

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1 Honor.

2 THE COURT: From the Defense?

3 MR. BELLAMY: No, Your Honor.

4 THE COURT: All right, thank you.

5 Ladies and gentlemen, as your Presiding Judge and as
6 your Resident Judge, I want to thank you for your service
7 in this particular matter. I know we asked you to do a
8 very difficult thing and that is to decide this case and
9 reach a unanimous verdict in this particular matter.

10 If you have or are in a relationship, or are married,
11 you understand it's difficult for two people to sometimes
12 agree on things and to have twelve unanimously agree on a
13 matter, we understand, and understand it is difficult, and
14 we appreciate the attention that you gave to this case,
15 the deliberations that you undertook in this matter, and I
16 can't tell you how much -- and how proud I am of you, and
17 thank you for your service in this matter. Thank you very
18 much. You are now excused.

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
20 **THE JURY.)**

21 THE COURT: All right, Mr. Bellamy, a motion from
22 the Defense at this point in time?

23 MR. BELLAMY: Yes, sir, Your Honor. Your Honor, at
24 this time I would make a motion to set aside the verdict
25 as it is not based on the evidence that was presented in

1 this courtroom and would ask the Court to set aside this
2 verdict and order a new trial.

3 THE COURT: All right, sir. Regarding the motion
4 for a new trial, and that being the only motion that can
5 be made to test the sufficiency of the evidence in this
6 particular matter, it is not my job to decide whether or
7 not I agree or disagree with the jury's decision. That is
8 not the test that comes under a motion for a new trial.
9 The test under a motion for a new trial is whether or not
10 there is any -- there is competent evidence to sustain the
11 jury's verdict, and I find in this particular case that
12 there was and exists in this case competent evidence to
13 sustain the jury's verdict to find the Defendant guilty of
14 the crime of murder and the crime of armed robbery beyond
15 a reasonable doubt and, therefore, I respectfully decline
16 to grant your motion for a new trial in this particular
17 matter.

18 Further motions or any other matters before we
19 proceed to sentencing?

20 MR. BELLAMY: No, sir, Your Honor.

21 THE COURT: All right, very good.

22 MS. VON HERRMANN: Your Honor, my victim's mother
23 did not want to be present in the courtroom for the
24 verdict. However, I believe she did want to address the
25 Court at sentencing, and I'd ask for just a moment to go

SENTENCING PROCEEDINGS

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1 and get her.

2 THE COURT: All right, very good, and do you have
3 any sentencing sheets for the Court's review?

4 MS. VON HERRMANN: Yes, sir, Your Honor.

5 THE COURT: And if you would show those to Mr.
6 Bellamy also, please.

7 MS. VON HERRMANN: (Hands documents to Mr. Bellamy.)

8 THE COURT: Thank you, ma'am.

9 All right, Solicitor, be glad to hear from you,
10 ma'am.

11 MS. VON HERRMANN: Thank you, Your Honor. I don't
12 have anything that I think -- anything further that I
13 think that the Court needs to know. However, the victim's
14 mother would like to address the Court. I would ask that
15 the Court hear from her if you deem it appropriate.

16 THE COURT: All right, ma'am, I'll be glad to hear
17 from you if you will just make sure you make your
18 presentation to -- to the Court only, and if you would
19 come forward, you can state your name, and then I'll be
20 glad to hear from you, ma'am.

21 TRENA BISHOP: My name is Trena Bishop, B-I-S-H-O-P.
22 My son died a tragic death. The Court hear of the
23 situation. It puts my heart in pieces. I have tried to
24 wrap my mind around this tragedy. There is not a day that
25 doesn't go by that I don't think about my son, Miles. I

1 only had him for twenty-four short years, but they were
2 enlightening and fulfilling. I wouldn't trade them for
3 anything in the world.

4 Dealing with a death, especially a sudden, tragic one
5 can be so heartbreaking and full of fear. I will never be
6 able to hold my son again. I will never hear him laugh
7 again, and I will never get to see him grow into the
8 person -- he deserved better than this. Miles was very
9 outspoken and he did whatever he loved to do with
10 conviction. He was very intelligent and I can see all of
11 his mannerisms in his daughter, Alexis.

12 Miles Thomas Slay, II, will be missed as a father, a
13 son, a brother, a grandson, a cousin, a nephew, and a
14 friend. No amount of pleading, hoping, or praying will
15 ever bring him back. Life will never be the same without
16 him.

17 THE COURT: Thank you, ma'am.

18 Anything further, Solicitor?

19 MS. VON HERRMANN: No, sir, Your Honor.

20 THE COURT: All right, thank you.

21 All right, Mr. Bellamy, be glad to hear from you,
22 sir.

23 MR. BELLAMY: May it please the Court, Your Honor.
24 Your Honor, certainly while we disagree with the verdict,
25 we don't stand up here and argue with it. As evident,

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1 Your Honor, by the nine hours of deliberations in this
2 case, which quite frankly was probably about equal to the
3 time that we actually took testimony in this case, that
4 this was not an easy case for the jury.

5 There were some legitimate issues that were litigated
6 here. This was not a case where a defendant came in to
7 just try a case, to try it and hope for something. As
8 evidenced by the length of deliberations, this was a very
9 difficult case, and, Your Honor, Tyronne has been here all
10 week. He's come back. He's accompanied here in the
11 courtroom by his mother and his wife. He has two children
12 as well.

13 Judge, while we don't know specifically what the
14 finding of the jury in this case other than guilty or not,
15 certainly under the facts of this case, the hand of one,
16 the hand of all, I think that the length of this
17 deliberation is indicative that Mr. Beaty's role was not
18 the shooter, it was because of that theory of law. It is
19 a valid theory of law, but I think it is important for me
20 to note that hopefully to the Court, that the Court will
21 recognize that with that deliberation, that while the
22 charge is the same, the sentence range is the same whether
23 you pull the trigger or not.

24 I would hope that in the discretion of the Court, the
25 Court could distinguish the two, and to sentence Mr.

1 Beaty, obviously it's a day for day time, to the minimum
2 term of imprisonment in this situation, thirty years. We
3 would ask the Court to consider that based upon the length
4 of deliberation in this case and the facts and evidence in
5 this case, because I do believe that the jury struggled
6 certainly with this issue as to who the person was.

7 This is a tragic situation certainly for the mother
8 of Mr. Slay. She's lost a son. Drugs and money at the
9 root of all this problem, Judge, and we would ask Your
10 Honor to respectfully sentence Mr. Beaty to the minimum
11 end on the charge of murder and would ask that whatever
12 sentence on the armed robbery run concurrent.

13 Something went horribly wrong out there. I do not
14 believe that there was any plan to kill anybody, that this
15 was a plan to trick somebody, get some money, and it went
16 horribly bad, and something happened. Again, I would ask
17 the Court to consider a concurrent sentence and the
18 minimum sentence for murder.

19 His family is here.

20 Would you like to speak, Miss Betty?

21 Your Honor, would His Honor hear from his mom?

22 THE COURT: Yes, ma'am. If you would come over
23 here, please, ma'am, or you can just come ---

24 MR. BELLAMY: Where would you like her to stand,
25 right here?

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1 THE COURT: Right there is fine. If you wanted to
2 maybe move the microphone over a little bit so that I'll
3 be sure to hear.

4 If you'd just tell me your name, ma'am, and then I'll
5 be glad to hear from you, ma'am.

6 BETTY BEATY: My name is Betty Beaty. I am
7 Tyronne's mother. I just want to say that I know my son
8 has done a lot of things that he hasn't supposed to do,
9 but in my heart, I know that he's not guilty of this
10 crime. He's the only son I have. He's my baby, and I do
11 love him, and if you will just please remember that he is
12 my son and he's the last child also.

13 I know Ms. Slater lost a son. And Tyronne -- I don't
14 know for sure, but Tyronne probably was involved with what
15 was going on, but not -- I don't believe he was involved
16 in a murder, and I don't believe he was involved in
17 actually taking something from him, so will you please --
18 I'm sorry.

19 THE COURT: That's all right. I understand.

20 BETTY BEATY: Please have mercy on him and remember
21 that he is somebody's child also.

22 MR. BELLAMY: The Court's indulgence for just one
23 second.

24 THE COURT: Yes, sir.

25 MR. BELLAMY: Your Honor, I believe Mr. Beaty would

1 briefly address the Court.

2 THE COURT: All right, sir.

3 Mr. Beaty, I'll be glad to hear from you, sir.

4 TYRONNE BEATY: Today -- today is the day I've
5 waited five years for this day to come, and I thought
6 today would be the day that the truth could come out and
7 it would be told. Now I see I have to deal with the
8 situation. All I ask is for you to do, give me the mercy
9 of the Court because I am not the trigger man. I am not
10 the killer in this case, but I am going to get charged for
11 this, so all I can ask for you to do is be as lenient as
12 you can, as you can.

13 MR. BELLAMY: Thank you. Thank you, Your Honor.
14 That would be all.

15 THE COURT: All right. 2006-GS-26-1748, the State
16 of South Carolina, County of Horry, versus Tyronne Beaty
17 regarding the charge of murder. In this particular
18 matter, all of the circumstances surrounding this from
19 beginning to end are just an absolute tragedy for all
20 persons involved.

21 Regarding this particular matter, the Court hereby
22 sentences the Defendant to the South Carolina Department
23 of Corrections for a determinate term of thirty-four
24 years.

25 2006-GS-26-1747 regarding armed robbery, the sentence

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1 is the Defendant is committed to the State Department of
2 Corrections for a determinate term of thirty years,
3 concurrent with 06-GS-26-1748. Thank you very much.

4 Anything further from the State at this time?

5 MS. VON HERRMANN: Nothing, Your Honor.

6 THE COURT: Anything further from the Defense?

7 MR. BELLAMY: Nothing, Your Honor.

8 THE COURT: All right. This term of General
9 Sessions Court is, therefore, ended sine die. Thank you
10 very much.

11 (Conclusion of Transcript of Record.)

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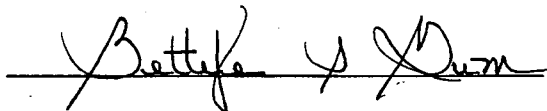
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank, Official
10 Reporter, and transcribed by me, relative to appeal, in
11 the Court of General Sessions for Horry County, South
12 Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16
17 November 12, 2010

18
19 

20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRONE BEATY,

APPELLANT

Appellate Case No. 2010-167826

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing a police officer to testify that a gunshot wound to the victim's hand was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person where the officer was qualified as an expert in forensic investigation only?

STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant for murder and armed robbery. R. 297. Heather von Herrmann prosecuted Appellant, and G. Scott Bellamy represented Appellant. R. 1. From July 12, 2010 through July 16, 2010, Appellant was tried before the Honorable Steven H. John and a jury. R. 1. The jury began its deliberations at 12:10 p.m. on July 15, 2010. R. 290 lines 5-6. At 6:15 p.m., the jury requested to go home and resume deliberations the following day. R. 291 lines 4-15. Judge John honored the jury's request. R. 291 line 18 – R. 292 line 24. The jury resumed deliberations at 9 a.m. the following day. R. 292 lines 23-24. At 11:50 a.m., the jury returned with its verdict finding Appellant guilty as charged. R. 293 lines 6-10; R. 294 lines 15-22. Judge John then sentenced Appellant to thirty-four years for murder, and thirty years for armed robbery. R. 295 line 15 - R. 296 line 3.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

The police discovered the body of Miles Slay, the victim, on October 21, 2005. R. 101 lines 7-13; R. 103 lines 7-12. Corey Smalls, an admitted drug dealer, testified that on October 20, 2005, he received a telephone call from the victim requesting a large quantity of cocaine. R. 3 lines 1-2; R. 5 line 2 – R. 6 line 3. Corey testified that he contacted Appellant requesting the cocaine on the victim's behalf. R. 7 lines 1-2. According to Corey, Appellant said he was unable to obtain the desired quantity. R. 7 lines 4-5. Corey, and his cousin Antonio Smalls, then drove to Murrells Inlet to pick up Appellant. R. 11 line 20 – R. 12 line 2. Corey claimed Appellant, who was with his cousin Neil Hill, wanted to rob the victim, and Corey agreed. R. 12 lines 6-22. The four then went to Food Lion where they purchased flour and sandwich bags. R. 14 lines 7-10. Appellant then placed the flour and some real cocaine in the sandwich bags. R. 14 lines 10-13. Afterwards, Corey met the victim at a gas station. R. 20 lines 22-25. Corey got into the car with the victim, and the two proceeded to a pre-determined area for the robbery. R. 24 lines 22-24; R. 27 line 19 – R. 28 line 15. When Corey and Miles arrived at the location, Appellant walked over to them. R. 31 line 22. Corey exited the victim's vehicle. R. 31 lines 24-25.

Corey claimed that by the time he made it to the second vehicle where Antonio and Neil were waiting, he heard Appellant say "He's grabbing for something. He's grabbing for something." R. 33 lines 13-17. Corey then observed Appellant and the victim "tugging-a-war" with a bag of money. R. 33 lines 18-20. According to Corey, Appellant pulled out a gun and shot into the victim's vehicle three times. R. 33 lines 21-22. Appellant ran toward the second vehicle. R. 34 lines 5-6. Appellant threw a bag of money in Corey's lap. R. 34 lines 6-7. Corey testified that Appellant realized the victim was still alive as they were

driving off and ordered that the car be stopped. Appellant “jumped back out the car and went back and finished him off.” R. 34 lines 9-12. The four left the immediate area together, but went their separate ways shortly thereafter. R. 37 line 25 – R. 38 line 11; R. 39 line 2 – R. 40 line 8.

Neil Hill also testified on behalf of the prosecution. Neil testified that Appellant called him on October 20, 2005 asking Neil to accompany Appellant to Murrells Inlet because Corey owed Appellant a large sum of money. R. 105 lines 16-18; R. 106 lines 10-16. When Neil and Appellant arrived at Corey’s house, Corey and Antonio were leaving. R. 107 lines 5-8. Neil testified Appellant confronted Corey about his debt, and Corey responded he had to “go take care of something” and afterwards he would pay the debt and buy more. R. 109 lines 3-8. Neil and Appellant got into the car with Corey and Antonio. R. 108 lines 8-10. Neil testified there was no conversation in the car about ripping off a potential drug buyer. R. 109 lines 14-23. The four drove to Food Lion, where Appellant purchased tape, flour and sandwich bags. R. 110 lines 2-9. Neil observed Appellant placing the flour in sandwich bags, and “figured out that it was going to be a drug rip.” R. 110 lines 10-15; R. 122 lines 21-23. Neil fell asleep in the car and woke up to gunshots. R. 115 lines 19-20. Neil observed Appellant jumped into the car, followed by Corey. R. 116 lines 12-13. Corey instructed the occupants to take the events of that day with them to their graves and that if he heard anyone knew anything, he would pay that person a visit. R. 116 lines 14-21; R. 131 line 13 – R. 132 line 5. Upon further questioning, Neil testified he heard three or four gunshots and did not hear a second set of shots. R. 117 lines 11-14. The four separated shortly thereafter. R. 117 line 20 – R. 118 line 2.

Antonio Smalls testified that on October 20, 2005, he overheard Corey on the phone with the victim who wanted to purchase a large quantity of cocaine. R. 141 line 19 – R. 143 line 1. He then heard Corey make phone calls trying to fill that order. R. 143 lines 2-10. Thereafter, Corey and Antonio drove to Murrells Inlet to pick up Appellant and Neil. R. 143 lines 16-17; R. 144 line 24 – R. 145 line 1. The four then went to Food Lion where Appellant purchased flour, duct tape, and plastic bags. R. 146 lines 2-7. Antonio testified there was a plan for a drug rip, which included giving the purchaser the flour in the bag so he would think he was getting drugs. R. 147 lines 21-25. The four drove to Foxtrot apartments, where they dropped off Corey, who was supposed to meet the victim. R. 152 lines 18-21; R. 153 lines 6-8. Antonio, Neil, and Appellant then drove to another location. R. 153 lines 13-14.

Corey and the victim arrived at the location where Antonio, Neil and Appellant waited. R. 157 lines 10-11; R. 160 line 13- R. 161 line 1. Antonio testified that he saw Appellant with a gun on his lap at that point. R. 157 lines 10-16. Corey got out of the victim's car and walked toward Antonio. R. 162 lines 5-8. Corey remained outside of the car, standing near the back. R. 162 lines 13-19. Appellant then got out of the car and walked to the victim's car. R. 162 lines 20-23. Antonio did not see the gun on Appellant at that time. R. 163 line 6. Antonio then heard three gunshots and saw Appellant leaving the victim's car. R. 163 lines 12-19. Antonio testified he did not see Appellant fire the shots, but did not observe anyone else near the victim's vehicle at the time. R. 163 lines 20-24. He observed Appellant trying to reach for something at the victim's car and then heard two more gunshots. R. 164 lines 6-9. Appellant returned to the car, and Corey asked why he did that. R. 166 lines 4-5. Appellant responded that the victim was reaching for something. R.

166 line 7. The four left the immediate area together and then went their separate ways. R.

166 lines 14-21; R. 167 lines 12-13; R. 168 lines 21-25.

ARGUMENT

The trial judge erred in allowing a police officer to testify that a gunshot wound to the victim's hand was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person where the officer was qualified as an expert in forensic investigation only.

Dr. Cynthia Schandl testified as an expert in the field of forensic pathology for the prosecution. R. 206 lines 8-9. Dr. Schandl testified she performed an autopsy on the victim on October 22, 2005. R. 206 lines 13-17. She testified she could not tell "exactly how many times he was shot. He was shot either five, or six, or seven times." R. 211 lines 21-22. Dr. Schandl explained that all of the gunshot wounds went all the way through the victim's body except one; thus, there were at least two holes in the body for each shot. R. 211 line 23 – R. 212 line 2. According to Dr. Schandl, determining how many times the victim was shot was complicated by the fact that shots went all the way through the body which would make it possible for a bullet to re-enter the body and go through a second time. R. 212 lines 3-6. Concerning the gunshot wound to the victim's right hand, Dr. Schandl testified the bullet went through the hand and may have re-entered at some other place. R. 214 lines 12-14. When the prosecutor asked Dr. Schandl if the gunshot wound to the victim's hand was consistent with a defensive wound, Dr. Schandl responded affirmatively explaining that "any wound that's to the hands or even to the forearms is considered a defensive wound because one can presume that one would attempt to defend themselves if they were being fired upon." R. 219 lines 7-14.

The prosecution called Peter Cestare to testify. Cestare testified he was employed with the Horry County Police Department as a Specialist in charge of the crime scene,

property, and evidence sections. R. 233 lines 12-15. At the time of trial, Cestare was in his eighth year with Horry County, but had been in policing since 1981. R. 233 lines 21-22. He explained his current duties were “supervise on a day to day basis the crime scene investigators ... respond to investigations ... oversee and direct their responsibilities and duties at investigations.” R. 234 lines 3-6. He testified that he analyzed crime scenes and was “called upon periodically to reconstruct crime scenes.” R. 234 lines 7-12. Cestare testified that his educational experience and training was as follows:

Prior to Horry County, I was employed by the New York City Housing Police Department under N.Y.P.D. I was a detective, rose through the ranks from police officer to detective commander there. I was in charge of their special investigations unit which would consist of major cases, homicides, mechanical deaths, things of that nature. I’ve been trained by the N.Y.P.D in crime scene processing, forensics process, DNA collection and handling of evidence by N.Y.P.D and the Department of Justice, blood stain pattern interpretation and analysis by both N.Y.P.D. and the Department of Justice, crime scene processing and analysis by N.Y.P.D. and the Department of Justice, crime scene reconstruction by N.Y.P.D. and the Department of Justice, ballistics alignment, laser and trajectory by N.Y.P.D. and the Department of Justice - - I’m sorry, by N.Y.P.D., AFIS, Automated Fingerprint Identification System, through both SLED and Motorola, the manufacturer of the equipment. I’m trained in photography through Nikon, the Nikon School of Photography, and I’ve been trained in fingerprinting, fume and chemical treatment and alternate light source, both by N.Y.P.D. and by Horry County Police Department.

R. 234 line 16 – R. 235 line 12. The prosecutor asked “so would all of those things sort of fall under the purview of forensic investigation.” R. 235 lines 13-14. Cestare responded affirmatively. R. 235 line 15. Thereafter, the prosecutor moved to have Cestare qualified as an expert in the field of forensic investigation. R. 235 lines 22-24. Appellant did not object. R. 236 lines 2-3. Thus, the court qualified Cestare to give his opinion in the field of forensic investigation. R. 236 lines 4-5.

Cestare testified that a gun was recovered from the victim's body when officers removed him from the vehicle. R. 243 line 18 – R. 244 line 15. The gun was found on the victim's right side under his t-shirt tucked into the waistband of his pants. R. 244 lines 11-15. The prosecutor then asked if Cestare had an opinion about whether or not the victim was attempting to reach that weapon. R. 247 lines 21-23; R. 248 line 6-7. Appellant objected. R. 247 lines 24-25. The trial judge instructed the witness not to answer the question at that point. R. 248 line 8. Thereafter, an off-the-record bench conference took place. R. 248 lines 10-11. The prosecutor then asked more questions concerning the gun. R. 248 lines 12-19. The prosecutor offered a photograph of the victim's hand into evidence. R. 249 lines 2-3. Appellant objected based on relevance and the cumulative nature of the photograph in light of the pathologist's testimony concerning the number and types of wounds. R. 249 lines 5-10. Cestare then testified that the photograph was taken "to specifically show something that [he] observed on the victim's hand that day." R. 249 lines 21-22. Based upon that testimony, the judge admitted the photograph into evidence over Appellant's objection. R. 249 lines 23-24.

Cestare testified that the photograph showed a defensive wound on the victim's right hand. R. 250 lines 9-15. When Appellant objected, the trial judge permitted Cestare to testify "based upon the Court qualifying him as a forensic investigator and his experience." R. 250 lines 18-21. Cestare testified based upon the photograph, he could tell "the victim's hand was up in a defensive manner blocking something coming at him, a shot." R. 250 lines 22-24. When Cestare began testifying regarding a bruising pattern, Appellant objected again. R. 251 lines 6-9. The trial judge explained he understood the objection was to exceeding his qualifications; however, he overruled the objection. R. 251 lines 10-14. The

prosecutor then asked if there was any way to determine the sequence of the shots. R. 253 lines 20-21. Cestare started to testify regarding what he could say based on scene as he observed it. R. 253 lines 22-25. Appellant objected and explained that the pathologist testified there was no way to determine the order of the shots. R. 254 lines 1-4. The trial judge explained that he did not understand the answer to be what Appellant said and instructed Cestare to answer. R. 254 lines 5-8. Cestare testified that the injury to the hand was a defensive wound, indicating the hand was up. R. 254 lines 10-12. Using two photographs, Cestare testified the victim's arm was "in a downward angle towards the front passenger floorboard." R. 254 lines 12-15. He further stated that "for the shot to have been through his hand, it could not have occurred where his hand is now, so therefore, his hand had to be up when that shot occurred." R. 254 lines 15-18. The trial judge ruled he would allow that testimony. R. 254 line 20.

In order for an individual "[t]o be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-253, 487 S.E.2d 596, 598 (1997)(quoting O'Tuel v. Villani, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995)). Our Rules of Evidence provide that "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill or experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE.

In State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001), the Supreme Court held a police officer, who was qualified to testify as an expert in crime scene processing and fingerprint identification exceeded the scope of his expertise when he testified as to his conclusion drawn from the measurements and observations he made. In Ellis, the victim was found dead as a result of gunshot wounds near his bicycle and a knife. The defendant admitted to shooting the victim, but claimed he acted in self defense when the victim dropped his bike and approached the defendant with the knife. When the victim refused to stop, the defendant shot the victim. The prosecution's theory of the case was that the defendant shot the victim while the victim remained on the bike. Id. at 176, 547 S.E.2d at 491. The police officer testified that the victim was on his bike when he was shot based upon his measurements and observations of the crime scene. Id. at 177-178, 547 S.E.2d at 491. Further, the Court held the error in allowing the officer to testify was not harmless in light of the defendant's contention that he was acting in self defense. Id. at 178, 547 S.E.2d at 491. The Court held the prosecutor was free to argue that the evidence supported an inference that the victim was on the bicycle at the time of the shooting, and the jury could have concluded as such, but the officer "was not qualified to give such an 'expert' opinion." Id.

Cestare was qualified as an expert in the field of forensic investigation. Although Cestare testified that he had received some training in crime scene reconstruction at some unknown time in his thirty-year career as a police officer and that all of the training he listed "sort of [f]ell under the purview of forensic investigation," Cestare was not qualified to testify as an expert concerning the location of the victim's hand at the time of the shooting. He was qualified to testify regarding his forensic investigation of the crime scene, which he

did, but he was not qualified to testify regarding the positioning of the victim's body at the time of the shooting. Cestare based his conclusion that the victim was not reaching for his gun because the victim's hand was up when it was shot. Cestare concluded the hand had to be up at the time the hand was shot because it could not have been shot in the position it was found when the police arrived – downward angle toward the floorboard. Cestare's testimony exceeded his qualifications as an expert in forensic investigation as it went beyond explaining processing a crime scene and the results of that process. Cestare made outrageous conclusions based upon inadequate data and training.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand this matter to the Circuit Court.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

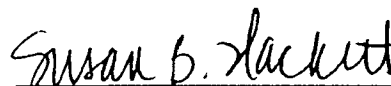
ATTORNEY FOR APPELLANT

This 23rd day of January, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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."

January 23rd, 2013

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

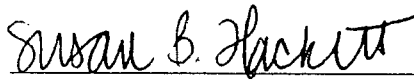
V.

TYRONE BEATY,

APPELLANT

CERTIFICATE OF SERVICE

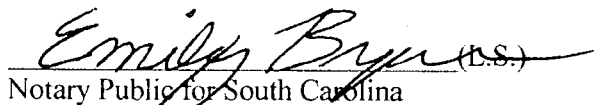
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of January, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of January, 2013.


Notary Public for South Carolina

My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2010-167826

THE STATE,

RESPONDENT,

v.

TYRONE BEATY,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in allowing a police officer to testify that a gunshot wound to the victim's hand was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person where the officer was qualified as an expert in forensic investigation only?

COUNTER-STATEMENT OF ISSUES ON APPEAL

Whether the trial judge abused his discretion by allowing Specialist Peter Cestare, of the Horry County Police Department, to opine that the gunshot wound to the victim's hand was a defensive wound and that it could not have occurred while the victim was reaching for a handgun because Specialist Cestare did not offer an opinion but merely stated a reasonable inference based on stated facts? Alternatively, whether there was an abuse of discretion because he was qualified, without objection, in the area of forensic investigation; he testified that he had received training in crime scene reconstruction, as well as "ballistics alignment, laser and trajectory" and that he is periodically called upon to reconstruct crime scenes, as part of his duties; and his opinion was cumulative to the forensic pathologist's conclusion that the wound to the victim's hand was a defensive wound?

STATEMENT OF CASE

Appellant, Tyrone Beaty (Beaty), is incarcerated in the McCormick Correctional Institution of the South Carolina Department of Corrections (SCDC), as the result of his Horry County, South Carolina convictions and sentence for murder and armed robbery. The Horry County Grand Jury indicted Beaty at the April 27, 2006 term of court for murder (2006-GS-26-01748) and armed robbery (2006-GS-26-01747). His victim was Miles Thomas Slay. **R. pp. 297-300.** On July 12-16, 2010, Beaty received a jury trial before the Honorable Steven H. John. G. Scott Bellamy, Esquire, represented Beaty in the trial court. Assistant Solicitor Heather von Herrmann, of the Fifteenth Circuit Solicitor's Office, prosecuted him.

Beaty did not testify at trial. The trial judge charged the jury on accomplice liability and mere presence but he did not submit any lesser-included offenses of either murder or armed robbery. **Supp. R. pp. 119-24.** The jury found him guilty of both indicted offenses. Judge John sentenced him to concurrent sentences of thirty-four years imprisonment for murder and thirty years imprisonment for armed robbery. **R. pp. 295-96.**

A timely notice of appeal was served and filed.

STATEMENT OF FACTS

1. Accounts of Eyewitnesses.

Corey Smalls.

Corey Smalls testified that he received a telephone call from the victim, Miles Thomas Slay, while he and his cousin, Antonio Smalls, were at an Horry County hotel on the morning of October 20, 2005. The victim, a cocaine dealer from whom Corey had purchased cocaine, wanted to purchase "a brick of cocaine," meaning a kilogram of cocaine.¹ However, the victim only had \$ 16,000.00, and Corey told him this was not enough for a kilogram, which costs between \$ 24,000.00 and \$ 30,000.00. Still, Corey telephoned his usual contact in an unsuccessful effort to find a large quantity of cocaine for the victim. **R. pp. 4-86.**

Corey then contacted Beaty, in an effort to get a brick of cocaine for the victim. Beaty said he would contact Corey later. When Beaty called back, he told Corey that he could not get a brick but that he would look out for \$16,000.00 worth of cocaine. Corey then called the victim and relayed Beaty's message to him. Corey also asked the victim what he wanted to do. Corey called Beaty, who asked him to come to Murrells Inlet, and to use a different car. Following this conversation, Corey told his cousin, Antonio, that they had to go to Murrells Inlet to meet Beaty, and Antonio drove them there. **R. pp. 6-9.**

Along the way, the cousins switch Antonio's blue Lincoln for a gold Maxima owned by one of Corey's clients. After dropping off Antonio's car at the home of Bridget Allen, the cousins went

¹ Corey admitted that he was a drug dealer. He had met the victim through another cousin Also, Corey was charged with murder and armed robbery in this case, and he was pleading guilty to armed robbery. **R. pp. 3-4; 45-46.**

to Murrells Inlet. As soon as Antonio pulled into the yard, Beaty and Neil Hill, Beaty's cousin, arrived in a Jeep. Beaty and Hill got out of the Jeep and into the back seat of the car that Antonio was driving and in which Corey was seated. Beaty then said, "Man, ... let's rob him. ... Man, oh, man, y'all got to do nothing. Just let me rob him and we'll split the money." Although the Corey cousins were initially somewhat hesitant, Beaty convinced them that they would not have to do anything and all four men agreed to participate in the robbery. **R. pp. 9-16.**

As part of Beaty's plan, Antonio drove the four to an area Food Lion, where Beaty purchased flour, sandwich bags and some plastic to cover a broken car window. Beaty put plastic over the car window.² He then placed the flour and some real cocaine into the sandwich bags. While Beaty did this, Corey saw that he had a gun. From the Food Lion, the group went to a day care center, and Antonio picked up his daughter. **R. pp. 14; 16-18.**

As they drove away from the day care center, however, Beaty realized that he had accidentally thrown away the real cocaine,³ and the group went back and Beaty retrieved it from a trash can. Once the group had dropped off Antonio's daughter at Ms. Allen's house, they continued with their plan. Antonio was still driving. **R. pp. 18-20.**

Beaty explained the plan, and he showed the robbery location to Corey. Corey testified that he was dropped off at a store, where he was supposed to meet the victim. He called the victim and waited on the victim to arrive. Because two people had accompanied the victim to the meeting place

² Jarrett Jeffcoat, a loss prevention investigator with Food Lion, testified that his primary duties include identifying "associate theft, [and] associate dishonesty" for the chain. The State introduced a videotape of Beaty purchasing these items at the Food Lion that afternoon, as **State's Exhibit 29**, as well as a receipt for them. **State's Exhibit 30. Supp R. pp. 1-7.**

³ Corey estimated that there was roughly thirty grams of cocaine. **R. p. 19, lines 14-16.**

and Corey recognized one as a man named Dominique,⁴ Corey called Beaty and asked for instructions. Beaty, who now feigned a Jamaican accent, said to tell them that the victim had to come to the meeting place alone because Beaty did not trust others. Small got into the front passenger seat of the victim's vehicle and the other men got out of it. **R. pp. 21-24.**

Corey got into the car with the victim, and they proceeded to the pre-determined area for the robbery. Corey did not initially recognize location and they passed it the first time.⁵ However, the victim turned the car around and they found it on the second attempt. When they arrived at the location and Beaty walked over to the victim's car, the victim said, "Oh, I know my man. I know him." So, Corey got out of the victim's car and headed back toward the Maxima. **R. pp. 24-25; 30-33.**

Once Corey sat down in the Maxima, he heard Beaty say, "[h]e's grabbing for something. He's grabbing for something." Looking up, Corey saw Beaty and the victim struggling over a bag of money. "The next thing... Tyronne Beaty pulled his gun out and he shot in the Jeep, pow, pow, pow, three times." He then ran back to the Maxima and threw the white bag of money into Corey's lap. **R. pp. 33-34; 79-80; 82; 87.**

Before Antonio drove away from the scene, Beaty ordered Antonio to "[h]old on for a minute" because he realized that the victim was still living. Beaty immediately "jumped back out [of] the car and finished him off." Corey knew that the victim was dead because the victim said, "Oh-h," and "leaned over" in his car. Corey claimed that he had not known of Beaty's plan to kill the victim and he did not think that Beaty cared about what happened to him because Corey had touched the

⁴ Corey told police that the other man, who was white, was named Daniel. **R. p. 24, lines 8-10.**

⁵ Corey testified that he had just gotten out of prison.

Jeep and the other persons who had originally been with the victim could identify him. **R. pp. 34-36; 87-88.**⁶

When Beaty got back into the car, he wiped the gun clean, and he threw a bullet out of the window. Corey asked Beaty why he had killed the victim, and Beaty said that he had to because the victim had recognized him. At that point, Beaty also "snatched" the money bag out of Corey's lap and said that "I'm going to hold onto the money just in case something go[es] down." Smalls did not know what Beaty did with the gun that he had used⁷ and he never saw the money. **R. pp. 35-37; 40-41.**

From the crime scene, Antonio drove the group back to Ms. Allen's residence, where they separated. Antonio drove Beaty and Hill back to Beaty's residence in his blue Lincoln, and Corey returned the Maxima to its owner. As they were driving back to Allen's residence, Corey received a call on his cell phone from Daniel, the white male who had originally been with the victim when Corey met him. Daniel wanted to know where the victim was. Corey claimed he did not know the victim's whereabouts and suggested that the victim was out selling drugs. Later, he called Daniel and asked to purchase some marijuana, in an effort to allay Daniel's suspicion. **R. pp. 38-39; 65-67.**⁸

⁶ Beaty had wiped the Jeep door to remove his own prints. **R. p. 88.**

⁷ Corey testified that Beaty had used "a big gun." Also, the gun had a clip. **R. pp. 38-39.**

⁸ "Daniel" turned out to be Daniel Prater. Prater testified that he was good friends with the victim and that the victim sold drugs. He, the victim and their friend Dominique were together on the morning of October 20th, and the victim was waiting for a call from Corey because he was supposed to buy cocaine from "Corey and them." The victim had the money for this transaction in a white bag in the vehicle's console. **R. pp. 253-57.**

Prater confirmed meeting with Corey at a gas station, that Corey ordered Prater and Dominique out of the vehicle. Further, he testified that, to his knowledge, Corey was the only person involved in the drug deal. Prater also confirmed his two subsequent phone conversations with Corey. **R. pp. 72-89.**

Because Antonio was not at Allen's residence when Corey returned, Corey called him. Antonio thereafter arrived and drove both men back to their hotel room. Sometime that night, Corey called his girlfriend, Felicia, and he told her what had happened. Felicia, who was "a federal investigator," told him to act like he did not know what the police were talking about if questioned by them. **R. pp. 39-40; 57-58.** Corey eventually turned himself in to police and, although he initially was less than completely honest, his final statement was truthful. **R. pp. 41-44; 48.**

Neil Hill.

Neil Hill testified that he is Beaty's cousin, that the two men are close and that he did not want to testify. Beaty called on the afternoon of October 20, 2005 and asked Hill to take him to Murrell's Inlet because Corey Smalls owed him \$ 1,000.00, and Beaty was going to ask Corey about the money. Beaty explained that "if [Corey] didn't have his money, there was going to be an altercation between him and Corey, and he asked me to come along with him in case Antonio jumped in." **R. pp. 104-06.**⁹

Beaty's girlfriend then drove Beaty and Hill to Corey's residence in Murrells Inlet and left them there. When they met up with Corey and Antonio, Antonio was driving the gold Maxima. Beaty asked Corey about his money, and Corey said that he would have it after he took care of something. Corey also told Beaty and Hill that they could come with him. They agreed to come, got into the Maxima and rode with him. **R. pp. 106-09.**

According to Hill, the group was "smoking and drinking" and Hill "never heard no discussion about they ripping nobody off." (Sic). However, the men went to the Food Lion, where Beaty purchased tape to fix the car window, as well as flour and sandwich bags. From there, the men

⁹ Hill did not know either Corey or Antonio Smalls but he had heard of them. **R. p. 108.**

went to the day care center and Antonio picked up his daughter. Hill claimed that Antonio threw the real cocaine in the trash while there, and that Beaty instructed the group to return to the day care and retrieve the cocaine once he realized that his cocaine was missing. **R. pp. 109-12; 127-28.**

After that incident, Beaty kept the cocaine in his pocket. The men then dropped off Antonio's daughter and Hill claimed that he fell asleep. When he awoke, the men were at a soccer field. **R. pp. 112-15.** According to Hill,

Tyronne woke me up and ask me if I need to use the bathroom. I told him yeah. Me, and him, and Antonio got out and we walked into the bathroom area. I went in and used the bathroom, and as we was coming back out, Tyronne told me to sit in the front seat, so I sat in the front seat, and me and Antonio was still in the car, and Antonio started talking to him about somebody owe him some money, and he asked him what do he think he should do about it, you know, so eventually, like I was telling you, I don't really associate with Antonio, though, so I lean back over and I was just sitting there, and I doze back off, and it seem like fifteen minutes later I heard gunshots go off.

R. p. 115, lines 9-20.

It was dark and Hill did not think that they were still at the soccer field when he heard the three or four shots. Also, he did not recall another vehicle. After he heard the shots, he "jumped up" and both Beaty and Corey "jumped" jump into the car. When Hill supposedly asked Corey, "'What's going on? What's going on?' ... Corey was like, 'To the death, to the death,' and, ... 'Ain't nothing. Ain't nothing.'" Corey also threatened to come see Hill if Hill said anything. **R. pp. 116-17; 131-32.**

After the group left the scene, they went back to Allen's house. As they were getting out of the car, Beaty told Corey, "I'm not f-ing with you. You got me ... caught up in this B.S. I'm not f-ing with you." Then, Corey returned the Maxima to its owner and Antonio dropped off Hill and Beaty. **R. pp. 117-18.**

However, Hill conceded that Beaty told him that Beaty was going to meet Corey and that he

did not know what other conversations Beaty may have had with Corey. He likewise admitted that he figured out that they were going to rip off the victim when he saw Beaty “bagging up the flower; that it was Beaty’s idea to go to the Food Lion; and that Beaty was going to hand the cocaine to the victim. However, Hill did not withdraw from this plan. Also, he heard Beaty and Corey arguing about money over the phone, with Beaty telling Corey, “he [Beaty] better hold it for bail.”¹⁰ **R. pp. 119-24; 135-37.**

Antonio Smalls.

Antonio Smalls testified that he and his cousin, Corey Smalls, and Bridget Allen were at an Horry County hotel on the morning of October 20, 2005, when Corey received a phone call from someone wanting to buy “a large quantity of drugs.”¹¹ Corey made “a couple of calls” to attempt to find the drugs, but no one answered. So, he called Beaty. After this conversation, Corey asked Antonio to drive him to Murrells Inlet to pick up Beaty and Hill. **R. pp. 141-43.**¹²

Antonio drove them to Allen’s residence in his Lincoln Towncar, and they dropped her off there. Corey got the gold Maxima because Antonio’s car was not running well. Beaty and Hill showed up thirty minutes after Corey and Antonio arrived in Murrells Inlet, and they got into the Maxima. The group headed to the Food Lion because Beaty wanted to get flour, ziplock bags and some tape to “fix” the car window, but Antonio did not hear his cousin and Beaty talking about

¹⁰ Hill claimed not to remember telling police that Beaty had been the one who held the money for bail.

¹¹ Antonio did not know the victim. Also, Antonio was charged with murder and armed robbery in this case. He also had an unrelated drug distribution charge. He had entered an agreement on these charges but he had not been promised anything by the State in exchange for his testimony. **R. pp. 170-71.**

¹² Antonio tried to talk Corey out of the robbery but Corey insisted that he needed the money. **R. pp. 174-75; 196.**

Corey owing Beaty money. **R. pp. 143-46.**

Antonio testified that the men discussed a plan to rip off someone in the car and that Hill had heard this conversation. Beaty had some real cocaine and he bought the flour to fool their intended victim into believing that it was also cocaine.¹³ After they left Food Lion, Antonio dropped his daughter off at the day care. As they were leaving that location, Beaty instructed Antonio to return because Beaty had accidentally thrown the real cocaine in the trash. Antonio returned to the daycare, retrieved the cocaine from the trash and handed it to Beaty. **R. pp. 146-52.**

Corey then asked Antonio to take him to an area apartment complex and Antonio did so. Once Corey had been dropped off, Antonio drove to the scheduled meeting place. Along the way there, Corey called Antonio's cell phone and spoke with Beaty. Antonio stopped at the "Moose Lodge" and he backed the car in at Beaty's direction. Eventually, a small Toyota SUV pulled up and parked a short distance from them and facing them. **R. pp. 150; 152-56; 160-61.**

The victim was driving and Corey was seated in the passenger seat. It was at that point that Antonio saw that Beaty had a semiautomatic weapon in his lap. This scared Antonio and caused him "to panic a little bit." Beaty walked over to the victim's car, while Corey got out of the victim's car, walked behind the Maxima, and smoked a cigarette. Hill remained in the Maxima, with his eyes closed but awake. **R. pp. 158-63.**

Antonio saw Beaty showing the cocaine to the victim and saw that they were having a conversation. Then, as Antonio and Hill were talking, Antonio heard three gunshots and "jumped." He looked up and saw Beaty leaving the victim's vehicle.¹⁴ "I looked at the victim's car, and it look

¹³ Hill confirmed that Beaty made the purchases at Food Lion.

¹⁴ Beaty was within a foot of the vehicle and no one else was near it. **R. pp. 163; 188; 196-97.**

like he was trying to reach for something, and I'm looking at Neil Hill and he's looking at me, and I heard two more gunshots." Beaty returned to the Maxima with a bag of money in his hand, which he put in his shirt. **R. pp. 162-65.**

Both Corey and Beaty got into the car, and Corey asked Beaty why he had shot the victim. Beaty replied, "'He was reaching for something.'" Following instructions, Antonio drove the group back to Allen's residence. Everyone got out of the Maxima but Corey, who returned it to its owner. Antonio did not know if Hill got any of the victim's money, but he did not get any and, to his knowledge, Corey did not get any of it either. Also, when Corey asked Beaty about the money, Beaty said "he's not giving up no money because we might need it for bond." **R. pp. 165-68.**

At Beaty's request, Antonio dropped off Beaty and Hill "up the road." In a subsequent telephone conversation with Beaty, Antonio told Beaty that he had received a call from a detective who wanted to speak to him. Beaty told him, "please go down there and tell them what they -- tell them the truth, whatever, so we can get some sleep, because [Beaty] couldn't sleep." So, Antonio went to the police and told them what he knew. **R. pp. 168-70.**

2. Autopsy findings.

Dr. Cynthia Schandl is the forensic pathologist who performed an autopsy on the victim, on October 22, 2005. Dr. Schandl opined that the victim "was shot either five, or six, or seven times." However, she could not determine precisely how many gunshot wounds were present because, with one exception, all of the gunshot wounds went all the way through the victim's body and left at least two holes in his body. It was possible that a bullet from one of these wounds may have re-entered the body and caused a second wound. **R. pp. 209-12.**

First and of importance to the issue raised on appeal, she found "a through and through ...

gunshot wound to his right hand." She opined that it was possible the bullet that caused this wound thereafter re-entered the victim's body but she did not know where and she could not determine on which side of the hand the entrance wound was located. **R. pp. 212; 214; 226.** Also, she opined that this was a defensive wound, explaining that "[a]ny wound that's to the hands or even to the forearms is considered a defensive wound because one can presume that one would attempt to defend [himself] if [he was] being fired upon, so it is consistent with a defensive wound." **R. pp. 219.**

Second, she found "a through and through gunshot wound that went through ... the [left] side of the arm or the shoulder." Dr. Schandl opined that it was possible the bullet that caused this wound then entered the other side of the victim's face before exiting his body. **R. pp. 212-13.**

She also found

another [wound] that's here ..., on the left chest (indicating) that comes out right here on the neck. Now, this one I'm quite certain then re-enters right here on the neck because there is a continuous what we call a graze wound that's connecting ... this exit gunshot wound, with this re-entrance gunshot wound, which then continues to come out the face here.

This is the one that went through the aorta and the left lung, and then it continued here and shattered the jaw over here and some teeth, okay, so this one I'm quite certain is a single gunshot wound that caused four different defects in this individual, so again, that one through the hand, one through this shoulder, possibly also that continuing through the neck to the face, one through here (indicating), to the neck, to here, and out the face, okay?

Now, the other one is to the back at about here (indicating), and it travels across the mid-line, hit the right lung, and ends up in this arm, okay, and then we have another one that travels from the ... posterior lateral thigh back here and then exits about here on the upper buttocks on the right-hand side, okay, so traveling from about here (indicating) to about here in an upward direction, depending on, of course, where the body is.

.... [T]here's another one that is here (indicating) that crosses the mid-line without entering the chest cavity and comes out the front of the right arm.

R. pp. 213-14.

Dr. Schandl opined that the cause of death was the perforation of his aorta and lung caused by the distant gunshot wound. The multiple “penetrating and perforating gunshot wounds to the back, chest, neck, and extremities” contributed to his death. The manner of death was a homicide.

R. pp. 219-20.

Because Dr. Schandl did not find the presence of either soot or stippling on any wound, she opined that they were all “distant” gunshot wounds.¹⁵ A toxicology report showed the presence of “ethanol, which is alcohol, at a level of twenty-two milligrams per deciliter, which is 0.022 percent.” The other finding was “Delta Nine Carboxyl Tetrahydrocannabinol, which is an inactive metabolite of THC, so a cannabinoid,[¹⁶] and then there's also nicotine, which is from cigarettes or chewing some kind of tobacco product, and its metabolite, cotinine.” **R. pp. 215-17.** (Footnote added).

3. Evidence from crime scene.

A 911 call was placed on October 21, 205, the day following the shooting (**Supp. R. pp. 8-10**), and the case was investigated by the Horry County Police Department. **Supp. R. pp. 10-16.** Inv. John Caulder is the Senior Crime Scene Investigator in the Horry County Police Department and he was the first crime scene investigator on the scene. His supervisor, Specialist Peter Cestare, also was involved in processing the scene. The scene had already been secured when they arrived. “There was a Masonic Lodge to the right of the area that was cordoned off, and there was a new vehicle, a SUV type vehicle, parked to the left of the Masonic Lodge with the driver's door ajar.” **Supp. R. pp. 17-18; R. pp. 231; 239.**

¹⁵ In Dr. Shandl's opinion, intermediate and distant wounds are the same. **R. p. 215-16.**

¹⁶ There was an insufficient amount present to say that he was under the influence of marijuana.

While the officers waited on a search warrant for the vehicle, they made a brief walk around the area and they saw the victim lying in the front seat of the SUV. They processed the scene after they had a warrant, using metal detectors to help find metal objects in the area. Outside of the vehicle on the driver's side, the officers found three baggies containing an unknown substance and a shell casing. **Supp. R. pp. 18-23; 49-50.**

Inside the door, the officers found a second shell casing, and a fourth plastic baggie containing an unknown substance. They found a projectile on the ground on the passenger side of the SUV, and two projectiles on the passenger seat. Also, "on the actual sides of the vehicle are exit marks made from ... a fired projectile where they actually enter from the inside of the vehicle and exit the outer shell of the vehicle;" and the passenger side window was shattered. The shattered glass could have been caused either by a projectile passing through it or the concussion of the gunshots. Specialist Cestare opined that all shots had been fired from the driver's side of the vehicle and none were fired from the passenger side. **Supp. R. pp. 23-28; 44-45; R. pp. 236-37; 240-41.**

The victim still had his cell phone with him, and the officers found a fourth projectile, which had gone through his body, in his clothing. They also found a third shell casing on the driver's seat, after the victim had been removed from the vehicle. Other casings were found on the ground. In all, the officers recovered five .45 caliber shell casings and five .45 caliber projectiles, in or around the vehicle. A fifth projectile was removed from the victim's body at autopsy. **Supp. R. pp. 27-29; 42-43; 50-52; 96; R. pp. 237-38.**

The officers never recovered a murder weapon. However, when the victim was moved out of the vehicle, officers "felt an object on his right side." When they lifted up his t-shirt, they found a .45 caliber handgun "tucked in the waistband of the pants." **R. pp. 243-44.**

SLED Agent Dan Defreese, an expert in firearms identification and analysis, testified that he analyzed the cartridge casings and projectiles recovered in this case. He found "sufficient matching individual markings on" four of the projectiles to opine that they were fired by the same semiautomatic .45 caliber weapon. The remaining projectile "had a number of similarities to the other four bullets, but [it] was somewhat more damaged than the other ones, and I just did not see sufficient agreement to conclude that this was fired by the same gun barrel to the exclusion of another gun barrel. It certainly could have been fired by the same gun, but I just can't say so for sure."

Supp. R. pp. 92-100.

Agent Defreese found that all of the shell casings were identical in construction, they were all produced by the same company and they were all CCI Blazer casings. He then looked "for the kinds of markings on each of these cartridge cases" that would allow him to conclude that they were fired by the same gun. However, the cartridge casings "did not have enough markings on them to conclude that they were fired by one gun." Nevertheless, they could have all been fired by one gun. When Agent Defreese compared the projectiles and cartridge casings to bullets and casings from the victim's weapon, he was able to exclude it as having fired any of them. **Supp. R. pp. 101-04.**

Subsequent testing of the substances in the plastic baggies revealed that one baggie had 24.34 grams or 375.61 grains of cocaine, but three other baggies did not contain any controlled substance. **Supp R. pp. 36-40.** Also, Specialist Cestare lifted twenty-two latent prints from the vehicle and sent to SLED for analysis, but none of these were connected to Beaty or his co-defendants. **Supp. R. pp. 53-66; R. pp. 259; 264-65; 286-87.**

ARGUMENT

The trial judge did not abuse his discretion by allowing Specialist Peter Cestare, of the Horry County Police Department, to opine that the gunshot wound to the victim's hand was a defensive wound and that it could not have occurred while the victim was reaching for a handgun because Specialist Cestare did not offer an opinion but merely stated a reasonable inference based on stated facts. Alternatively, there as no abuse of discretion because he was qualified, without objection, in the area of forensic investigation; he testified that he had received training in crime scene reconstruction, as well as "ballistics alignment, laser and trajectory" and that he is periodically called upon to reconstruct crime scenes, as part of his duties; and his opinion was cumulative to the forensic pathologist's conclusion that the wound to the victim's hand was a defensive wound.

Beaty maintains that the trial judge erroneously allowed Crime Scene Specialist Peter Cestare, of the Horry County Police Department, to testify that a gunshot wound to the victim's hand was a defensive wound and that it could not have occurred while the victim was reaching for a handgun on his person because Officer Cestare was only qualified as an expert in forensic investigation and this opinion was beyond the scope of his expertise. Respondent submits that his argument is without because Specialist Cestare did not offer an opinion but merely stated a natural inference based on stated facts. Alternatively, there as no abuse of discretion because he was qualified, without objection, in the area of forensic investigation; he testified that he had received training in crime scene reconstruction, as well as "ballistics alignment, laser and trajectory" and that he is periodically called upon to reconstruct crime scenes, as part of his duties; and his opinion was cumulative to the forensic pathologist's conclusion that the wound to the victim's hand was a defensive wound. Further, any error in the admission of his testimony is non-prejudicial and harmless beyond a reasonable doubt, at worst, since his opinion was cumulative to the forensic pathologist's conclusion that the wound to the victim's hand was a defensive wound and there was overwhelming evidence of guilt.

A. Proceedings in the trial court.

Specialist Peter Cestare testified that he is employed by the Horry County Police Department, where he had been employed since 1981. Specialist Cestare is "in charge of the Crime Scene, and Property and Evidence sections." He supervises the crime scene investigators and personally conducts investigations. He explained that his "position is overall forensic investigation for all cases within Horry County." As part of his duties, he analyzes crime scenes and he is periodically called upon to reconstruct those scenes. **R. pp. 233-34.**

When asked to give his education, experience and training, he testified that:

Prior to Horry County, I was employed by the New York City Housing Police Department under N.Y.P.D. I was a detective, rose through the ranks from police officer to detective commander there. I was in charge of their special investigations unit which would consist of major cases, homicides, mechanical deaths, things of that nature. I've been trained by the N.Y.P.D. in crime scene processing, forensics processing, DNA collection and handling of evidence by N.Y.P.D. and the Department of Justice, blood stain pattern interpretation and analysis by both N.Y.P.D. and the Department of Justice, crime scene processing and analysis by N.Y.P.D. and the Department of Justice, crime scene reconstruction by N.Y.P.D. and the Department of Justice, ballistics alignment, laser and trajectory by N.Y.P.D. and the Department of Justice -- I'm sorry, by N.Y.P.D., AFIS, Automated Fingerprint Identification System, through both SLED and Motorola, the manufacturer of the equipment. I'm trained in photography through Nikon, the Nikon School of Photography, and I've been trained in fingerprinting, fume and chemical treatment and alternate light source, both by N.Y.P.D. and by Horry County Police Department.

R. p. 234, line 13 - p. 235, line 12.

The Assistant Solicitor established that "all of those things sort of fall under the purview of forensic investigation," and that he had previously testified as an expert seven or eight times in Horry County and "upwards of fifty" times in New York courts. Then, Specialist Cestare was qualified, without objection, as an expert in the field of forensic investigation. **R. p. 235, line 13 - p. 236, line**

5.

Specialist Cestare testified that he responded to the crime scene on October 21, 2005, and participated in processing the scene. Much of his testimony was admitted without objection, including his opinion that all of the shots were fired from the driver's side of the vehicle, and his testimony that the officers recovered a gun, which was on victim's right side under his t-shirt and tucked into the waistband of his pants, when the officers removed him from the vehicle. **R. pp. 236-45.**

Specialist Cestare also identified and described for the jury **State's Exhibit 17**, a photograph depicting the interior of the vehicle taken from the driver's side; **State's Exhibit 36**, a photograph showing where the victim's gun was located; and **State's Exhibit 20**, a photograph depicting the interior of the vehicle taken from the passenger's side. **R. pp. 236-45.** Beaty objected when Specialist Cestare was asked whether he had an opinion as to whether the victim was attempting to reach for his weapon, based upon his review of **State's Exhibit 36** and **State's Exhibit 20**. **R. p. 247, line 21 - p. 248, line 9.** Following an unrecorded bench conference, Cestare testified - without objection - that the victim's gun was not exposed in any way. Rather, "[i]t was covered by the shirt and ... tucked into the waistline of ... the pants." **R. p. 248, lines 10 - 15.**

Beaty also objected to introduction of a photograph of the victim's right hand (**State's Exhibit 45**), on the grounds that it was irrelevant and the cumulative to the pathologist's testimony. After Specialist Cestare testified that the photograph would assist him in explaining the crime scene and that it depicted something that he observed on the victim's hand on October 21st, the trial judge allowed the State to introduce it. **R. p. 248, line 19 - p. 250, line 1.**

Then, the following colloquy occurred of which Beaty now complains:

Q. What is this a photograph of?

A. This photograph shows the victim's right hand. You can clearly tell it's the right hand by the placement of the thumb and fingers. What you see on this photograph is both -- is two wounds, entrance and exit, and what makes this photograph unique to me is that it's what I would refer to as a defensive wound. This photograph indicates to me - - -

MR. BELLAMY: Your Honor, I am going to --

A. - - - that this person's hand was up.

THE COURT: I am going to allow him, based upon the Court qualifying him as a forensic investigator and his experience, I am going to allow him to testify and respond to that question. Thank you.

A. This photograph would indicate that this person's hand was up in a defensive manner blocking something coming at him, a shot. Commonly a defensive wound is - - there's two, two types of wounds when you classify wounds on a body, offensive and defensive, offensive being the aggressor, defensive being the person who is trying to defend themselves or protect themselves. This would appear to me to be a defensive wound, like the hand was placed up.

R. p. 250, line 8 - p. 251, line 5. The trial judge understood Beaty's objection was that the testimony exceeded the witness' qualifications. **R. p. 251, lines 10 - 14.** *See also* **R. p. 248, lines 1 - 2.**

Thereafter, Specialist Cestare was asked whether he could determine the sequence of the gunshots, and he indicated that although it was possible to do so "[i]n some cases," here he could only determine "how everything was placed." Beaty objected because the pathologist had previously testified that it was not possible to determine the order of the shots. **R. p. 253, line 20 - p. 254, line 4.** The trial judge did not understand Cestare's answer to contradict the pathologist's opinion but indicated that he had to hear the answer in order to make a ruling and he instructed Specialist Cestare to answer the question. **R. P. 254, lines 5-9.**

Cestare then testified that:

A. As I mentioned earlier, in looking at that injury, it is in my opinion a

defensive wound which would indicate his hand was up. When you look at the photos you've shown here, State's Exhibit 20, State's Exhibit 36, clearly show the victim's arm in a downward angle towards the front passenger floorboard. In order for that shot to have been through his hand, it could not have occurred where his hand is now, so, therefore, his hand had to be up when that shot occurred.

R. p. 254, lines 10-18. The trial judge ruled that this testimony was admissible. **R. p. 254, line 20.**¹⁷

B. Discussion.

The State submits that Beaty's argument is without merit, and that the trial judge properly overruled his objection. It is well-settled that:

The qualification of a witness as an expert and the admissibility of his or her testimony are matters left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of that discretion and prejudice to the opposing party. *Nelson v. Taylor*, 347 S.C. 210, 214, 553 S.E.2d 488, 490 (Ct.App.2001). 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. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004).

State v. Jamison, 372 S.C. 649, 652, 643 S.E.2d 700, 701 (Ct.App. 2007). *See also* Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise"); *State v. Tapp*, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012) ("The admission or exclusion of evidence is an action within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions") (citations

¹⁷ Beyond the determination that the hand wound was a defensive wound, Cestare could not determine the order in which the shots were fired. **R. p. 255, lines, 22-25.**

omitted); *State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct.App. 2012).

“There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge. *State v. Henry*, 329 S.C. 266, 495 S.E.2d 463 (Ct.App.1997).” *White*, 372 S.C. at 374-75, 642 S.E.2d at 612. In other words, “[f]or a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony.” *Ellis v. Davidson*, 358 S.C. 509, 525, 595 S.E.2d 817, 825-26 (Ct.App. 2004) (citations omitted).

Relevant evidence is “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. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Martin*, 347 S.C. 522, 533, 556 S.E.2d 706, 712 (Ct. App. 2001).

Applying the above standards to the present case, it is clear that Beaty’s argument lacks merit. In support of his claim of error, Beaty relies upon the Supreme Court’s decision in *State v. Ellis*, 345 S.C. 175, 177-79, 547 S.E.2d 490, 491- 92 (2001). Respondent submits that his reliance is misplaced.

In *Ellis*, the defendant was convicted of murder. The victim was found in the street, near both his bicycle and a knife. Ellis admitted that he had shot the victim three times. However, he maintained that he had acted in self-defense because the victim, who wore a leg brace, had dropped

the bicycle and approached him in a menacing fashion while holding the knife. Ellis claimed that he had verbally warned the victim to stop, but that he instinctively shot when the victim jumped towards him, while still "holding the knife in a threatening position." *Id* at 177, 547 S.E.2d at 491.

In order to disprove the self-defense claim, the prosecution sought to show that "the victim was shot while riding the bike." To this end, the State presented a police officer, who "was qualified as an expert in crime scene processing and fingerprint identification. *Id*. Over objection, the officer was permitted to opine "that, in his opinion, the victim was astride the bike when shot." *Id*.

On appeal, the Supreme Court agreed with Ellis' argument that the officer was not qualified to offer opinion testimony in the area of crime scene reconstruction because he had not been qualified as an expert in crime scene reconstruction. The Court reasoned as follows:

Sergeant Walters was qualified as an expert in crime scene processing and fingerprint identification. As such, he was qualified to testify, as he did, to measurements taken at the scene, to the recovery of shell casings, and to the identification of blood stains. He exceeded the scope of his expertise when he was permitted, over appellant's objection, to impart to the jury his conclusion, drawn from these measurements and observations, regarding the location of the victim and the position of his body vis-a-vis the bicycle at the time of the shooting. In effect, Sergeant Walters was allowed to give his opinion on the ultimate issue: Whether appellant was acting in self-defense when he shot and killed the victim. This was error. *See* Rule 704, SCRE; *State v. Wilkins*, 305 S.C. 272, 407 S.E.2d 670 (Ct.App.1991) (opinion may be offered on ultimate issue only where witness is otherwise qualified).

Ellis, 345 S.C. 175, 177-78, 547 S.E.2d at 491. Further, the Court found that the error could not be harmless because of Ellis' claim that he acted in self-defense and the State's closing argument, which repeatedly referred to the officer's testimony as "scientific evidence." *Id* at 178-79, 547 S.E.2d at 491-92.¹⁸

¹⁸ The Court noted that "the State was free to argue that the evidence supported an inference that the victim was astride the bicycle when shot," and that "the jury could certainly have concluded that he was." However, the Court found that admission of the officer's opinion to this effect was prejudicial error. *Id* at

In the present case, however, Cestare did not reach an opinion based upon the measurements that he had taken that day. Rather, he was merely testifying about the common sense proposition that the victim's hand could not have been shot in the position in which it was found by police because the wound would not have gone through his hand, as it did. Again, the physical evidence was that the victim was seated in the driver's seat; the shooter, Beaty was standing on the driver's side of the car; and the victim's gun was on the victim's right side, under his t-shirt, and tucked into the waistband of his pants, when the officers removed him from the vehicle. **R. pp. 236-45.** Thus, Cestare testified to the quite natural inference that the victim's hand must have been up when he received the wound to it because his body would have been between Beaty and his right hand, and his right hand would not have been at such an angle to the Beaty that it would have permitted a through and through wound, as occurred.

This was demonstrated by the two photographs that were taken that day and on which he premised his testimony. "A natural inference based on stated facts is not opinion evidence. Where the distinction between fact and opinion is blurred, it is often best to leave the matter to the discretion of the trial judge." *State v. Williams*, 321 S.C. 455, 464, 469 S.E.2d 49, 54 (1996). *See also Commonwealth v. Lodge*, 727 N.E.2d 1194 (Mass. 2000) (detective with extensive experience in investigating homicides may have general knowledge to testify that falling blood forms teardrop shape without rising to level of expert "blood spatter" evidence; however, detective was not asked appropriate foundational questions).

Furthermore, and assuming that Specialist Cestare's testimony is considered as the opinion of an expert, Respondent submits that the trial judge did not abuse his discretion by permitting this

178, 547 S.E.2d at 491.

testimony because, contrary to Beaty's argument and unlike the scenario involved in *Ellis*, Specialist Cestare had specialized knowledge that assisted the trier of fact to understand the evidence and to determine a fact in issue, based upon his knowledge, experience, training and education. He was qualified, without objection, as an expert in the field of forensic investigation, and he testified that he had previously testified as an expert seven or eight times in Horry County and "upwards of fifty" times in New York courts. **R. p. 235, line 13 - p. 236, line 5.**

He was not qualified merely as an expert in crime scene processing or as a crime scene technician. *Contra Ellis*, 345 S.C. at 177, 547 S.E.2d at 491. Rather, his expertise was "forensic investigation." Moreover, his testimony concerning his education and work experience reflected that he had been with the Horry County Police Department for eight years and that he was employed by the N.Y.C.P.D. before that. Also, he worked with the New York City Housing Police Department under N.Y.P.D., where he eventually became a detective commander and "was in charge of their special investigations unit which would consist of major cases, homicides, mechanical deaths, things of that nature.

With respect to his training, he testified that he had received training in the areas of "crime scene processing and analysis by N.Y.P.D. and the Department of Justice, crime scene reconstruction by N.Y.P.D. and the Department of Justice, ballistics alignment, laser and trajectory by N.Y.P.D." **R. p. 234, line 13 - p. 235, line 12.** Additionally and again contrary to *Ellis*, in explaining the nature of his expertise, he testified that he analyzes crime scenes and that he is periodically called upon to reconstruct those scenes. **R. pp. 233-34.**

Respondent would note that other courts have sanctioned expert testimony from seasoned police officers, where the subject matter involved drawing common sense conclusions that are more

obvious or noticeable to an officer due to his or her long experience with those types of crime. *See, e.g. State v. Vega*, 691 A.2d 22 (Conn. App. Ct. 1997) ("It is common to qualify law enforcement officers as experts in the conduct of criminals because of their experience and the lack of such knowledge among lay jurors"); *Casey v. State*, 523 S.E.2d 395 (Ga. Ct. App. 1999) (officer's training and experience qualified him to opine about DUI defendant's driving abilities); *State v. Crosby*, 748 So.2d 502 (La. Ct. App. 1999) (officer with experience and training in narcotics trade could give expert testimony as to packaging of narcotics; this merely assisted jury in understanding packaging of cocaine for retail sale in order to judge defendant's claim that he merely possessed for personal use); *Commonwealth v. Frias*, 712 N.E.2d 1178 (Mass. App. Ct. 1999) (police officer may give expert testimony as to how drug transactions are carried out on the street level: this may (or may not) assist the untrained jury in understanding the evidence they have heard of particular conduct on the street); *Bui v. State*, 964 S.W.2d 335 (Tex. Ct. App. 1998) (officers with long experience who touched and held fireplace log were qualified to give expert opinion that it could be used to beat someone to death).

In *Cammon v. State*, 500 S.E.2d 329 (Ga. 1998), the Georgia Supreme Court upheld the introduction of police opinion testimony as to the trajectory of a bullet, even though the officer was not qualified in ballistics. The Court noted that the testimony was based the officer's extensive investigation which established the facts forming his opinion. *Id* at 333. Similarly, Specialist Cestare's testimony was based on evidence gathered in his investigation, and he more than adequately established for the jury the facts behind his opinion.

Additionally, Respondent would note that although Beaty's objection was that Specialist Cestare's opinion went beyond the scope of his expertise, the objection was premised upon the

expectation that Cestare would offer an opinion inconsistent with that of the forensic pathologist that it was impossible to determine the order of the gunshot wounds. As a result, Respondent submits that the objection was improperly based upon pitting of the State's witnesses. Moreover, his opinion was consistent with her opinion. *Cf., e.g., State v. Benning*, 338 S.C. 59, 62-64 & nn. 1-2, 524 S.E.2d 852, 854-55 & nn. 1-2 (Ct.App. 1999) (Solicitor's attempts on cross-examination of defendant to pit his testimony against testimony of two prosecution witnesses were improper); *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998) ("Although it is improper for an attorney to cross-examine a witness in such a manner as to force him to attack the veracity of another witness, improper 'pitting' constitutes reversible error only if the accused was unfairly prejudiced"); *Stephen W. Brown Radiology Associates v. Gowers*, 278 S.E.2d 653 (Ga.App. 1981) (sustaining objection to defense counsel's question to expert witness based on testimony previously given by another expert witness on ground that court was not going to allow one witness to be pitted against another witness was not error where examination of testimony given by previous expert witness showed that his testimony was opinion testimony and counsel made no effort to allow witness to testify further by asking him hypothetical question with reference to matter in issue"); *Gray Line, Inc. v. Keaton*, 428 A.2d 360, 362 (D.C. 1981) ("Appellant's expert witness testified that his examination of appellee prior to trial revealed no "objective evidence" of any condition requiring treatment. ... Thus, appellant's expert appears to be pitted against appellee herself on the issue of permanency of her injury from this particular accident") (record citation omitted). Moreover, the trial judge properly determined that Cestare's testimony did not contradict the pathologist's opinion. **R.p. 254, lines 5 - 20.** Other than his testimony that the hand wound was a defensive wound received while the hand was up, Cestare could not determine the order in which the shots were fired. **R. p. 255, lines, 22-25.**

Respondent further submits that Beaty cannot show any prejudice resulting from the trial judge's ruling because the ruling was harmless and non-prejudicial beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). Specifically, Respondent notes that Cestare's opinion is merely cumulative to that of Dr. Schandl that the through and through gunshot wound to the victim's right hand was a defensive wound. While Dr. Schandl could not determine on which side of the hand the entrance wound was located (**R. pp. 212; 214; 226**), she unequivocally opined that this was a defensive wound, explaining that "[a]ny wound that's to the hands or even to the forearms is considered a defensive wound because one can presume that one would attempt to defend themselves if they were being fired upon, so it is consistent with a defensive wound." **R. p. 219.**

Moreover, Beaty conveniently overlooks that even if the victim had been reaching for a gun, as Beaty suggests, any wound that he received in the course of doing so was necessarily a defensive wound because he was the victim of an armed robbery.¹⁹ The applicable law was succinctly stated in *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999):

"[O]ne who provokes or initiates an assault cannot escape criminal liability by

¹⁹ Armed robbery occurs when "[a] person ... commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon." S.C. Code Ann. § 16-11-330(A) (2001).

invoking self defense" Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict. As Reviving Right Of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974). "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide. 40 Am.Jur.2d *Homicide* § 149 (1999). "[A] robber, who is met with such violent resistance by his victim that he has no opportunity to convince [the] victim that he has abandoned his criminal intentions and only wants to withdraw, may not claim self defense if he injures or kills his victim." 55 A.L.R.3d at 1003-04; *see also United States v. Thomas*, 34 F.3d 44 (2d Cir.1994) (one who commits or attempts a robbery armed with deadly force and kills the intended victim when victim responds with force may not avail himself of the defense of self-defense); *People v. Couch*, 436 Mich. 414, 461 N.W.2d 683 (1990) (a robber or other wrongdoer engaged in felonious conduct has no privilege of self-defense); *Stiles v. State*, 829 P.2d 984 (Okla.Crim.App.1992) (one who kills while committing armed robbery is an aggressor and an aggressor is not entitled to a claim of self-defense).

The victim, therefore, had a right to defend himself, even to the point of using lethal force.

Indeed, Respondent would note that the trial judge charged the jury on accomplice liability and mere presence but he did not submit any lesser-included offenses of either murder or armed robbery. **Supp. R. pp. 119-24; 126-32.** He also did not charge self-defense. **Supp. R. pp. 113-25; 126-32.** As a result, Specialist Cestare's testimony cannot be prejudicial to Beaty. Finally, Respondent would note that there was overwhelming evidence of Beaty's guilt. Therefore, the trial judge's ruling must be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment of the lower court and Dukes' murder conviction should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

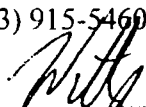
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By: 

WILLIAM EDGAR SALTER, III

February 25, 2013.

ATTORNEYS FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2011-196667**

THE STATE,

RESPONDENT,

v.

TYRONE BEATY,

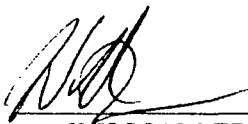
APPELLANT.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 25th day of February, 2013.



WILLIAM EDGAR SALTER, III

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2011-196667

THE STATE,

RESPONDENT,

v.

TYRONE BEATY,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 25th day of February, 2013.



WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

**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.

Tyrone Beaty, Appellant.

Appellate Case No. 2010-167826

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2013-UP-252
Heard June 4, 2013 – Filed June 19, 2013

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and Senior
Assistant Attorney General W. Edgar Salter III, all of
Columbia; and Solicitor Jimmy A. Richardson, of
Conway, for Respondent.

PER CURIAM: This appeal arises out of Appellant Tyrone Beaty's convictions for murder and armed robbery. On appeal, Beaty argues the trial court erred by allowing a police officer, qualified without objection as an expert in forensic investigation, to testify that a gunshot wound to the victim's hand was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Commander*, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (noting the admission or exclusion of evidence is a matter within the trial court's sound discretion); *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (providing a trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion); *State v. Robinson*, 396 S.C. 577, 587, 722 S.E.2d 820, 825 (Ct. App. 2012) (finding a trial court does not abuse its discretion in qualifying a witness as an expert if the "witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge"); *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); *id.* ("[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." (quotations omitted)); *Hill v. State*, 647 S.W.2d 306, 309 (Tex. App. 1982) (holding the trial court did not err by admitting the testimony of a police officer qualified as a certified police officer on whether the victim's wound was defensive).

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry)Tyrone Beaty # 191955)

Full name and prison number (if any) of Applicant.)

135929

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 McConnick Corr. Inst.
2. Name and location of Court which imposed sentence Gen. Sessions Horry Co.
3. Name(s) of co-defendant(s) (if any) Corey Napoleon Smalls, Neil Nehi Hill and Antonio Smalls
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-26-1747 Armed Robbery
 - (b) 2006-GS-26-1748 Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 16, 2010 30 years
 - (b) July 16, 2010 34 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
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. Denied / Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard June 4, 2013 - Filed June 19, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Up of No # 2013 - UP-252
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) /
- (c) A
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) Prosecution Misconduct
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) SEE ATTACHED SHEET (S)
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (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. PCR - 2011 - CP-26-5200
 - ii. PCR - 2011 - CP-26-07861
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Common Pleas, Horry Co.
 - ii. Common Pleas Horry Co.
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Dismissed w/out prejudice
 - ii. Dismissed w/out prejudice
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. Sept 16, 2011ii. Dec 7, 2011

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N

ii. _____

iii. _____

iv. A

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?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective Assistance of trial counselii. Prosecution Misconduct

iii. _____

(b) the proceedings in which each ground was raised:

i. PCRii. PCR

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) N

(b) _____

(c) A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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? N/A

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. G. Scott Bellamy / Hearn Britain & Martin, PA
 - ii. 1206 Third Ave Conway SC 29526
 - iii. Susan B. Hackett - Appellate Defender
 - iv. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial & Sentencing
 - ii. Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:
New trial - full and fair PCR hearing - ruling on all issues per 17-29-80 and any other relief that I am entitled to

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of McCormick)Tyrone Beatty)

VERIFICATION

135929

I, Tyrone Beatty, 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.

Tyrone Beatty

SWORN to and subscribed before me this _____
day of _____, 2_____.

(L.S.)

Notary Public

My Commission Expires: _____

13 AUG 28 PM 2:18
CLERK OF COURT
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

13

5929

I, Tyane BEATY, 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.

Tyane BEATY

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

13 AUG 28 PM 2:18
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Tyrone Beaty, #191955,	)	Case No. 2013-CP-26-5929
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed August 28, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In April 2006, the Horry County Grand Jury indicted Applicant for murder (2006-GS-26-1748) and armed robbery (2006)-GS-26-1747. G. Scott Bellamy, Esquire, represented Applicant. On July 12, 2010, Applicant proceeded to trial before the Honorable Steven H. John and a jury. On July 16, 2010, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to concurrent terms of thirty-four (34) years for murder and thirty (30) years for armed robbery.

Applicant filed a timely notice of appeal and Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 19, 2013. State v. Beaty, Op. No. 2013-UP-252 (S.C. Ct. App. filed June 19, 2013). The remittitur was returned to the circuit court on July 9, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of trial counsel"
 - a. Failure to object to officer's testimony before grand jury.
 - b. Failure to sufficiently argue for a directed verdict.
 - c. Failure to properly argue for a new trial.
 - d. Failure to request a charge lesser included offenses as to both counts.
 - e. Failure to object to the charge on the felony murder doctrine.
 - f. Failure to object to the charge on inferred malice.
 - g. Failure to object to the charge on unanimity of the verdict.
2. "Prosecution Misconduct"
 - a. Solicitor knowingly used perjured testimony.

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v.

Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

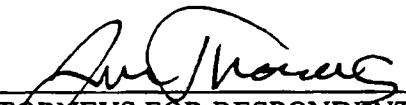
Respectfully submitted,

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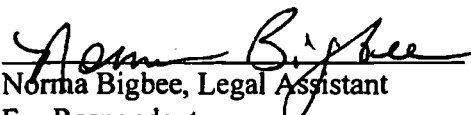
June 12, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2013-CP-26-5929
TYRONE BEATY, #191955	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 12TH day of June, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF HORRY

) CASE NO.: 2013-CP-26-5929

PCR HEARING

October 29, 2014

BEFORE: The Honorable John C. Hayes

TYRONE BEATY,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

 **ORIGINAL**

APPEARANCES:

Joshua Thomas, Esq.
Attorneys for the Respondent.

Daniel Selwa, Esq.
Attorneys for the Petitioner.

Official Court Reporter
Natalie Dahl, RPR

I N D E X

WITNESS

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P R O C E E D I N G S

1
2 MR. THOMAS: This is Tyrone Beaty versus South
3 Carolina, 2013-CP-26-5929. He was indicted in
4 April 2006 for murder and armed robbery, represented
5 by Scott Bellamy, went to trial July 12th through the
6 16th, 2010. He was convicted as indicted. Honorable
7 Steven H. John sentenced him to 34 years for murder,
8 and 30 for armed robbery. Susan Hackett with the
9 Office of Appellant Defense filed an appeal. The
10 Court of Appeals affirmed that in Unpublished Opinion
11 2013-UP-252. A remitter was returned July 9, 2013.
12 This PCR was filed August 28, 2013 alleging
13 ineffective assistance of counsel and prosecutorial
14 misconduct. He's represented by Daniel Selwa. He's
15 present in the courtroom, and the State is ready to
16 proceed.

17 THE COURT: Mr. Selwa.

18 MR. SELWA: Thank you, Your Honor. I would like
19 to call Mr. Tyrone Beaty to the stand.

20 (TYRONE BEATY, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name and spell your last.

23 THE WITNESS: Tyrone Beaty, B-E-A-T-Y.
24
25

TYRONE BEATY - DIRECT EXAMINATION

DIRECT-EXAMINATION

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BY MR. SELWA:

Q Mr. Beaty, you are here for a PCR; is that correct?

A Yes.

Q And you are claiming a couple of things, one of which being that your trial counsel was ineffective; is that correct?

A Yes.

Q But, also, you're claiming that there's newly discovered evidence; is that correct?

A Yes.

Q Let's start with the newly discovered evidence. Can you tell us what you have come to know that you did not know at the time of trial?

A I just found out my codefendant, Cory Smalls, wrote a statement to my family, and I received it, saying that the Solicitor, or something like that, made a deal with him, and they went back on a deal, or something like that, for my conviction.

Q Was there anything else that he alleged in that letter or that you understood from those letters?

A I mean, it had a bunch of different things in it, but, I mean, it is kind of hard.

Q What was he saying in the letter, to your

TYRONE BEATY - DIRECT EXAMINATION

1 knowledge? What did you understand from the letter?

2 A He was stating he felt guilty for what he did and
3 he's trying now to do the right thing in the court
4 system, so he's trying to -- he said the Solicitor
5 made a deal with him about -- for him to testify
6 against me.

7 MR. THOMAS: I'll object to this as hearsay.
8 What Mr. Smalls said, I think that is more appropriate
9 for Mr. Smalls to tell us.

10 THE COURT: Since I don't have a jury, I'll hear
11 it. The objection is under advisement.

12 Q (MR. SELWA) Please continue.

13 A So, I mean, it was a long, little letter he
14 wrote.

15 Q Did the letter or letters, did they seem to
16 suggest to you that he was taking responsibility for
17 his acts?

18 A Yes.

19 Q And why is that important to your case?

20 A Because I know I didn't do the crime, and now
21 he's all the sudden feeling like -- I guess his
22 conscience got to him.

23 Q And as you understood the letters, do you feel
24 like his intention was to absolve you of any guilt in
25 the crime?

TYRONE BEATY - DIRECT EXAMINATION

1 A I guess so.

2 Q And have you had conversations with him?

3 A No.

4 Q You just received these letters from him?

5 A Yes.

6 Q Of course, he couldn't have brought that forward
7 at the time of the trial; is that correct?

8 A I guess not. I mean, he was working against me
9 at the time; he was working with the Solicitor.

10 Q And his testimony during the trial led to your
11 conviction?

12 A Yes, it has.

13 Q Had he not testified, do you think you would have
14 been convicted?

15 A No, I wouldn't. They didn't have no evidence. I
16 didn't do anything.

17 Q Let's get into why you feel your trial counsel
18 was ineffective. Who represented you in your trial?

19 A G. Scott Bellamy.

20 Q He's here today?

21 A Yes, he is.

22 Q Tell me about what Mr. Bellamy didn't do or how
23 he was ineffective.

24 A Things he was supposed to object to, he didn't; I
25 asked him. A lot of the things he knew what he was

TYRONE BEATY - DIRECT EXAMINATION

1 doing; he was a lawyer. There was evidence that they
2 didn't bring to my case because it was not admissible
3 or didn't think he should have brought it to the case.
4 Every little thing they had in the case, they should
5 have brought it up.

6 Q What evidence are you speaking of?

7 A I mean, we had phone records, we had people who
8 wrote letters stating that they heard Mr. Smalls talk
9 about the case and, you know, say things about the
10 case that wasn't towards me, it was towards him. He
11 said he couldn't bring him to trial because they had
12 other cases, like other charges, other cases, and they
13 had lawyers and their lawyers felt like they didn't
14 want their client to testify in my case because they
15 had prior charges, or something like that.

16 MR. SELWA: If I may, do you want me to...

17 (The microphone was malfunctioning so a brief
18 recess was taken to address the issue.)

19 THE COURT: Thank you.

20 Q (MR. SELWA) So to sum up what you said, you asked
21 Mr. Bellamy to present evidence that would have called
22 into question Mr. Smalls' testimony?

23 A Yes.

24 Q And he didn't do that for you?

25 A Yes.

TYRONE BEATY - DIRECT EXAMINATION

1 Q Was there specific individuals that you wanted
2 him to call that he didn't call?

3 A Yes. Somebody in the county jail who was in
4 lockup when Cory Smalls was in lockup up. They said
5 in the day or night they made conversation through the
6 doors, and the guy heard conversations through like
7 the doors, and he wrote me a letter, a letter saying
8 that he would testify saying that he heard Cory say
9 this and that about our case. I presented the
10 evidence to my lawyer. I said here is the letter, he
11 heard Mr. Cory say this and that. My lawyer told me,
12 because he couldn't talk to the individual himself, he
13 had to go to that person's lawyer because the guy was
14 in jail facing a prior charge, so he had to talk to
15 the lawyer first. The lawyer was saying he didn't
16 think it was a good idea for his client to come in my
17 favor.

18 Q With the crime that you were charged with, how
19 many codefendants were involved in your case?

20 A Four of us.

21 Q And one of which was a minor; is that right?

22 A Who?

23 Q Was there a minor involved?

24 A No, I don't think no minor.

25 Q I'm sorry. They all had deals with the State?

TYRONE BEATY - DIRECT EXAMINATION

1 A Yes.

2 Q Did they all testify?

3 A Yeah. I mean, Cory Smalls is the only one that
4 convicted me, who testified against me. Nobody else
5 said that they seen I did anything.

6 Q Could you summarize what Mr. Smalls' testimony
7 was?

8 A He said I was the triggerman in Miles Slay's
9 murder.

10 Q Back to your counsel, other than not calling
11 those witnesses or investigating that jailhouse
12 conversation, what other claims are you making?

13 A I have a couple of them in my packet there. I
14 did law work when I was in prison, and I put a lot of
15 good -- it should be in there (indicates).

16 MR. SELWA: May I approach?

17 THE COURT: You may.

18 THE WITNESS: Who do I hand this to?

19 THE COURT: You just testify about it.

20 Q (MR. SELWA) So what are the other claims that you
21 are making against Mr. Bellamy?

22 A I mean, I have problems with my reading, so it is
23 hard for me to read it word for word.

24 Q You don't have to do that, just the specific
25 issues that you are having or claiming as for why Mr.

TYRONE BEATY - DIRECT EXAMINATION

1 Bellamy was ineffective.

2 A I have it all here.

3 Q So these are relating to your return; is that
4 correct?

5 A Yes.

6 Q And in your return, you are claiming that --

7 THE COURT: He didn't make a return, he made an
8 application.

9 MR. SELWA: Sorry.

10 Q (MR. SELWA) In your application, you were claiming
11 that your counsel did not argue for a directed verdict
12 or sufficiently argue for a directed verdict; is that
13 correct?

14 A Yes.

15 Q And can you expand on that at all? Was there
16 arguments that he didn't make for directed verdict?

17 A Yeah. A lot of arguments he didn't make, a lot
18 of objections he didn't make.

19 Q Did he make any post-trial motions after the
20 close of the evidence? Did he make any motion for a
21 new trial?

22 A No. Only thing he asked for was -- what was it?
23 It was something, but can't remember what it was. Was
24 it my appeal?

25 Q Let me read these and ask you if these are the

TYRONE BEATY - DIRECT EXAMINATION

1 grounds. Claim that he was ineffective for failure to
2 object to officer's testimony before the Grand Jury;
3 is that correct?

4 A Yes.

5 Q And you are claiming he was ineffective for
6 failure to sufficiently argue for a directed verdict?

7 A Yes.

8 Q That he failed to properly argue for a new trial?

9 A Yes.

10 Q That he failed to object to the charge of the
11 felony murder doctrine?

12 A Yes.

13 Q And he failed to object to the charge of inferred
14 malice?

15 A Yes.

16 Q And he failed to object to the charge of
17 unanimity of the verdict; is that what you had?

18 A Yeah.

19 Q You also claim that the prosecutor knowingly used
20 perjured testimony?

21 A Yes.

22 Q As we go through these, can you expand on each of
23 those? I'll address them in order, with the exception
24 of the first one. We'll skip the first one. Failure
25 to sufficiently argue for directed verdict, I asked

TYRONE BEATY - DIRECT EXAMINATION

1 you about that a second ago, and you are stating that
2 he did not sufficiently argue for the directed
3 verdict?

4 A Yes.

5 Q Can you tell the Court what grounds he didn't
6 address the directed verdict or what he didn't
7 effectively do with that?

8 A Not offhand.

9 Q Do you remember him making a motion for a new
10 trial?

11 A No.

12 Q Did he argue for a lesser included offense?

13 A No.

14 Q Did he object to the felony murder doctrine?

15 A No.

16 Q Did he object to the charge of inferred malice?

17 A No.

18 Q And did he fail to object -- did he object to the
19 charge of unanimity of the verdict?

20 A No.

21 Q Do you think that his failure to do that has
22 prejudiced you?

23 A Yes, it has.

24 Q And had he done those, would you have been in a
25 different position than today?

TYRONE BEATY - CROSS-EXAMINATION

1 A Yes, I will.

2 MR. SELWA: No further questions. Answer any
3 questions that the AG's Office has.

4 CROSS-EXAMINATION

5 BY MR. THOMAS:

6 Q How many meetings did you have with your attorney
7 before the trial?

8 A Here?

9 Q How many meetings did you have with Mr. Bellamy
10 before your murder trial?

11 A A bunch of them.

12 Q Did you all have an opportunity to go over the
13 evidence the State was going to use against you at
14 trial?

15 A No, I don't think we did.

16 Q He didn't tell you that any of the other
17 witnesses were going to make statements?

18 A Yes, he did tell me.

19 Q So you knew, basically, that this was a case
20 where all of your codefendants were going to testify
21 against you?

22 A Yes, he did.

23 Q And what did you tell him your version of events
24 was? What happened that day?

25 A Just basically broke it down and told him what

TYRONE BEATY - CROSS-EXAMINATION

1 happened.

2 Q So you were there when the victim was shot?

3 A Yes.

4 Q And you all were there to rob him of some drugs?

5 A No, it wasn't robbery; it was a drug deal. We
6 went to sell him drugs. I don't know where the murder
7 came in or robbery; it was a drug deal.

8 Q So you were just going to sell him fake drugs?

9 A Both. A couple ounces of fake dope and a couple
10 of real dope.

11 Q Did he explain to you, basically, that your
12 defense was going to be to cast doubt on the
13 credibility of everyone's testimony?

14 A Who?

15 Q What did he tell you your defense was to this
16 charge?

17 A I don't remember.

18 Q You said you've got a letter from Mr. Smalls, is
19 that the letter you attached to your application?

20 A Yes, that's it.

21 Q So that's the only letter you've gotten from him?

22 A I have an old letter, but it is outdated, as they
23 said.

24 Q But the one you attached to the application is
25 the one you are talking about where he recants --

TYRONE BEATY - CROSS-EXAMINATION

1 A Yes.

2 Q Were you ever housed in the same detention
3 facility as Mr. Smalls?

4 A When I first came down, they had me in Leiber,
5 and he was at Leiber. Weeks later, they separated us,
6 sent me to McCormick, and he was at Leiber. He stayed
7 at Leiber.

8 Q Were you all ever at -- so you were at Leiber
9 together?

10 A Yes.

11 Q When you were in the same unit or near each
12 other, did you have a chance to interact?

13 A He was upstairs; I was downstairs.

14 Q Is that when he told you he was going to write
15 this letter?

16 A That was the first letter he wrote.

17 Q Did you threaten him to write that letter?

18 A No, I haven't.

19 Q You didn't hold a knife and tell him to write
20 that letter?

21 A No.

22 MR. THOMAS: That is all I have. Thank you.

23 MR. SELWA: No redirect.

24 THE COURT: You can step down.

25 MR. SELWA: No other witnesses.

THE COURT CONVERSING WITH CORY SMALLS

1 THE COURT: State?

2 MR. SELWA: I'm sorry. Yes, Cory Smalls. I'm
3 sorry.

4 THE COURT: Okay.

5 (Whereupon, a bench conference was had.)

6 (CORY SMALLS, having been duly sworn,
7 testified as follows:)

8 THE COURT: I'm John Hayes, a circuit court
9 judge. You are getting ready to testify on behalf of
10 Mr. Beatty?

11 MR. SMALLS: Yes, sir.

12 THE COURT: You understand that whatever you
13 testify to today is being taken down by this court
14 reporter; you understand that?

15 MR. SMALLS: Yes, sir.

16 THE COURT: You understand that any testimony you
17 give today could be used against you if it is adverse
18 to your interest; that is, if you implicate yourself
19 in committing an offense or involvement with this
20 particular crime or some other crime, that you could
21 be prosecuted for that?

22 MR. SMALLS: Yes, sir.

23 THE COURT: Do you have an attorney representing
24 you in regard to your testimony today?

25 MR. SMALLS: No. I'm good.

CORY SMALLS - DIRECT EXAMINATION

1 THE COURT: You don't want an attorney to
2 represent you or advise you about your testimony?

3 MR. SMALLS: I'm here to clear the air, you know.
4 I don't need anybody to defend me on that.

5 THE COURT: But you understand that you have --
6 if you have any involvement in an offense, you have a
7 Constitutional right to remain silent; that is, no one
8 can make you testify against your own interest; you
9 understand that?

10 MR. SMALLS: Uh-huh.

11 THE COURT: Is that a yes?

12 MR. SMALLS: Yes, sir, I understand that.

13 THE COURT: You may proceed.

14 DIRECT-EXAMINATION

15 BY MR. SELWA:

16 Q How are you doing, Mr. Smalls?

17 A Doing all right.

18 Q You are a codefendant in Mr. Beaty's case; is
19 that correct?

20 A Yes, sir.

21 Q Can you explain to the Court your role in that
22 conviction?

23 A Well, my role in his conviction is this right
24 here, right -- we -- we -- we got locked up for
25 something that took place in 2005, okay. And in 2010,

CORY SMALLS - DIRECT EXAMINATION

1 when I went to court, the Solicitor coerced me into
2 lying on Tyrone Beaty to get a conviction, because she
3 told me, you know what I'm saying, that they would
4 give me a deal, you know what I'm saying, that if I
5 say that he did it or what not, that I would get a
6 deal. So Tyrone Beaty did not do that. Just like
7 when I had -- in the interrogation tape, I told them
8 it was a Jamaican that did the murder, okay. If they
9 overlooked that, that is on them, you know what I'm
10 saying. I was looking forward to having a deal, you
11 know what I'm saying, but they lied to me. I ended up
12 with 19 years, you see where I'm coming from. They
13 played me just to get a conviction, you know what I'm
14 saying, and I feel bad about that, that is why I'm
15 here to clear the water, you know what I'm saying,
16 because of the fact that it is on my conscience.

17 I know this man all my life. I know this man's
18 mama, and she knows my family, you know what I'm
19 saying. Ever since -- I got this bed and laying down
20 and reading the Bible, because my daddy is a preacher.
21 I read the Bible and read the Bible, but it was
22 something I couldn't get over because I'm like, dang,
23 man, I just sent this man to prison for 34 years over
24 something he didn't do, you know what I'm saying. I
25 want to get saved, but before I get saved, I want to

CORY SMALLS - DIRECT EXAMINATION

1 clean the skeleton out of my closet, you know what I'm
2 saying.

3 Q Can you summarize your testimony for the Court
4 today so they have a better understanding where you
5 are coming from? Can you summarize what you testified
6 to at trial about Mr. Beaty?

7 A Yeah. I testified at trial that at the time that
8 he was the murderer, you know what I'm saying, and he
9 wasn't.

10 Q You testified that he was the triggerman,
11 basically, the one that shot the victim?

12 A Yes.

13 Q And you testified to that based on your personal
14 knowledge at that time? You were stating that you
15 witnessed that event?

16 A I mean, my personal knowledge is the fact that,
17 personally, he didn't do it. I did it because the
18 Solicitor coerced me into saying that he did it
19 because she just wanted a conviction. At that time, I
20 was angry to the fact -- you know, I was very, very --
21 I was weak, you know what I'm saying. I just wanted
22 to go home. I just had a brand new baby, so they made
23 it look good, you know what I'm saying. Personally,
24 my personal knowledge, he had nothing to do with that.

25 Q Can you expand on that and tell the Court how you

CORY SMALLS - DIRECT EXAMINATION

1 know he was not involved?

2 A Because I was there. I was there. I saw he
3 wasn't the one that did it.

4 Q Okay. Did he have knowledge of the drug sale or
5 drug deal that was going down?

6 A Did he have knowledge? I can't speak on that.
7 That's something -- I'm speaking on what I know. I
8 can't speak on what he knows or not. I can't speak on
9 that.

10 Q At any point, did you discuss that you were going
11 to sell drugs or any other codefendants discuss they
12 were going to sell drugs in front of --

13 A This don't have nothing to do with me. This is
14 about him. It is his PCR. I'm here to help clear the
15 water with him. This don't have anything to do with
16 me.

17 Q Well, you understand, right, that I'm trying to
18 establish how you know this stuff?

19 A I know that he's not the murderer.

20 Q Did you see or do you know who the person was
21 that pulled the trigger?

22 A I said he was a Jamaican. The day I went and
23 talked to them, I told them it was a Jamaican. If you
24 go back and look at the interrogation tape that they
25 withheld out of my paperwork, you know what I'm

CORY SMALLS - DIRECT EXAMINATION

1 saying, they took that out of my motion to Brady, you
2 know what I'm saying. If you go and look at it, it
3 will tell you that I told them it was a Jamaican.

4 Q Throughout the interaction with the victim, you
5 were able to stay in constant visual contact with
6 Mr. Beaty?

7 A No. He went his way, I went mine, that is how it
8 goes.

9 Q After the incident?

10 A After the incident, yes.

11 Q During the incident, as they claimed it happened,
12 were you in constant visual contact with Mr. Beaty?

13 A No.

14 Q How long was he out of your contact?

15 A Up until we went to trial.

16 Q Okay. How does the Court know or how is the
17 Court to know that you saw him not do this?

18 A Because I was right there, I mean.

19 Q That is what I'm asking. Were you in constant
20 visual contact with him during the whole incident?

21 A Yeah. Yeah. Of that incident, yeah.

22 Q And did you see him pull out a gun?

23 A No. You know what I'm saying, we was there. He
24 had no gun, no nothing, you know what I'm saying. The
25 guy who did the killing, he had the gun. There was no

CORY SMALLS - DIRECT EXAMINATION

1 gun in our case.

2 Q You didn't see him take that person's life; is
3 that correct?

4 A How many times you ask me the same question in
5 different forms, I mean.

6 Q So your answer is, no, you didn't see him take
7 that life?

8 A I know he didn't take his life.

9 Q But the question is, did you see him or -- did
10 you see him do that?

11 A We was together. I mean, we was together like
12 right here, you know what I'm saying. I know. I know
13 he didn't take it.

14 Q You know, because you saw him?

15 A We was together, I mean.

16 Q Why should the Court believe you now at this
17 point?

18 A Because I'm his codefendant. I was there.

19 Q Your testimony earlier was that you were worried
20 about your own skin, more or less, in making the deal
21 with the Solicitor; is that correct?

22 A Yeah, at that time. Like I say, I was weak. I
23 was manipulated..

24 Q Do you understand the consequence of recanting
25 your testimony at this point?

CORY SMALLS - DIRECT EXAMINATION

1 A It's like this right here, man. I understand all
2 of that, Man. Right now, I mean, if anything extra,
3 you know what I'm saying, with the case of him not
4 being a killer, I'm clarifying that. You are asking
5 me these other questions, I mean it's irrelevant. It
6 is irrelevant. I mean, what more do you want to know?
7 You are asking me the same question that took place
8 almost ten years ago. I mean, you like putting me
9 back here on trial; I'm not.

10 Q You understand we have to establish that you have
11 the knowledge and that you are changing your story at
12 this point?

13 A I'm here telling the truth because I want to get
14 saved. I want to move on. I mean, me telling the
15 truth, God has judged me by that, you know what I'm
16 saying. I want to get saved with me cleaning out my
17 closet. I'm trying to get rid of skeletons.

18 Q When did you first contact Mr. Beaty about
19 recanting your testimony?

20 A When did I contact him? I never contacted him.

21 Q Did you write him letters?

22 A I wrote a letter. I was in my bed one night
23 after I read the Bible. I went to sleep. I had this
24 dream. I woke up the next morning and I'm like, you
25 know what, let me contact my daddy. He lives right

CORY SMALLS - DIRECT EXAMINATION

1 down the road from me. I can throw a rock and hit his
2 mama's house. I told my daddy, Listen, I need Tyrone
3 Beaty's address. He didn't even know, you know what
4 I'm saying. So my daddy, being a preacher -- my daddy
5 is a preacher. He told me, Cory, you know what, you
6 are doing the right thing. I'm going to his mama's
7 address, and I sent it to his mama myself, not through
8 him or anyone else. I sent it to him myself.

9 Q Did you send two letters?

10 A Did I send two letters? What difference -- I
11 mean, where the amount come from?

12 Q Did you send one in 2010 stating that you wanted
13 to recant your story, and another one in 2014?

14 A Yeah. Yeah. Yes, I did. At that time, yeah.

15 Q Did you send any other letters?

16 A Not that I remember.

17 MR. SELWA: May I approach?

18 THE COURT: Yes.

19 Q (MR. SELWA) Can you identify that letter?

20 A No, I can't identify that.

21 Q So you are not familiar with this at all?

22 A No. If it is anything to do with court, I get my
23 letters notarized, but if it is not notarized, then it
24 ain't came from me.

25 Q Is that your writing? Do you recognize that to

CORY SMALLS - CROSS-EXAMINATION

1 be your writing?

2 A No. No.

3 Q Mr. Smalls, in order to clear the air on your
4 prior transgressions and testifying against Mr. Beaty,
5 you are coming before the Court to tell the Court,
6 basically, that you lied, you felt bad about it and
7 you want to make things, right? Is that right?

8 A Yeah, because the Solicitor at that time coerced
9 me into doing that. So, like I say, they made me a
10 lie, made me doing that; therefore, I was being forced
11 by them to do that.

12 Q Okay.

13 CROSS-EXAMINATION

14 BY MR. THOMAS:

15 Q You never told your attorney that the Solicitor
16 coerced you into giving this statement?

17 A The question again?

18 Q Let me slow down. Did you ever tell your
19 attorney that the Solicitor coerced you into
20 testifying?

21 A No, because they was working together.

22 Q And, in fact, you've never told anyone until
23 today that the Solicitor coerced you into cooperating
24 against Mr. Beaty?

25 A Exactly.

CORY SMALLS - CROSS-EXAMINATION

1 Q Do you remember being sworn at trial, put under
2 oath?

3 A Uh-huh.

4 Q Swearing to tell the truth?

5 A Yep.

6 Q Do you remember after that testifying that you
7 and Mr. Beaty went to do a drug rip on the victim?

8 A And, like I say, everything at that time, it was
9 a lie, you know what I'm saying. They told me that
10 they would give me a deal, so we talked about it, you
11 know what I'm saying. They knew about everything, so,
12 therefore, they were like a codefendant with me. They
13 agreed -- like, okay, you do this, we won't give you
14 blazay, blazay, blazay, you know what I'm saying.

15 Q So your testimony is that the Solicitor told you
16 to say everything you said at trial?

17 A The Solicitor? I'm doing everything on my own
18 because this is what God asked me to do.

19 Q The facts you relayed at trial, that you called
20 Mr. Beaty, that you all drove out to this place off of
21 Enterprise Road, that you all had four people in the
22 car, you went to Food Lion, you got some flour and
23 packaged it up, made it look like drugs; where did you
24 get that story from?

25 A I'm saying -- okay, it is like this right here.

CORY SMALLS - CROSS-EXAMINATION

1 I'm speaking about the murder, not the drugs. I'm
2 speaking about the murder.

3 Q You are not understanding the question.

4 A I'm understanding everything you are saying.

5 Q Well, then, answer it.

6 A The drugs and -- not the drugs, but that right
7 there, okay, is factual, okay. But the murder is not
8 factual. I lied about the murder because of the fact
9 that the Solicitor coerced me into saying this, okay.
10 Now, the drugs and Food Lion, that don't have nothing
11 to do with the murder.

12 Q So you weren't lying when you said you all went
13 out to this spot to do a drug deal; that was true?

14 A Yeah, that was true.

15 Q And it was true that you and Mr. Beaty were
16 there, present at the time?

17 A Yeah, we was present. Yeah.

18 Q The only thing you are saying now that you lied
19 about is who actually shot the victim?

20 A Yes, because of the fact that he didn't kill
21 nobody. At that time, the Solicitor wasn't worried
22 about the drugs, wasn't worried about the robbery.
23 The Solicitor was worried about the murder.

24 Q Well, if the Solicitor -- strike that. You said
25 it was a Jamaican man that shot the victim?

CORY SMALLS - CROSS-EXAMINATION

1 A Yes.

2 Q And where did he come from?

3 A I don't know where he come from. I know he's no
4 longer existing now, you know what I'm saying.

5 Q How did the Jamaican man get to this Masonic
6 lodge off of Enterprise --

7 A Because he lives in a trailer park off of
8 Enterprise Road, you know what I'm saying. He be
9 like, okay, meet me here, blazay, blazay, blazay, and
10 that is how it went down.

11 Q You pled guilty to your involvement in these
12 crimes?

13 A Yes.

14 Q Do you remember being sworn and put under oath at
15 that guilty plea?

16 A Yes.

17 Q Do you remember agreeing with the judge that the
18 facts the Solicitor relayed during that guilty plea
19 were true, and you, in fact, were involved in
20 everything that you said at the trial, it was true?
21 Do you remember saying "yes" to that question?

22 A Yes.

23 MR. THOMAS: May I approach?

24 THE COURT: Yes.

25 Q (MR. THOMAS) I know you've been asked about this,

CORY SMALLS - CROSS-EXAMINATION

1 but I want to clarify it. Do you recognize this piece
2 of paper I'm handing you?

3 A No.

4 (State's Exhibit 1 marked.)

5 Q (MR. THOMAS) I'm referring to what is marked for
6 identification as State's 1. That is not your
7 handwriting?

8 A Huh-huh.

9 Q That is not your handwriting?

10 A No.

11 Q You didn't write that letter?

12 A No.

13 Q Were you at Leiber Correctional Facility with
14 Mr. Beaty?

15 A Yes.

16 Q Where were you all in relation to that facility?
17 Were you in the same dorm, same wing?

18 A We was in the same dorm.

19 Q So you deny ever writing a letter to the
20 Solicitor's office saying that Mr. Beaty threatened
21 you into making this change of heart?

22 A That is not true. If I do anything, I get it
23 notarized by the postal -- through the mail or
24 something.

25 Q So Mr. Beaty didn't threaten you?

HEATHER von HERRMANN - DIRECT EXAMINATION

1 A Nope.

2 MR. THOMAS: That is all I have. Thank you.

3 THE COURT: Redirect?

4 MR. SELWA: No redirect.

5 THE COURT: You can step down. Thank you.

6 Mr. Selwa, anything else?

7 MR. SELWA: Court's indulgence. No, Your Honor.

8 THE COURT: State.

9 MR. THOMAS: Heather von Herrmann, Your Honor.

10 (HEATHER von HERRMANN, having been duly sworn,
11 testified as follows:)

12 THE CLERK: State your name and spell your last
13 for the record.

14 THE WITNESS: Heather von Herrmann, last name is
15 spelled little V-O-N, capital H-E-R-R-M-A-N-N.

16 DIRECT-EXAMINATION

17 BY MR. THOMAS:

18 Q Could you tell us briefly what your involvement
19 -- well, let me ask you this. Where were you employed
20 in 2005?

21 A I was employed with the Horry County Solicitor's
22 Office, and I was the Solicitor who was assigned to
23 prosecute the case against Mr. Beaty, Mr. Smalls,
24 Antonio Smalls, and Neil Hill; there were four
25 codefendants in that case.

HEATHER von HERRMANN - DIRECT EXAMINATION

1 Q Could you briefly give us an overview of what --
2 sort of how this case broke open.

3 A I don't remember exactly how it broke open. I do
4 -- I recall the facts of it, which were that it was
5 sort of a drug rip gone wrong. These four individuals
6 had gotten together and had packaged up some cocaine
7 along with some flour or pancake mix they had gotten
8 at the Food Lion at Murrells Inlet. They were going
9 to try to exchange that for, I believe, \$16,000, which
10 the victim, Miles Slay, had in his possession. They
11 went to that exchange point near the Masonic lodge,
12 and Mr. Slay was killed during that exchange.

13 Q What were your discussions with -- let me back
14 up. All of these codefendants were represented by
15 counsel?

16 A They were.

17 Q What was sort of your -- how did you proceed with
18 trying to resolve this case either through pleas or
19 through trial? Which defendants' attorneys did you
20 talk to first?

21 A I believe I talked to Mr. Hazard, who was
22 Mr. Smalls' lawyer, Cory Smalls' lawyer. I also spoke
23 with Stuart Axelrod, who represented Antonio Smalls,
24 and Billy Monckton, I believe, represented Neil Hill.

25 Q Did you ever have any meetings with Mr. Smalls,

HEATHER von HERRMANN - DIRECT EXAMINATION

1 just you and him by yourself?

2 A No. Mr. Hazard was always present at those
3 meetings.

4 Q What were your discussions with Mr. Hazard about
5 Mr. Smalls' role in this trial?

6 A Well, Mr. Hazard had whatever conversation he had
7 with Mr. Smalls, and then he came to me and told me
8 that, you know, his client had information about the
9 situation, that he was willing to provide us with that
10 information and that he wanted to enter into a plea
11 agreement.

12 Q Did you ever threaten Mr. Hazard that if
13 Mr. Smalls didn't cooperate, something bad would
14 happen to him?

15 A No, I did not.

16 Q As far as -- did you ever intimate to Mr. Hazard
17 what you wanted Mr. Smalls' testimony to be at trial?

18 A I didn't. You know, I don't know what the
19 discussion was between Mr. Hazard and Mr. Smalls, but
20 the story from Cory Smalls was what it was when it
21 came to us. He said that he was willing to enter into
22 that plea agreement. The story that he gave was the
23 same as the story that Antonio gave.

24 Q In fact, the stories between the three of the
25 codefendants were, would you say, similar? Was there

HEATHER von HERRMANN - DIRECT EXAMINATION

1 any question in your mind that one of them was lying?

2 A No.

3 Q You have a copy of the Solicitor's file with you
4 up there?

5 A I do.

6 Q Did you ever receive any correspondence from
7 Mr. Smalls after his plea?

8 A I did.

9 Q I'll show you what is marked for identification
10 as State's 1. Do you recognize that?

11 A I do.

12 Q Could you tell us what it is?

13 A That is a letter that I received from Mr. Smalls
14 after his conviction.

15 MR. SELWA: Objection, Your Honor.

16 THE COURT: You have to have a better foundation,
17 he's probably moving that way.

18 Q (MR. THOMAS) Are you familiar with Mr. Smalls'
19 handwriting?

20 A I am. Mr. Smalls had written me other letters
21 before.

22 Q And is that letter that -- that copy I handed
23 you, is that a true and accurate depiction of what is
24 in your file that you are looking at?

25 A It is. I'm looking at the original in my file.

HEATHER von HERRMANN - DIRECT EXAMINATION

1 MR. SELWA: Objection. Object on speculation.

2 I'm not sure she's been qualified as a handwriting
3 expert.

4 THE COURT: He hadn't offered it yet, so I think
5 that is the time to make an objection.

6 Q (MR. THOMAS) I'll hand you what Mr. Smalls already
7 admitted is the letter he wrote to Mr. Beaty and that
8 was attached to his application. Since you were
9 familiar with everyone's handwriting, does it seem
10 consistent, the handwriting, to you?

11 A It does seem consistent, and the letter I
12 received was also consistent with my conversations
13 from Mr. Smalls' lawyer. Apparently, a similar letter
14 had been written to Mr. Hazard, and I believe we had
15 some conversation about the situation there as well.
16 But the handwriting, yes, appears to be identical and
17 is consistent with other handwriting or other letters
18 that I received from Mr. Smalls.

19 MR. THOMAS: I would move to admit State's 1.

20 MR. SELWA: Objection.

21 THE COURT: I'll sustain the objection.

22 Q (MR. THOMAS) Did you have any concern after the
23 trial was over that Mr. Smalls had changed his heart
24 on his testimony?

25 A I did not have concerns about that. I did have

HEATHER von HERRMANN - DIRECT EXAMINATION

1 concerns for Mr. Smalls' safety after the conviction.
2 It came to my attention that despite instructions to
3 the Department of Corrections that these codefendants
4 be kept apart, due that Mr. Smalls testified against
5 Mr. Beaty, that they had actually been housed
6 together, I believe, at Leiber Correctional Institute.
7 It also came to my attention that there were some
8 allegations that Mr. Beaty had threatened Mr. Smalls
9 into making a statement that Mr. Smalls did not make
10 --

11 MR. SELWA: Objection.

12 THE COURT: Sustain the objection. That is all
13 hearsay.

14 Q (MR. THOMAS) Not withstanding -- not telling us
15 what you may have heard from anybody else, from your
16 review of the file and from your participation in this
17 case, is there any doubt in your mind that the story
18 Cory Smalls told at trial is consistent with the other
19 facts of the case and what your theory was?

20 A It is completely consistent with the other facts
21 of the case and completely consistent with the
22 evidence. There is no doubt in my mind that the story
23 that he told at trial was what had taken place. It
24 was backed up by other witnesses. It was backed up by
25 the forensic evidence as well. I know that he has

HEATHER von HERRMANN - DIRECT EXAMINATION

1 made some statements about some coercion, but I think
2 that even at trial he was questioned extensively about
3 the fact that he entered into a proffer agreement,
4 what that meant to him, and whether or not he was
5 promised anything in return for his cooperation with
6 the State in that particular trial.

7 I can tell you what I told Mr. Smalls, because it
8 is the same thing that I tell every defendant who ever
9 entered into a proffer agreement with me while I was a
10 prosecutor, and that is this: If you cooperate and
11 you testify consistent with the statements that you
12 have given us, then we will make the judge aware of
13 your level of cooperation. I have never in all the
14 time that I was a prosecutor promised anybody that
15 they would receive any particular sentence. The only
16 thing I could offer them was that we would make the
17 judge aware of that level of cooperation.

18 So I don't believe -- I don't know that he was
19 coerced. He and I had a lot of conversations. He was
20 actually, I believe, a witnesses in another trial that
21 I had prosecuted previously.

22 Q And did you also handle Mr. Smalls' plea?

23 A I did.

24 Q And do you recall him -- let me ask you this.

25 What was the sentencing range in his plea?

HEATHER von HERRMANN - CROSS-EXAMINATION

1 A I cannot remember. I think he ended up pleading
2 to the armed robbery, and I think he was looking at, I
3 guess, like 25 or 30.

4 MR. THOMAS: May I approach?

5 THE COURT: Yes.

6 Q (MR. THOMAS) I'll hand you, to refresh your
7 recollection, a copy of Mr. Smalls' plea.

8 A (Witness examines document.) So he pled to the
9 armed robbery, which is in the sentencing range of 15
10 to 20 years.

11 Q Do you recall where Judge John came down in that
12 range?

13 A I believe it was a 19-year sentence.

14 MR. THOMAS: That is all I have.

15 CROSS-EXAMINATION

16 BY MR. SELWA:

17 Q You stated Mr. Smalls previously worked with you
18 on another case?

19 A No, that is not what I said. I said I believe he
20 was a witness in another case that I had prosecuted.

21 Q But he wasn't a codefendant in that particular
22 case?

23 A No.

24 Q Did he get any deals for that case?

25 A No. No. No. That case was some time before.

HEATHER von HERRMANN - CROSS-EXAMINATION

1 Q So he had no involvement, just a witness to the
2 act in that particular case?

3 A He wasn't even a witness to the act. I think
4 that maybe he had a brother who was a codefendant or
5 cousin who was a codefendant or something, so that was
6 -- he was not a witness or a participant in the other
7 case.

8 Q Would you say that he cooperated with you in that
9 particular incident?

10 A I don't know whether we -- I don't know whether
11 we ended up calling him at trial or not. I just don't
12 recall.

13 MR. SELWA: Thank you. No further questions.

14 MR. THOMAS: That is all.

15 THE COURT: You can be excused. We appreciate
16 your time. Next witness.

17 MR. THOMAS: State would call Mr. Bellamy to the
18 stand.

19 (SCOTT BELLAMY, having been duly sworn,
20 testified as follows:)

21 THE CLERK: State your name and spell your last
22 for the Court.

23 THE WITNESS: Scott Bellamy, B-E-L-L-A-M-Y.
24
25

SCOTT BELLAMY - DIRECT EXAMINATION

DIRECT EXAMINATION

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BY MR. SELWA:

Q Could you give us a brief overview of your experience as a lawyer?

A Graduated law school in 1990, was admitted to the Bar in November of 1990. The first year I clerked for Sydney Floyd here in Conway. In 1991, I went to work for the Solicitor's Office, from '91 for '95 in the Solicitor's, and have been in private practice from '95 until now, I guess that is 19 years.

Q How did you come involved with Mr. Beaty's case?

A Tyrone hired me to represent him. I believe right from the beginning we turned him in on actually the warrants. I met him out at the jail. We learned there were warrants, and there was some delay between the event occurring and the arrest being made. So I arranged for him to turn himself in, and we got bond set up on him and got him out.

Q And I guess once you took over, did you file the standard Rule 5 Brady motions?

A I did.

Q Could you give us a brief overview of what the State's evidence was in response?

A They had a lot of crime scene stuff, crime scene people went out to Enterprise Road. It was in a

SCOTT BELLAMY - DIRECT EXAMINATION

1 Masonic lodge. You had your standard
2 this-is-where-shell-casings-were-located and your
3 autopsy reports, ballistics and things of that nature.
4 Also, they had a number of statements from
5 codefendants that were made. I believe Mr. Smalls,
6 who testified here today, he had about five hours of
7 either audio or videotaped statements that he had
8 given on different occasions. I believe there were
9 three different statements he gave.

10 Mr. Hill gave statements, and also Mr. Antonio
11 Smalls gave statements as well. They had a video tape
12 from, I believe, the Food Lion down in the Murrells
13 Inlet area. They had a receipt showing where
14 something had been bought at a particular time that
15 matched up to a video. So there was a lot of evidence
16 that we received.

17 We had a number of SLED reports and things of
18 that nature with gun powder residue and that sort of
19 thing. I can't recite every one of them, but it was a
20 significant amount of discovery that was turned over.

21 Q And in any of that discovery, was any of the
22 forensic evidence directly linking Mr. Beaty to the
23 scene?

24 A I don't believe so. When you say "forensic," I
25 think in terms of DNA, fingerprints and things of that

SCOTT BELLAMY - DIRECT EXAMINATION

1 nature. There was nothing forensically that would --
2 blood on clothes found from Tyrone or anything of that
3 nature that linked him forensically to it, as best as
4 I can remember. Obviously, that was one of our --
5 part of our defense, we didn't have the CSI sort of
6 things.

7 Q How many meetings did you have with Mr. Beaty?

8 A I represented Mr. Beaty from, I guess, late '05,
9 maybe December, when he turned himself in. This case
10 went to trial 2010. We met dozens of times in my
11 office and we -- we met a lot.

12 Q During those meetings, did you have an
13 opportunity to share with him the discovery responses
14 and everything evidence wise?

15 A Yes. We discussed the evidence that we had
16 received, and primarily -- obviously, as you can tell,
17 there was a significant delay, almost five years from
18 the arrest of trial. Quite frankly, for several years
19 nothing really happened. The case just kind of sat
20 there. Ms. von Herrmann cut him a deal -- I say "cut
21 a deal," his codefendants turned on him, gave
22 statements implicating him. Some of the initial
23 statements were that he didn't have anything to do
24 with it.

25 Again, part of our defense was the

SCOTT BELLAMY - DIRECT EXAMINATION

1 inconsistencies from the initial statements, second,
2 third statements and, of course, the ultimate
3 statement that was made in the courtroom by way of
4 live testimony. But, yes, it really came down to
5 there was the statements of the codefendants against
6 him, that was the key to their case. Tyrone did not
7 give a statement.

8 Q And in all of your discussions with him, what was
9 his, sort of, explanation for what had gone on that
10 night?

11 A His explanation is that, you know, he didn't have
12 anything to do with killing the man. He may have been
13 in the Food Lion where the video showed him, but he
14 had nothing to do with shooting him. You know, this
15 was a drug deal or drug rip-off, potentially, but
16 there was never a robbery or a murder, meant to be a
17 killing.

18 Q Did he ever tell you that anybody other than the
19 three codefendants was involved that night?

20 A I don't recall, to be honest with you, any
21 specifics of that. He was adamant that he was not the
22 one that shot him. We tried to show through the
23 forensics that the way that his codefendants were
24 describing the event could not have happened by way of
25 where the shell casings were found, angles of bullets

SCOTT BELLAMY - DIRECT EXAMINATION

1 and things of that nature that were inconsistent with
2 the statements ultimately made by his codefendants.

3 Q What were your conversations with him about the,
4 I guess, two things at trial; first, the
5 hand-of-one-hand-of-all theory, and then the felony
6 murder inference?

7 A Well, again, another five years later I can't
8 remember the specific words, but basically when one or
9 more people involve themselves in a criminal activity,
10 that everyone can be guilty of the crime, even though
11 only one person may have been the shooter. If you
12 enter into an agreement or conspiracy to commit some
13 other act, and in furtherance of committing that act,
14 a separate act of, say, murder occurs, then all can be
15 found guilty under the hand-of-one-is-the-hand-of-all.

16 Q And you explained that to him?

17 A I did. Again, I can't tell you independently,
18 but I would have explained that concept because,
19 obviously, when you have multiple defendants and only
20 one person can be the shooter, you know, that is a
21 concern that a jury can convict you even if they don't
22 believe that you didn't actually shoot.

23 Q And the felony murder inference, did you explain
24 that?

25 A Yes, I believe I would have. Again, I can't sit

SCOTT BELLAMY - DIRECT EXAMINATION

1 here and tell you independently word for word, but I
2 believe I would have explained it.

3 Q Do you recall objecting to the felony murder
4 charge at trial?

5 A Not specifically. If you showed me the
6 transcript, which I have it here, and if you tell me
7 where to look.

8 Q Turn to Page 497, Line 11.

9 A We had a discussion in chambers about it. The
10 judge told us what he was going to charge, and I put
11 it on the record, my objection.

12 Q Do you remember moving for a directed verdict?

13 A I did.

14 Q Do you recall renewing that at the end of trial?

15 A After the verdict?

16 Q Well --

17 A The end of the State's case?

18 Q Yes, sir.

19 A Yes.

20 Q And you asked for a new trial at the end?

21 A After the verdict, yes. Yes.

22 Q Looking back, do you have a copy of the
23 indictment with you?

24 A No, I do not have a copy of the indictments.

25 MR. THOMAS: May I approach?

SCOTT BELLAMY - DIRECT EXAMINATION

1 THE COURT: Yes.

2 Q Do you recall there being any problems with the
3 indictments when you saw them?

4 A I remember we amended the indictment before trial
5 on a date or something, because it was not a material
6 part of it, and certainly it had something to do with
7 the date, and that it was nothing that would have
8 changed our strategy or anything.

9 Q But nothing else was wrong -- I mean regarding
10 the witness before the Grand Jury or the -- the
11 elements of the crime were all there?

12 A Yeah. As far as witnesses for the Grand Jury, I
13 saw that in the application. I'm not familiar with
14 that concept that I can object. That is a secret
15 proceeding. I'm not a party to whenever it goes to
16 the Grand Jury, but if I was supposed to, I didn't.

17 Q Were you ever aware that there might be an
18 individual in lockup who could help testify on
19 Mr. Beaty's behalf?

20 A I remember something about there was somebody in
21 jail who may have overheard some conversation with one
22 of his codefendants or had a conversation with one of
23 the codefendants. He was locked up. He was
24 represented, and I cannot ethically contact him if he
25 has an attorney. As best I recall, I contacted this

SCOTT BELLAMY - CROSS-EXAMINATION

1 person's attorney to see if I could speak with him,
2 and they wouldn't let me, as best I remember.

3 MR. THOMAS: Thank you.

4 CROSS-EXAMINATION.

5 BY MR. SELWA:

6 Q How are you doing today, Mr. Bellamy?

7 A Good.

8 Q I have a couple of questions. I recognize you
9 answered some of the other claims or allegations
10 against you on direct, so I won't go back over those,
11 but I do want to ask about one of his claims about the
12 lesser included offenses. Did you ask for a lesser
13 included offense?

14 A I don't believe that I did.

15 Q And what was the reason for not asking for a
16 lesser included offense in the charge?

17 A Our strategy, trial strategy, was to basically
18 put the State's case on trial for their
19 inconsistencies within their own witnesses and
20 statements and with forensic evidence. As a trial
21 strategy, basically it was an all-or-none approach.
22 We didn't want to give the jury an out to convict of
23 something lesser.

24 Q Looking back on it in hindsight, since he did get
25 convicted, do you think that would have been a good

SCOTT BELLAMY - CROSS-EXAMINATION

1 idea to ask for a lesser included?

2 A If I knew he would have been convicted of the
3 murder, I certainly would have asked for if, yeah. I
4 think that is obvious. But at the time, I felt as if
5 it was the best strategy, at the time, and that is the
6 only time you can make that decision, at that moment.
7 Hindsight is 20/20. The other thing I would say is,
8 in that regard as far as asking for it, I'm not sure
9 based on the evidence that there was evidence to
10 support necessarily the lesser included charges,
11 albeit I didn't ask for it, so that is a moot point.

12 The evidence was such that I don't know that it
13 would have been granted, but I did not ask for it. In
14 hindsight, I may have done it differently.

15 Q So your testimony, basically, was that you didn't
16 think there was enough evidence?

17 A It was more of a trial strategy, quite frankly,
18 not to give the jury some out to convict of something
19 lesser. Again, on the manslaughter, that carries 30,
20 and I felt that he would have gotten a lot of time
21 even at that, but anyhow.

22 Q Do you feel the same about the robbery?

23 A Yes.

24 MR. SELWA: No further questions. Thank you.

25 THE COURT: Redirect?

SCOTT BELLAMY - CROSS-EXAMINATION

1 MR. THOMAS: Nothing further from the State.

2 THE COURT: You can step down and be excused.

3 MR. THOMAS: That's all for the State.

4 THE COURT: All right. I'll take this under
5 advisement.

6 (Whereupon the proceedings concluded.)

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1 CERTIFICATE OF REPORTER

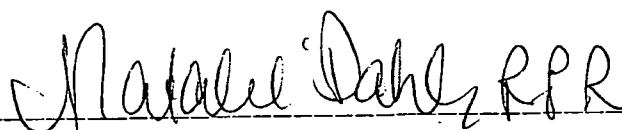
2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the captioned case, relative to appeal,
11 for Horry County, South Carolina, on the 29th day of
12 October, 2014.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16 January 26, 2015

17
18 
19 _____

20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Tyrone Beaty,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-26-5929

ORDER

This is a Post-Conviction Relief Proceeding.

Horry County
Clerk of Court
11 NOV 17 PM 12:59
J. L. HARRIS, JR.
CLERK OF COURT

Applicant filed his application for Post-Conviction Relief (PCR) on August 28, 2013.

The undersigned heard this case on the 29th day of October 2014. The State of South Carolina was represented by Josh Thomas, Esquire, and the Applicant was represented by Daniel Selwa, II, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In April 2006, the Horry County Grand Jury indicted Applicant for murder (2006-GS-26-1748) and armed robbery (2006-GS-26-1747). G. Scott Bellamy, Esquire, represented Applicant. On July 12, 2010, Applicant proceeded to trial before the Honorable Steven H. John and a jury. On July 16, 2010, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to concurrent terms of thirty-four (34) years for murder and thirty (30) years for armed robbery.

Applicant filed a timely notice of appeal and Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 19, 2013. *State v. Beaty*, Op. No. 2013-UP-252 (S.C. Ct. App. filed June, 19, 2013). The remittitur was returned to the circuit court on July 9, 2013.

JcH#1

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. Failure to object to officer's testimony before grand jury.
 - b. Failure to sufficiently argue a directed verdict.
 - c. Failure to properly argue for a new trial.
 - d. Failure to request a charge lesser included offenses as to both counts.
 - e. Failure to object to the charge on the felony murder doctrine.
 - f. Failure to object to the charge on inferred malice.
 - g. Failure to object to the charge on unanimity of the verdict.
2. "Prosecution Misconduct"
 - a. Solicitor knowingly used perjured testimony.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the applicant. *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*, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C.115, 386 S.E.2d 624 (1989).

The reviewing court applies a two pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, 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.E. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

Applicant alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 S.C. 794 (1989).

Herein below the court will fully address the particulars regarding Applicant's ineffective assistance of counsel grounds for post-conviction relief.

As to 1(a), trial counsel could not appear at the grand jury proceeding and therefore could not object to the presentation of evidence at the grand jury proceeding. Particular 1(a) is without merit on its face.

As to 1(b) and 1(c), trial counsel, Scott Bellamy, testified he made timely motions for a directed verdict and a new trial. The record reflects trial counsel moved for a directed verdict at the close of the State's case based on insufficient evidence. (TR p. 504 LL 19-20). The motion was denied by the trial judge who stated there was more than sufficient evidence. (TR p. 508 LL

12-19). Trial counsel renewed the motion for directed verdict after the defense rested and the motion was again denied by the trial judge. (TR p. 506 LL 1-8). Trial counsel made a motion to set aside the verdict and for a new trial after the jury returned its verdict. (TR p. 595 L 23 through p. 596 L 2). This motion was denied. (TR p. 596 LL 3-17).

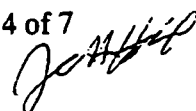
As to particulars 1(b) and 1(c), Applicant has failed to carry his burden of proof. He has failed to show that in regard to the motion trial counsel's performance fell below the reasonable attorney standard of *Cherry*, supra.

As to particular 1(d) trial counsel testified he did not request a charge on a lesser included offense as the State's case was in trouble and he felt it was best to just allow the jury to consider all (guilty of murder) or nothing (not guilty). Trial counsel testified that not asking for a charge as to a lesser included offense was not, standing alone, a trial strategy but where trial counsel's testimony is reviewed in its totality on this issue the decision regarding a lesser offense request was part and parcel of trial counsel's trial strategy. I find trial counsel had a valued reason for employing the trial strategy he testified to in Applicant's case. *Rice v. State*, 2014 WL 5280546 (Ct. App. 2014). This particular is without merit.

As to particular 1(e), trial counsel did object to the trial judge's charge of felony murder doctrine. (TR p. 496 L 21 through p. 497 L 17). As to particular 1(f), the trial judge denied the State's request to charge inferred malice. (TR p. 498 LL 17-20). These particulars are without merit.

Applicant's 1(g) is a *non sequitur*. Jury unanimity is required in the State of South Carolina. (S.C. Constitution Art. V, Section 22).

Applicant's allegation of prosecutorial misconduct is based on the State's calling a co-defendant, Corey Smalls, to testify against Applicant. Applicant testified that Corey Smalls

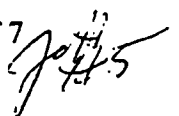


testified for the State based on a deal between Smalls and the State. Corey Smalls testifies at Applicant's hearing that he had testified against Applicant at trial based on coercion from the solicitor and the promise of a deal. Smalls testified that at the time of Applicant's trial he was "weak" and just wanted to get home to his new baby. Smalls testified of an unknown Jamaican¹ man actually shot the victim. Smalls testified he sent two letters to the State wanting to recant his testimony against Applicant.

On cross examination, Smalls testified he never told his trial counsel of State's coercion, that he testified truthfully as to the drug deal which lead to the shooting but denied Applicant shot the victim. Smalls testified he was present at the pre-arranged drug deal. Smalls denied writing a letter to the solicitor who prosecuted Applicant claiming Applicant threatened him. When shown what purported was the letter, Smalls said it was not his handwriting and it was not notarized. Smalls testified he has all of letters notarized. The State offered the letter into evidence and the undersigned ruled the letter inadmissible as it had not been authenticated and in fact been denied by Smalls to be his work product.

Heather von Herrman, Esquire, testified that she was the solicitor that prosecuted the murder case against Applicant and his three co-defendants, one of whom was Corey Smalls. She denied ever offering Smalls any deal in exchange for his testimony against Applicant. She testified that whenever she met with Smalls, his trial counsel Ronald W. Hazzard was always present. She testified Smalls' story was consistent with the versions of events given by Applicant's other co-defendants. She testified that Smalls' testimony was consistent with the facts and the evidence.

¹ At Applicant's trial, Smalls testified Jamaican was a "made up image." (TR p. 175 L 20 through p. 176 L 5).



Mr. Smalls has now testified twice under oath relative to Applicant's murder charge. He now says he lied when he testified at trial and was coerced into testifying. At trial, Smalls testified that the solicitor and he, through his attorney, had reached an agreement and he had entered into a proffer agreement. (TR p. 123 L 19 through p. 124 L 11). Smalls testified at trial that while he hoped to get some benefit from testifying there were no secret agreements nor any promises relative to his testimony at trial. (TR p. 125 LL 3-25). At Applicant's trial on cross examination, Smalls testified he was to plead to armed robbery. (TR p. 126 L 21 through p. 127 L 14). On cross examination at the PCR hearing, he testified that he was not being honest and truthful as to what Applicant did in regard to the murder for which Applicant was on trial.

I find Corey Smalls' testimony at the post-conviction relief hearing is not credible. I find Heather von Herrmann's testimony credible. I find Corey Smalls' testimony at Applicant's trial was not the product of any prosecutorial misconduct. I specifically find, Smalls was not offered any deal in exchange for his testimony other than that reflected in the trial record regarding a proffer agreement for his being allowed to plead to armed robbery rather than murder. To the extent this proffer constituted a "deal" such was laid before the jury in its entirety for the jury to consider in assessing Smalls' credibility and Applicant's trial.

I find Applicant has failed to carry his burden of proof and failed to prove either ineffective assistance of counsel or prosecutorial misconduct.

I find trial counsel's representation meets the reasonable attorney standard of *Cherry*, supra.

The Court finds that trial counsel's representation of Applicant was effective. Additionally, the court finds an absence for any grounds of relief which the Applicant seeks. Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge *jd 7*

November *16*^{*th*}, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TYRONE BEATY, #191955

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-26-5929

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 filed copy of the Order in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 3rd day of December, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

WITNESSES

LEWIS/HCPD

DOCKET NO. 2006-GS-26-1748

THE STATE OF SOUTH CAROLINA

COUNTY OF Horry

79198-1

WBvH

COURT OF GENERAL SESSIONS

APRIL

TERM 2006

THE STATE

ARREST WARRANT NO.

vs.

I-269563

TYRONE BEATY

B/M

CDR: 0116 16-03-0010,0020

MYRTLE BEACH SC 29577

DOA: 10-04-05

ACTION OF GRAND JURY

TRUE BILL

APR 27 2006

Foreman of Grand Jury

ATTORNEY: SCOTT BELLAMY

VERDICT

INDICTMENT FOR:

MURDER

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:
MURDER

At a Court of General Sessions, convened on April 27, 2006, the Grand Jurors of Horry County present upon their oath:

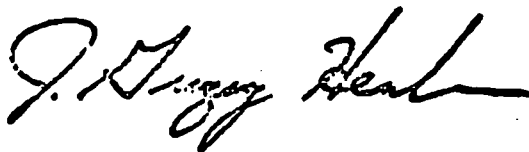
MURDER

CDR: 0116 16-03-0010,0020

7/12/10
motion to amend
granted

That TYRONE BEATY did in Horry County, on or about the 21st day of October, 2005, willfully, feloniously, and intentionally kill the victim, Miles Thomas Slay, II, with malice aforethought, either express or implied, by means of shooting the victim in the chest, and the victim did die as a proximate result thereof on or about October 21, 2006 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

WITNESSES

LEWIS/HCPD

DOCKET NO. 2006-GS-26-1141

THE STATE OF SOUTH CAROLINA

COUNTY OF Horry

79198-1

WBVH

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

ARREST WARRANT NO.

VS.

L-269562

TYRONE BEATY

B/M

CDR: 0139 16-11-0330(A)

MYRTLE BEACH SC 29577

DOA: 10-04-05

ACTION OF GRAND JURY

TRUE BILL

Scott Bellamy

APR 27 2006

Foreman of Grand Jury

ATTORNEY: SCOTT BELLAMY

VERDICT

INDICTMENT FOR:
ARMED ROBBERY**ORIGINAL**

Foreman of Petit Jury Date:

J. GREGORY HEMBRREE, SOLICITOR

At a Court of General Sessions, convened on April 27, 2006, the Grand Jurors of Horry County present upon their oath:

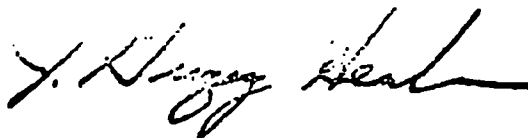
ARMED ROBBERY

CDR: 0139 16-11-0330(A)

7/12/10
motion to amend
granted

That TYRONE BEATY did in Horry County on or about the ^{20th} 21st day of October, 2005, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of from or in the immediate presence of Miles Thomas Slay, II with intent to deprive him of possession by use of force, threats or intimidation. in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

79198

greetings

Mrs. Heather von Hermann,

I'm writing about a situation that took place here at Lieber Correctional Institution. Well why I was mixed at Kirkland, R+E, Correctional Inst. I've told the caseworker there that I didn't want to be at the same institution as my Co-defendant (Tyronne Beatty)... they gave me this paper to sign, but a month later I've saw my Co-defendant (Tyronne Beatty) in the very same dorm unit they assigned me to, at Lieber Correctional Inst. when my Co-defendant (Tyronne Beatty) saw me, he bought a shank before known as a knife and threaten me to give a written statement stating, "he wasn't the shooter in Mike's slave death." so I wrote the statement for him so he wouldn't stab me. But after I wrote the statement, he had people to jump me by telling them I got on the stand which caused him to get 34 years. my Co-defendant (Tyronne Beatty) has done this to help his appeal. But as of now, I'm suing the Department of Correctional for putting him on the same yard as me and caused me to be badly assaulted. I'm writing you this letter on the behalf of that statement he forced me to write.

Theronne Beatty

Cody Smith #200021