

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

JAN - 8 2015

JOHN J. MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000786

APPENDIX

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1 Q And did you find that gun?

2 A We did not.

3 Q Did you have the opportunity to talk to Delia
4 Nix, the owner -- or the resident at [REDACTED]
5 [REDACTED]?

6 A I did at the time of the search warrant.

7 Q Yes.

8 A I talked with her, read her the search warrant.
9 In fact, John Moore was there when we arrested him
10 at her residence and was reading the search warrant
11 to him and her and continued to read it to her and
12 talk to her after John was taken back to
13 headquarters.

14 Q So did you have -- how long would you say your
15 conversation was with her?

16 A We talked on and off for the better part of 30
17 minutes.

18 Q So you had a good opportunity to hear her
19 voice?

20 A I did.

21 Q How about John Moore, did you have an
22 opportunity to talk to him?

23 A I did. I spoke with him briefly out there at
24 the scene at [REDACTED], again back at
25 headquarters, we had some conversations. He mostly

1 talked to investigate --

2 **MR. COLLINS:** Objection, Your Honor.

3 **THE COURT:** Yes, sir.

4 **MR. COLLINGS:** We have an issue of law outside
5 the presence of the jury.

6 **THE COURT:** All right. Ladies and gentlemen,
7 please step in the jury room. Don't discuss the
8 case.

9 (The jury retires to the jury room.)

10 **THE COURT:** Yes, sir.

11 **MR. COLLINS:** Your Honor, the objection is
12 based on his speaking of conversations that he had
13 with the defendant, Mr. Moore. We had a pretrial
14 motion where Your Honor ruled that Investigator
15 Barnes did not establish the requirements to be able
16 to talk about any of the contents of the
17 conversations he had with Mr. Moore. It's our
18 position that he should not then be allowed to talk
19 about the conversations, period.

20 **THE COURT:** What are you intending to ask him?

21 **MS. WEISS:** Your Honor, that was the end of --
22 we're not getting into any conversations that he
23 had, just the fact that he had a chance to talk to
24 Mr. Moore.

25 **MR. COLLINS:** Your Honor, I believe she's

1 trying to establish that he can recognize his voice.
2 In pretrial, we established that he nodded his head
3 in affirmation and possibly asked for chips and a
4 drink. There was no other testimony regarding any
5 other conversation, spoken conversation he had with
6 Mr. Moore. And I object because I don't want the
7 jury to get the impression that there was a
8 conversation and they're missing out on the contents
9 about it.

10 **THE COURT:** The issue before the Court in the
11 pretrial motions was whether statements of the
12 defendant would be admissible or not or whether
13 nonverbal statements or acknowledgments or nodding
14 of the head would be admissible. The ruling of the
15 Court was at the preliminary stage, at the pretrial
16 stage, that those things had not been established
17 sufficiently under Denno to admit the statements.
18 There was no ruling about this specific issue and he
19 can be asked about whether he talked to the
20 defendant. I note your objection.

21 **MR. COLLINS:** Your Honor, just for the record,
22 my concern is that this conversation that we're
23 speaking of did not come up in the Denno hearing and
24 now they're seeking to introduce the existence of
25 the conversation.

1 **THE COURT:** As long as they don't go into the
2 content of the conversation, I don't think there's
3 any way for me to exclude it. You'll have to
4 cross-examine him about his ability to identify, if
5 that's where they're going, his ability to identify
6 the voice of the defendant on the recorder.

7 Anything else?

8 **MR. COLLINS:** Not at this time.

9 **THE COURT:** Thank you.

10 Are you ready for the jury to come back?

11 **MS. WEISS:** Yes, Your Honor.

12 **THE COURT:** Bring in the jury, please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. You may continue, Ms.
15 Weiss.

16 **MS. WEISS:** Thank you, Your Honor.

17 BY MS. WEISS:

18 **Q** Investigator Barnes, we were just talking about
19 conversations that you had with John Moore the day
20 of the search warrant, the day he was arrested. Did
21 you have an opportunity to have a conversation with
22 John Moore?

23 **A** I did.

24 **Q** And, approximately, how long did that
25 conversation last?

1 **A** We spoke a few moments, a few minutes, out at
2 the house at [REDACTED] and then again
3 we spoke several minutes at headquarters later on
4 when I got back to headquarters.

5 **Q** And did you have an opportunity -- I mean, you
6 had a good enough opportunity that you would
7 recognize his voice?

8 **A** Yes.

9 **Q** The next step that you took in the
10 investigation after Mr. Moore was arrested, he was
11 taken to Alvin S. Glenn, what was the next step in
12 your investigation?

13 **A** I had sent Sergeant Ewing over to recover the
14 pick-up truck and he had gotten in touch with John
15 Moore's father. Based on -- based on what I learned
16 from there, we felt like we needed to get a hold of
17 the phone records from the jail and we went about
18 asking for those phone records.

19 **Q** Is that something you normally do in
20 investigations?

21 **A** It's something actually that's really come
22 around in the last few years, but this is something
23 that had been a part of the jail and something that
24 they had had in place with Pay-Tel and something we
25 felt like we could access legally.

1 Q And tell me how that works, how did you go
2 about requesting phone records from the jail?

3 A I called up Sergeant Shull and asked her for
4 those particular phone calls out of numbers that we
5 felt like might be called.

6 Q And who did those numbers belong to?

7 A Those were numbers that we knew were associated
8 with John Moore.

9 Q I'm going to show you what's been marked as
10 State's Exhibit 129 for identification. Do you
11 recognize this disk?

12 A Yes, I do.

13 Q And what is that disk?

14 A This is a disk that I received from Sergeant
15 Shull and I marked 11/10/05 at 1510 hours, which is
16 3:10 hours in the afternoon.

17 Q And how did you get this disk?

18 A From Sergeant Shull.

19 Q And did you actually record the information
20 that was on this disk?

21 A Sergeant Shull had and handed it to me.

22 Q And you've been able to listen to the calls on
23 this disk?

24 A I have.

25 Q Specifically as it references track three on

1 this call, you listened to that call recently?

2 **A** I have.

3 **Q** And did you recognize the voices on that call?

4 **A** I did.

5 **Q** And who were the voices on that call?

6 **A** It would be Delia Nix, the girlfriend of John
7 Joseph Moore, talking to John Joseph Moore, Junior.

8 **MS. WEISS:** Your Honor, at this time, I would
9 like to introduce State's Exhibit 129 into evidence.

10 **MR. COLLINS:** Your Honor, we're probably going
11 to have to take this up outside the presence of the
12 jury.

13 **THE COURT:** Ladies and gentlemen, please step
14 in the jury room. Don't discuss the case.

15 (The jury retires to the jury room.)

16 **THE COURT:** Yes, sir.

17 **MR. COLLINS:** Your Honor, first and foremost,
18 this C.D. in question, only one track has been
19 established for the method in which they're trying
20 to introduce the C.D.

21 But to back up a little bit, from what I
22 gather, and I wanted to take care of this with the
23 jury outside of our presence, but from what I
24 gather, the State is seeking to introduce recorded
25 phone calls from the jail. They've established that

1 the jail records it and that he's listened to it.
2 However, there's no one that had any part of this
3 conversation that can testify as to whether or not
4 these recordings are a fair and accurate
5 representation of the conversations that were had on
6 the disk. I'd like to compare it to if you're
7 trying to introduce a photograph. You can have
8 somebody testify as to what it is, but it's not
9 admissible until somebody can testify that it's a
10 fair and accurate representation of what it purports
11 to be.

12 I've researched numerous cases trying to find
13 something directly on point in this situation, but
14 the case law, there's always a participant of the
15 conversation or somebody who listened to the
16 conversation as it took place. We haven't heard any
17 testimony as far as somebody that has personal
18 knowledge of what this conversation was.

19 These are recordings. We don't know the
20 authenticity of the recordings being a fair and
21 accurate representation of that conversation. So we
22 would object to the State introducing the
23 conversations contained on these compact disks
24 unless some sort of authentication of that nature
25 can be provided.

1 **THE COURT:** Ms. Weiss.

2 **MS. WEISS:** Thank you, Your Honor. Your Honor,
3 Ms. Shull testified prior to Eric Barnes and she's
4 the one who keeps these records, she's the one that
5 knows about these records, that the computer system
6 only starts recording when somebody says hello and
7 records entire conversations. She testified that
8 she then records them to disk. I mean, that is the
9 conversation itself, that's beginning to end.

10 And Eric Barnes has testified he recognizes the
11 two voices on there as being Delia Nix and John
12 Moore. The voices have been recognized, the phone
13 call has been recorded in its entirety. I think, at
14 that point, it becomes admissible. The defense can
15 argue and introduce anything to rebut that, but --
16 and I think that may go to the weight of the
17 evidence, but the admissibility, the voices have
18 been recognized and the conversations have been
19 recorded in the ordinary course of business in their
20 entirety by a computer.

21 **THE COURT:** Anything else?

22 **MR. COLLINS:** Your Honor, we've heard no
23 supporting information about the computer system.
24 We've only heard information about one of the tracks
25 on the compact disk so far. And we would just stand

1 -- Rule 602, you have to be able to testify to
2 personal knowledge about what you're testifying
3 about. Mr. Barnes has no personal knowledge about
4 what these original conversations were about. He
5 only has personal knowledge about what's on the
6 recording. And we would just stand by the original
7 argument, Your Honor.

8 **THE COURT:** Bear with me a few minutes.

9 (Pause.)

10 **THE COURT:** What I've got so far is that
11 Sergeant Shull testified that there is a software
12 program affixed to the telephone, pay telephone at
13 the jail, and that it will automatically record
14 completed calls and that there is a system in place
15 using that software whereby a telephone number that
16 is dialed from the pay phone at the jail can be
17 entered into a search mechanism and all the calls
18 that went to that telephone number can be found on
19 the hard drive and then downloaded onto a C.D. or
20 something of that fashion. And she testified, the
21 sergeant did, that she was asked by this
22 investigator to download certain -- or check certain
23 phone numbers, which she did, that she recorded them
24 onto a C.D. and that she gave them to this
25 investigator.

1 He has testified that he asked Sergeant Shull
2 for the calls out to the particular numbers that he
3 felt might be called. And the question, Who did
4 those numbers belong to? And the answer was, Those
5 were the numbers that we knew were associated with
6 John Moore. And then you showed him the C.D. and
7 asked him if he identified it and he said that that
8 is the C.D. that he received from Sergeant Shull,
9 which he marked on it November the 10th, 2005 at
10 1510 hours, that he listened to the calls on the
11 disk.

12 And then he was asked specifically as to track
13 three of the call if he had listened to that
14 recently. He said he had. He was asked does he
15 recognize the voices on that call. He said he did.
16 He was asked who the voices were. And he said Delia
17 Nix, the girlfriend of John Joseph Moore, talking to
18 John Joseph Moore, Junior. And that's when the
19 State's Exhibit 129 was offered into evidence and
20 the objection was raised.

21 Why did y'all ask him about one track?

22 **MS. WEISS:** Because, Your Honor, we planned to
23 use that one track.

24 **THE COURT:** What's on the disk?

25 **MS. WEISS:** The disk has numerous phone calls.

1 There's an abundance of phone calls. But, Your
2 Honor, for the purpose of this case, we plan on
3 introducing track number three.

4 **THE COURT:** And what does the defense want to
5 tell me?

6 **MR. COLLINS:** Your Honor, my reading of 901, it
7 gives different illustrations of different ways in
8 which a voice can be identified or different
9 illustrations in which a call can be authenticated.
10 One of the ways in which a voice can be identified
11 is through any knowledge, I believe the case law
12 states, as from a totality of the circumstances.

13 I would even argue that the evidence presented
14 so far has not even provided enough information for
15 a valid voice identification. The conversation that
16 he referred to with Mr. Moore is extremely vague.
17 We didn't hear anything about it in the pretrial
18 hearing and it was only for a few minutes. And he
19 never spoke with Mr. Moore on the phone before in
20 his life. The same goes for Delia Nix, he never
21 spoke to her over the phone. People's voices sound
22 completely different over the phone.

23 In furtherance of that, there's also, I
24 believe, the telephone conversation, Rule 901(b)(6),
25 it talks about if you establish where numbers come

1 from and if a call's made to certain businesses, you
2 can authenticate the parties to the call, but
3 neither one of these authenticate the contents of
4 the conversation. And what the State is trying to
5 introduce is contents of a conversation between what
6 they purport is Delia Nix and Mr. Moore without
7 giving the defense a chance to cross-examine the
8 contents of the conversation.

9 There's been no evidence or no testimony as far
10 as authenticating the contents of the conversation
11 and whether or not it fairly and accurately
12 represents the original conversation, which is what
13 the State is purporting this C.D. is a copy of.

14 **MS. WEISS:** Your Honor, if I may?

15 **THE COURT:** Sure.

16 **MS. WEISS:** Track number three contains
17 numerous admissions made by the defendant in
18 reference to this case. Those admissions are
19 admissible by the State as well.

20 **THE COURT:** Well, I think his objection goes to
21 the authentication of the exhibit.

22 **MS. WEISS:** Your Honor, we could go further as
23 far as the voice identification. I know Rule
24 901(b)(5) talks about hearing the voice at any time
25 under circumstances connecting it with the alleged

1 speaker. Investigator Barnes, I can proffer some
2 more testimony, could also tie in circumstances to
3 the speakers as well. I think he has as far as John
4 Moore being at Alvin S. Glenn, Delia Nix being his
5 girlfriend, giving the number, tying it to Delia Nix
6 and then recognizing the voices of Delia Nix and
7 John Moore over the phone.

8 **THE COURT:** When did he ever say this was Delia
9 Nix' phone number?

10 **MS. WEISS:** He did say Delia Nix, the
11 girlfriend, was one of the phone numbers that he
12 gave to Jeanie Shull to record.

13 (Pause.)

14 **THE COURT:** Was that since the jury came back
15 in last time?

16 **MS. WEISS:** I believe so, Your Honor. Yes,
17 sir, Your Honor.

18 **THE COURT:** When did he say that? I don't see
19 it.

20 (Pause.)

21 **THE COURT:** All right. The ruling is that the
22 exhibit has not been properly authenticated at this
23 point. It may certainly be authenticated and have a
24 different ruling at a later point. And you
25 certainly may continue to ask him questions.

1 With regard to entering an entire disk with
2 numerous conversations on it, I mean the only way I
3 can do that is if I tell the jury that if they want
4 to hear this exhibit, they have to hear it in the
5 courtroom. Otherwise, I send the C.D. back with all
6 kinds of conversations on it that aren't part of the
7 record.

8 **MS. WEISS:** No, Your Honor. I've got -- that
9 one, that's just the original C.D. and then I was
10 going to enter in just the track as the piece of
11 evidence to be played for the Court. I've got it
12 recorded just that one track on a separate disk.

13 **THE COURT:** Okay. In evidence means in
14 evidence. Exhibit means the same thing. I got lost
15 in your lingo.

16 **MS. WEISS:** The original disk -- what we were
17 going to play into evidence is the piece of
18 evidence --

19 **THE COURT:** I understand now, but I didn't
20 understand it 30 seconds ago. You were offering the
21 whole thing in evidence. Offering it in means the
22 same as offering it in evidence. An exhibit means
23 the same thing as in evidence, the way I understand
24 it. And I apologize to y'all if I misunderstand it.

25 **MS. WEISS:** Your Honor, I didn't know any other

1 way to do it without putting in the original.

2 **THE COURT:** Okay. It's no big deal.

3 **MS. WEISS:** I just want to make sure I'm clear
4 with you. This is -- I'm entering it the way it is
5 -- works.

6 **THE COURT:** I decided yesterday after I went
7 home and said my prayers, I'm not going to try to do
8 y'all's job.

9 **MR. COLLINS:** Your Honor, we would just ask
10 that at any point in their continued questioning, if
11 the Solicitor intends on playing the audio C.D. in
12 front of the jury, we would like to at least proffer
13 the conversation they intend on playing so that we
14 can decide whether or not it is admissible before
15 the jury gets a chance to hear it.

16 **MR. MEADORS:** Could we do that now?

17 **THE COURT:** We're going to have to do it now,
18 but how long is the conversation?

19 **MS. WEISS:** Just a couple minutes, Your Honor.

20 **MS. MCDUFFIE:** It's six minutes, Your Honor.

21 **MR. MEADORS:** Your Honor, to defend us --

22 **THE COURT:** Y'all cue it up and I'll be back
23 out in a second. We'll be at ease just a minute.

24 Mr. Barnes, you can't discuss your testimony
25 with anybody, okay.

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** Thank you.

3 (Brief Recess.)

4 **THE COURT:** Bring the jury in, please.

5 (The jury returns to the courtroom.)

6 **THE COURT:** Ladies and gentlemen, after
7 conferring with the attorneys about this legal issue
8 that I have to deal with, they tell me it's going to
9 be at least another half hour, 45 minutes. So I'm
10 just going to let you folks go home so that I can
11 continue to stay here and work on that and ask you
12 to be here in the morning at 9:30.

13 Now, as you know, I drew two alternates because
14 that's what the statute provides for me to draw up
15 two alternates and I've seated those two alternates.
16 So it's really, really important that you remember
17 those admonitions, don't let anybody discuss the
18 case with you, don't allow yourselves to be exposed
19 to any media coverage and report to me if anything
20 does happen.

21 I hope you have a very pleasant evening.
22 Tomorrow I hope sometime by the midmorning break to
23 give you some idea of where I think we are with the
24 progress of the case, where we are in relation to
25 when we'll finish up or likely finish up. Okay. I

1 hope you have a pleasant evening. Thank you.

2 (The jury was excused for the day.)

3 **THE COURT:** Just to make sure no one gets the
4 impression I'm trying to be coy, I'm not. The
5 customary way that I see things done with the
6 situation we have here as far as preserving the
7 record is that the C.D. in this instance with the
8 greater material on it is marked either as a court's
9 exhibit or as an identification exhibit and then the
10 C.D. with the portion that relates to what is being
11 tendered for the jury to take back with them is
12 marked as an exhibit.

13 There is no magic to that. I've had numerous
14 instances. It happens a lot with highway patrolman
15 who come in and they have their recordings from
16 their video cameras and they have all their stops
17 for the last 20 or 30 days or whatever that thing
18 will store on there and we have to deal with this
19 kind of thing a good bit.

20 But right now I'll just have to deal with the
21 issues before me. And it may be more than
22 authenticity. I'm not saying that's the only issue.
23 The defense is raising the objection that the
24 witness is not qualified to testify that this is
25 this particular person's voice.

1 Now, let me just tell you all to the extent
2 that it helps you, and again I'm not trying to --
3 I'm not trying to do anything except play this
4 straight down the middle like I always do. I never
5 heard the jailer -- the jail employee testify about
6 Mr. Moore being an inmate. I know there may be
7 reasons why nobody said that. I never heard any
8 other witness say that and I never heard the phone
9 number and I never heard who the phone number is
10 listed as being the subscriber with the telephone
11 company.

12 And I'm not trying to be hypertechnical, but I
13 think the defense is right, in most of the cases
14 that have had to deal with this, it's the situation
15 where one of the participants to the conversation
16 does testify. Now, I know there has to be cases
17 where that doesn't happen. There also are 911 tapes
18 that are admitted all the time. Of course, with 911
19 systems, you generally have automatic tracking as to
20 where the call's being placed from and usually there
21 is some identification of the persons by their name
22 at the outset of the call.

23 All right. Make your proffer as to what you
24 need to do so I can make my rulings.

25 **MS. WEISS:** Thank you, Your Honor. Just for

1 clarification of what we're doing at this time, do
2 you want me to go ahead and proffer all of his
3 testimony or do you just want to proffer the C.D. at
4 this time?

5 **THE COURT:** All I want to get into is the
6 admissibility of the C.D.

7 DIRECT EXAMINATION

8 BY MS. WEISS:

9 Q Investigator Barnes, you arrested John Moore on
10 November 3rd of 2005?

11 A I did.

12 Q And are you aware -- what day did you receive
13 this C.D.?

14 A 11/10/05 in the afternoon, 11/10/05 at 1510
15 hours.

16 Q And do you have personal knowledge whether or
17 not John Moore was still incarcerated at the Alvin
18 S. Glenn Detention Center?

19 A I do.

20 Q And was he?

21 A He was.

22 Q And had he been incarcerated continuously since
23 November 3rd of 2005?

24 A He has been.

25 Q So when you received this, he had been at Alvin

1 S. Glenn?

2 A That is correct.

3 Q And the dates that this tape reflect occurred
4 during those seven days?

5 A That is correct.

6 Q And how do you know that?

7 A Because that is the request that I had given to
8 Ms. Shull.

9 Q And you listened to these C.D.'s as well?

10 A I did.

11 Q So information on these C.D.'s, that led you to
12 know that they were recorded during that time
13 period?

14 A That is correct.

15 Q And what is that information?

16 A Information regarding times and places, people
17 associated with Mr. Moore, friends and associates,
18 relatives all were a part of the conversations.
19 This was -- the particular track you are referring
20 to is one of several tracks that I heard. On those
21 tracks I heard, it became apparent who was talking
22 based on the descriptions, based on the reading of
23 the search warrant from [REDACTED] by Delia
24 to John Moore, I understood who that was, the whole
25 volume of circumstances there, the totality of

1 circumstances.

2 **Q** When you got that C.D. from Jeanie Shull, from
3 Sergeant Shull, did you notate on that C.D. what
4 phone number that C.D. pertained to?

5 **A** I did not, that is not my handwriting. That is
6 how I received it, though.

7 **Q** Okay. And was that one of the phone numbers
8 that you requested?

9 **A** Honestly, I do not recall that. My assumption
10 is that it is, that she would not have given it to
11 me had I not notated it in my notes anywhere. I
12 would have to refer back to my case files to find
13 that particular number, so I don't honestly know
14 where (sic) that number is associated with, but I do
15 know that the people on that are associated with
16 this particular case.

17 **Q** And whose phone numbers did you give her,
18 specifically? What people of phone numbers did you
19 give?

20 **A** They were John Moore's residence, his daddy's
21 residence telephone number and Delia Nix's telephone
22 number.

23 **Q** So Delia Nix was one of the phone numbers that
24 you gave her?

25 **A** Yes.

1 Q And this phone call when you listened to track
2 three, who did you recognize as being the female on
3 the phone?

4 A Delia Nix, the girlfriend.

5 Q I'm sorry?

6 A Delia Nix, the girlfriend.

7 Q And what was notated on the front of that C.D.?

8 A G-friend.

9 Q You take that --

10 **THE COURT:** I'm sorry, I didn't hear you.

11 **THE WITNESS:** G-friend.

12 BY MS. WEISS:

13 Q Do you take that notation to mean --

14 A Girlfriend.

15 Q So that would be consistent with that being the
16 girlfriend's phone number?

17 A Yes, ma'am.

18 Q That you provided to Sergeant Shull?

19 A Yes, ma'am.

20 Q And you recognized the male voice as being who?

21 A John Moore.

22 Q The inmate at Alvin S. Glenn?

23 A That is correct.

24 Q And at the beginning of that phone call, the
25 Pay Telecommunications recording, are you aware of

1 what that says?

2 **A** John.

3 **Q** But the recording of the actual Pay
4 Telecommunication recording says who is calling, and
5 who does it identify?

6 **A** An inmate at Alvin S. Glenn Detention Center.

7 **Q** And that inmate identifies himself and
8 identifies himself in this case as being?

9 **A** John.

10 **Q** Okay. And so you recognize the voice and he
11 said that his name was John and he was an inmate at
12 Alvin S. Glenn?

13 **A** Correct.

14 **Q** And all of those are consistent with John
15 Moore, Junior, in this case?

16 **A** That is correct.

17 **THE COURT:** Before y'all go any further, where
18 do y'all get junior from?

19 **MS. WEISS:** That's just his name. He's a
20 junior, Your Honor.

21 **THE COURT:** Okay.

22 **MS. WEISS:** It was in my head.

23 **THE COURT:** Earlier he said John Joseph Moore
24 and then he said John Joseph Moore, Junior.

25 **MS. WEISS:** They're not different people, Your

1 Honor.

2 THE COURT: Y'all assume, like I told y'all,
3 that I know this stuff. I don't know this stuff.
4 Again, I'm not trying to be hypertechnical with you,
5 but I don't know what his daddy's name is and y'all
6 got to be careful. Go ahead.

7 MS. WEISS: Yes, sir, Your Honor.

8 BY MS. WEISS:

9 Q You recognize that voice as being John Joseph
10 Moore, the defendant in this case?

11 A Yes, ma'am.

12 Q And in that tape, are there conversations that
13 relate specifically to this case?

14 A Yes, ma'am.

15 Q There are conversations that relate
16 specifically to John Moore, the defendant?

17 A Yes, ma'am.

18 Q In this tape, does -- are there
19 conversations -- are there things that are being
20 said by Delia, who is John Moore's girlfriend, that
21 you recognize her voice, that are specific to this
22 case?

23 A Yes, ma'am.

24 Q And are those conversations specific to the
25 time period, these seven days, in which this tape --

1 this C.D. was recorded?

2 **A** Yes, ma'am.

3 **Q** And are those conversations that you would
4 expect to come from John Moore and Delia Nix, his
5 girlfriend?

6 **A** Yes, ma'am.

7 **MS. WEISS:** Your Honor, at this time, I'd like
8 to play the C.D.

9 **THE COURT:** You may play it.

10 (Whereupon, State's Exhibit Number 124 was
11 played for the Court.)

12 BY MS. WEISS:

13 **Q** That would be track three that we're talking
14 about?

15 **A** Yes, ma'am.

16 **Q** And hearing that voice again, do you recognize
17 the male voice?

18 **A** I do.

19 **Q** That male voice belongs to?

20 **A** John Joseph Moore, Junior, the defendant in
21 this case.

22 **Q** And the female voice?

23 **A** Is Delia Nix, his girlfriend.

24 **Q** And did you provide phone numbers for any other
25 girlfriends that you knew about?

1 **A** Not to my knowledge.

2 **Q** This was the girlfriend. And the information
3 they talked about, that specifically relates to this
4 case?

5 **A** Yes, ma'am.

6 **MS. WEISS:** Beg the Court's indulgence.

7 **THE COURT:** Yes, ma'am.

8 (Pause.)

9 BY MS. WEISS:

10 **Q** Investigator Barnes, specifically, comments
11 that he made was specifically regarding this case,
12 admissions in this case. And Delia Nix says, You
13 did shoot -- she says, You did not pull that fatal
14 shot. He says, Yeah?

15 **A** Yes, ma'am.

16 **Q** He admits to shooting?

17 **A** Yes, ma'am.

18 **Q** Says, What, you were shooting in front of
19 Kerwyn? He responds, Yeah?

20 **A** Yes, ma'am.

21 **Q** Admits to shooting in front of Ker --

22 **MR. COLLINS:** Your Honor, I believe we heard
23 the recording. I don't know if we need to go back
24 through a transcript that the State's made up of
25 their version of what they heard. I mean, the Court

1 heard the recording.

2 **THE COURT:** Overruled.

3 Go ahead.

4 **MS. WEISS:** Thank you, Your Honor.

5 BY MS. WEISS:

6 **Q** He says on the tape, I mean, we were shooting a
7 gun right in front of his face?

8 **A** Yes, ma'am.

9 **Q** He said that he saw the guy reach down in the
10 car like he was about to pull a gun and that's when
11 the shots started?

12 **A** That's what I remember, yes, ma'am.

13 **Q** He also admitted there was only one gun in the
14 truck?

15 **A** Yes, ma'am.

16 **Q** He also admitted in this tape that the back
17 window of the truck had opened up?

18 **A** Yes, ma'am.

19 **Q** Investigator Barnes, did law enforcement have
20 anything to do with eliciting this conversation?

21 **A** No, ma'am.

22 **Q** Was John Moore being interrogated by anybody in
23 this conversation involved with law enforcement?

24 **A** No, ma'am.

25 **Q** So these admissions were made freely and

1 voluntarily of his own free will?

2 A Yes, ma'am.

3 MS. WEISS: Your Honor, at this time, that's
4 all we have.

5 THE COURT: All right. Cross?

6 MR. COLLINS: Thank you, Your Honor. Please
7 the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. COLLINS:

11 Q You've testified at some point or another that
12 you served a search warrant at a couple different
13 places?

14 A Yes, sir.

15 Q And at the location of these search warrants,
16 there was numerous people present, right?

17 A That is correct.

18 Q And on the search warrant, are many details
19 involving the allegations of this crime, correct?

20 A That is correct.

21 Q And you left copies of the search warrants with
22 the people at those residences?

23 A I did.

24 Q And this is probably a week after -- do you
25 have any idea when this conversation took place?

1 A I don't.

2 Q You said --

3 A I know that it happened some time after the
4 arrest and before I got the C.D.'s.

5 Q You didn't actually ever see a video or witness
6 John Joseph Moore, Junior, pick up a phone and talk
7 on a phone at the jail, did you?

8 A No, sir.

9 Q You said you talked with Delia Nix for about 30
10 minutes off and on?

11 A Yes, sir.

12 Q And this was at the residence where the search
13 warrant was served?

14 A Yes, sir.

15 Q With numerous other people around talking to
16 you?

17 A No, sir, we pulled her out.

18 Q You pulled her out. Did you talk to her over
19 the phone?

20 A I don't recall that if I talked to her over the
21 phone prior to those or not, but I did talk to her
22 over the phone at some point after the arrest. I
23 don't recall whether I did that before these things
24 came in.

25 Q Do you recall what type of conversation you had

1 with her over the phone?

2 A Yes, sir. I recall one of them.

3 Q And what type of conversation --

4 A It was in regards to there was a possibility
5 that she was helping.

6 Q And how did you --

7 A Would you like me to go in further?

8 Q -- confirm that it was Delia Nix that you
9 talked to on the phone on those occasions?

10 A Because I knew her voice and I had called her
11 telephone number.

12 Q Is that before or after this conversation took
13 place purportedly at the jail?

14 A Like I said, I don't recall -- if you'll let me
15 refer to my notes. My notes are not clear on that
16 except to say that I -- after the first set of phone
17 calls that I received from Sergeant Shull out at
18 AGDC, there were some questions that came up in
19 regards to the search warrant and the evidence of
20 that search warrant. I know that Tom Amaro was out
21 at [REDACTED] with Delia Nix and I had
22 given him a message to have Delia call me. And I do
23 not recall whether or not I talked to her on the
24 phone and there's no notations in my notes that I
25 talked to her on the phone prior to me getting these

1 tapes, but it is fair to say that in the course of
2 this, I did talk to her on the phone.

3 **Q** And you testified that you spoke to John Moore,
4 Junior, for several -- a few minutes at the house
5 when you served the search warrant?

6 **A** Yes, sir.

7 **Q** And then you said you spoke to him several
8 minutes at headquarters?

9 **A** Yes, sir.

10 **Q** I believe you testified at pretrial hearing
11 that you remember asking him if he wanted chips or a
12 soda?

13 **A** Right. And we talked a little bit about
14 bridges in the conversation that didn't have
15 anything to do with this particular case in point,
16 but we talked about other issues that, you know,
17 that kind of opened up the conversation between he
18 and I.

19 **Q** You didn't testify to that before trial?

20 **A** Yes, I did.

21 **Q** But you hadn't talked with John Moore
22 personally on the phone, had you?

23 **A** No, sir.

24 **Q** You testified that the phone number belonged to
25 Delia Nix?

1 **A** Yes, sir.

2 **Q** Are you positive on that?

3 **A** After I had the -- testified here just a few
4 minutes ago, I did have a chance to look at the
5 arrest report and noticed on the arrest report at
6 [REDACTED] for John Joseph Moore, I had
7 listed at the time of his arrest that particular
8 telephone number, which would be Delia Nix'
9 telephone number.

10 **Q** And how did you confirm that that telephone
11 number is registered to Delia Nix?

12 **A** Just from what John Joseph Moore, Junior, told
13 me.

14 **Q** He listed that as his number?

15 **A** He listed that as his number.

16 **Q** And how did you confirm that was Delia Nix'
17 phone number?

18 **A** Because that was the same address as Delia Nix.

19 **Q** Do you know if it was a cell phone or a land
20 phone?

21 **A** Well, the jail, from what I understood, they
22 cannot bill a cell phone. They have to bill a
23 landline, so that was a landline number.

24 **Q** From what you understand?

25 **A** That's my understanding. [REDACTED]

1 Road and I know that as the prefix to be a landline
2 number.

3 Q And you never checked to see if that number
4 actually belonged to a person named Bridgett?

5 A Bridgett Cunningham also stays there at [REDACTED]
6 [REDACTED]. And my belief is that's her in
7 the background on some of those calls. I don't know
8 that for a fact because I didn't talk to her, but
9 that's my belief based on the totality of the
10 circumstances.

11 Q So more than one person stays at this
12 residence?

13 A Right.

14 Q You didn't listen to these conversations as
15 they were taking place, did you?

16 A No, sir.

17 Q You didn't listen on the end of who you purport
18 to be Delia Nix while this conversation took place,
19 did you?

20 A No.

21 Q And you didn't listen on the end of who you
22 purport to be John Moore while this conversation
23 took place?

24 A No, sir.

25 Q So the only thing you have to go by is the

1 recording provided to you by the Alvin S. Glenn
2 Detention Center?

3 A Yes, sir.

4 Q And you have to admit in listening to it there
5 are inflections of voice indicating sarcasm in some
6 of their statements, correct?

7 A There are tone and inflections in different
8 things I understand. I mean, there was emotion tied
9 up in those as well.

10 Q And it would be helpful to know what type of
11 emotions are actually coming through on those
12 voices, wouldn't it?

13 A Sure.

14 Q And it's also -- it would be fair to say that
15 the person doing the majority of the talking on this
16 track in particular is who you purport to be Delia
17 Nix, correct?

18 A She does a lot of talking.

19 Q If you cut John Moore's statements out and took
20 hers completely out, it would be extremely hard to
21 follow what he was talking about, correct?

22 A I misunderstood that question because --

23 Q If you cut that voice, the female voice, out of
24 this track and all you could hear was the voice of
25 who you purport to be John Joseph Moore, Junior, it

1 would be extremely hard to follow what the subject
2 of the conversation is?

3 **A** I don't know, but I would assume you could take
4 that stance.

5 **MR. COLLINS:** Beg the Court's indulgence.

6 **THE COURT:** Yes, sir.

7 (Pause.)

8 BY MR. COLLINS:

9 **Q** Do you know where Delia Nix is right now?

10 **A** She was sitting outside earlier.

11 **MR. COLLINS:** Thank you. No further questions.

12 **THE COURT:** Redirect?

13 **MS. WEISS:** Yes, Your Honor, briefly.

14 REDIRECT EXAMINATION

15 BY MS. WEISS:

16 **Q** Referring to your notes page 29.

17 **A** Yes, ma'am.

18 **Q** I ask you to refresh on those notes for a
19 minute.

20 **A** Yes, ma'am. Thank you for showing that. I did
21 interview her outside and she listed that telephone
22 number as her telephone number.

23 **Q** So you interviewed Delia Nix?

24 **A** Yes, ma'am.

25 **Q** And you actually asked her about the shooting?

1 **A** Yes, ma'am.

2 **Q** And so you actually had a conversation with her
3 at that point?

4 **A** Yes, ma'am.

5 **Q** And she gave you some phone numbers at that
6 point?

7 **A** Yes, ma'am.

8 **Q** And what phone numbers did Delia Nix give you?

9 **A** She gave me a cell phone number of [REDACTED] and
10 a home phone number of [REDACTED], which is the same
11 telephone number as listed on the front of this C.D.
12 that was given to me by Sergeant Shull on 11/10/05
13 at 1510 hours.

14 **Q** In listening to that tape, that C.D., John
15 Moore did make a couple statements, admissions
16 specifically, on there in his own words; do you
17 remember that?

18 **A** Yes.

19 **Q** Specifically, did you hear him say, I said
20 that's why I was just going to put it all on him
21 because, I mean, I was shooting a gun right in front
22 of his face?

23 **A** Yes, ma'am.

24 **MS. WEISS:** Thank you.

25 No further questions, Your Honor.

1 **THE COURT:** Recross?

2 **MR. COLLINS:** Very briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. COLLINS:

5 **Q** You understand that these phone calls from
6 Alvin S. Glenn Detention Center are limited to a
7 certain amount of time, correct?

8 **A** Yes, sir.

9 **Q** The phone cuts off after a certain amount of
10 time?

11 **A** Yes, and they give them a warning that it's
12 getting ready to happen.

13 **Q** I believe it's a one minute warning or
14 something --

15 **A** If I recall correctly, that's right.

16 **Q** And this one track that we're speaking of and
17 that the Solicitors have referenced the transcript
18 to you on is one of many, many phone calls you
19 listened to, correct?

20 **A** That is correct.

21 **Q** In some of the calls, it's even referenced that
22 he would call her right back, correct?

23 **A** That is correct.

24 **Q** I believe we have copies of up to 20 phone
25 calls, correct?

1 **A** I have supplied you all the copies I have, yes,
2 I believe that's --

3 **Q** And that would be from one week's period?

4 **A** -- that would be a fair assertion.

5 **Q** And that would be from one week's period?

6 **A** From the time that he got arrested to the time
7 that I received them, I believe that's a week.

8 **MR. COLLINS:** No further questions, Your Honor.

9 **THE COURT:** Thank you, sir. I think you can
10 step down, but you can't discuss your testimony with
11 anybody.

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** All right.

14 **MR. MEADORS:** Can I say one brief thing and
15 then I'll turn it...

16 **THE COURT:** Yes, sir.

17 **MR. MEADORS:** A lot of reference has been made
18 to this wasn't brought up in the pretrial. I, and I
19 think we specifically asked if there were any other
20 objections to statements and they said, no. And Ms.
21 Weiss, even in her opening, said there was a
22 statement they were going to hear with the wire and
23 then another statement from the Alvin S. Glenn
24 Detention Center.

25 I say that because of some of the testimony

1 that he may or may not have testified as to all of
2 these issues on Monday because we didn't think that
3 was an issue. And we'd asked him if there was going
4 to be an issue in the other two statements and we
5 were told, no. I understand we still have to
6 authenticate it, I'm not saying that, but by the
7 same point, I don't want the fact he may not have
8 gone into some of this Monday is because we did not
9 think any of it was an issue. And I just wanted to
10 put that on the record and turn it over to counsel.

11 And, Your Honor, we'd like to offer the entire
12 statement on the tape. He's authenticated it. He
13 said he had talked to both of them before,
14 recognizes those voices. The facts in and of itself
15 I think are -- to him have authenticated it because
16 he's talking about the crime, using the names.

17 In addition to that, Your Honor, they are
18 admissions. Law enforcement is not -- it's clearly
19 an admission against interest. In response to Mr.
20 Collins questions, he had no idea this conversation
21 was going on. He's down there. After he's being
22 warned your calls are being taped, it clearly says
23 that, he makes these admissions, some of them
24 straightforward, That's why I was going to put it
25 all on him because, I mean, I was shooting a gun

1 right in front of his face. I think that's what
2 happened. That's what the passenger said happened.
3 That's clearly an admission there respectfully.

4 But, Judge, we'd ask Your Honor to consider
5 that it's been authenticated that the only calls we
6 can have and can be recorded are ones that are
7 recorded front to end, that tape kind of speaks for
8 itself on that. In a way, I don't know if I should
9 say, but that's kind of self-authenticating, nothing
10 else could be on there. They couldn't have recorded
11 it and downloaded it unless they had the whole phone
12 call. That's all. Thank you.

13 **THE COURT:** Anything else?

14 **MS. WEISS:** Speaking to some of the issues that
15 you raised, Your Honor, he clearly indicates that
16 the phone number -- the phone number of Delia Nix,
17 the time period that he was an inmate that he was at
18 the jail that it had to be within those seven days.
19 He knew firsthand knowledge that he was still at the
20 jail during that time. The tape says it's on an
21 inmate at the Alvin S. Glenn Detention Center, that
22 inmate's name is John, that's been further
23 corroborated by the facts of what he's talking
24 about.

25 I think the tape at this point has been

1 authenticated. I think the voices have been
2 identified through the totality of the
3 circumstances, the phone call, the number,
4 everything, and the recognition of Eric Barnes of
5 those voices. And I think, you know, once again,
6 that they are admissions. I think that this tape
7 has now been authenticated and should be presented
8 to the jury.

9 **THE COURT:** Mr. Collins.

10 **MR. COLLINS:** Your Honor, first and foremost,
11 if the Court rules that the identification of the
12 voices on the telephone conversation are valid,
13 that's still not enough to authenticate in
14 introducing the entire contents of the conversation.
15 We still don't have any witness that can testify as
16 to the contents being what was actually said in the
17 original conversation. We have a recording from a
18 system we know nothing about and that witness has
19 been released.

20 And it goes back to the comparison I made
21 earlier as far as the photograph. You can identify
22 it, but it then has to be what it purports to be.
23 We don't have any testimony as far as that is
24 concerned.

25 And after listening to the track that they're

1 seeking to introduce, you can clearly understand
2 that Delia Nix is the one doing most of the talking,
3 if you assume it's Delia Nix. She's the one doing
4 the talking. She's testifying. She's on the
5 witness list. She can easily come in here and
6 explain what's on there.

7 As far as admissions, a lot of this has to do
8 with inflection of voice. Sarcasm is easily to
9 discern in a lot of those. The danger is taking
10 statements out of context without having anybody
11 from the defense to cross-examine as far as the
12 situation and the contents of the conversation. I
13 don't believe that they can authenticate the
14 contents of this phone call without anyone who had
15 any privy to the original conversation.

16 911 phone calls are allowed in as
17 nontestimonial. I believe after hearing this, it's
18 completely testimony on Delia Nix' part, the
19 admissions from a party opponent being able -- the
20 prejudicial effect of being taken out of context
21 without anybody to cross-examine to explain the
22 context of the conversation.

23 He testified that there were at least 20 phone
24 calls in one week period that lasts a very short
25 amount of time. We don't know if this was a phone

1 call directly after another phone call in the
2 context of a bigger conversation. If we have a
3 witness here to cross-examine and to testify, we can
4 learn about that information, but without that, this
5 is a single conversation that could easily be taken
6 out of context and which is not authenticated this
7 is even the contents of the original conversation.

8 **THE COURT:** All right. Thank you.

9 The ruling of the Court is that the track three
10 recording is admissible. It has been authenticated
11 sufficiently to satisfy the requirements of Rule
12 901. Rule 901(a) deals with authentication or
13 identification. Subsection (a) reads that the
14 requirement of authentication or identification as a
15 condition precedent to admissibility is satisfied by
16 evidence sufficient to support a finding that the
17 matter in question is what its proponents claims to
18 be -- or what its proponents claims. And then it
19 gives illustrations which are not to be -- deemed to
20 be an exclusive list rather they are illustrations.

21 Subsection (5) deals with voice identification,
22 subsection (6) deals with telephone conversations.
23 With regard to subsection (6), I had raised some
24 issues about concerns I had because the rule talks
25 about evidence about a number assigned and tying

1 that number in some way to the particular person or
2 business, and I think you have to read that to also
3 deal with a location.

4 That now has been tied up sufficiently for the
5 Court to allow it to go to the jury because there is
6 evidence that this phone number is the home phone
7 number of not only the location where the search
8 warrant was executed and the defendant was arrested,
9 it also is indicated to be the phone number given by
10 Ms. Nix who's been identified as the defendant's
11 girlfriend. The phone may be listed in someone
12 else's name, but there's been evidence about who
13 lived there and the connection that those people
14 have to each other and to the case.

15 Moreover on subsection (5), a person can
16 testify as to voice identification. I don't know
17 that it would be absolutely necessary that both
18 parties to the conversation be identified under
19 subsection (5), but I think they have been in this
20 instance sufficient to go to the jury.

21 Now, there are numerous jury issues. And there
22 are numerous opportunities to cross-examine and
23 point out weaknesses in what this conversation is
24 and what it purports to be, but as far as it's
25 admissibility, I'm satisfied that it is admissible

1 and it may be played to the jury.

2 Do we have anything else I can do tonight?

3 **MR. MEADORS:** If I could just get some
4 guidance, Your Honor, as far as time tomorrow for
5 planning purposes for us and the rest of the office.
6 If we were to break around midday or rest, let's
7 just say, hypothetically, I don't know whether or
8 not they have anything, would Your Honor's
9 inclination be to go on and go forward tomorrow
10 afternoon and finishing the trial? And if you
11 didn't want to comment now, I understand that. I'm
12 just trying to think ahead --

13 **THE COURT:** No. I don't mind telling you at
14 all what I'm thinking right now as long as you all
15 understand this huge caveat, I don't know. I don't
16 know what's going to happen with a juror. What
17 happened this afternoon with that juror just was
18 bizarre. And I should have learned a long time ago
19 that I can't really plan a lot of these things too
20 well. My wife doesn't seem to understand when I'm
21 doing jury trials when I try to explain to her that
22 I lose control over a lot of the time.

23 Now, to your question, I have drug court
24 tomorrow night in Lexington, which is at 6:00. I
25 cancelled it last week. I have no problem with

1 cancelling it this week if it looks as though that's
2 something I need to do.

3 What I generally do with drug court is I try to
4 find out how they're doing, the participants. And
5 if the participants are doing well, we don't really
6 need for me to go over there and pat them on the
7 back too much. If there's some problem issues, then
8 I don't like to string too many weeks in a row
9 together that I don't have the ability to sanction.
10 So I do have drug court, but I already told my law
11 clerk that first thing in the morning, or either go
12 ahead and send an e-mail today, notifying them that
13 I might be tied up.

14 I've been looking at this law a good bit today.
15 And I try to work on the computer and get a draft of
16 the charge together as I go along in every case, of
17 course I can't finalize it, but one of the issues
18 that I've been looking at is something, quite
19 frankly, I've never had to wrestle with. And so I
20 can see us possibly getting bogged down on this to
21 where we have to have a good bit of discussion. I
22 plan to take the computer home with me tonight.

23 I think I've read every single case that I
24 could find. The issue deals with whether the
25 defendant is requesting a voluntary manslaughter

1 charge. And just to alert you all so maybe you can
2 spend your night reading law, too, what I'm troubled
3 by is that apparently South Carolina has case law
4 which I read to be somewhat conflicting. And the
5 case law states very specifically that if you're
6 dealing with transferred intent, that murder doesn't
7 get reduced to manslaughter. So if I am engaged in
8 some provocation from one person and I kill another
9 one in heat and passion following that provocation,
10 that I don't get the benefit of having a reduced
11 charge submitted to the jury on voluntary
12 manslaughter.

13 And there was a recent case, it's a 2007 case,
14 which, as you all know who read our cases in South
15 Carolina, it's very unusual that we have a case that
16 came down in this fashion. There were two justices
17 who ruled that voluntary manslaughter should not be
18 submitted to the jury. The Chief Justice concurred
19 in result only and said that she felt as though that
20 the majority was misconstruing the self-defense
21 aspects and how that played into this division
22 between murder and manslaughter.

23 Then two other justices dissented, Justice
24 Pleicones and Justice Moore. And they stated that
25 they felt as though voluntary manslaughter should

1 have been submitted to the jury in a situation where
2 there was an altercation between one person and the
3 defendant and another person wound up getting
4 killed.

5 So I don't know what the defense intends to do.
6 I don't know what their position is. I don't know
7 if they're going to offer any evidence. I don't
8 know any of that. Was it Childers?

9 **MR. MEADORS:** That's a Kershaw County case Your
10 Honor's talking about and I tried that with now
11 Judge McMahon. So I'm very familiar with it.

12 **THE COURT:** The Court of Appeals had said that
13 the trial judge should have submitted voluntary
14 manslaughter to the jury and that was a unanimous
15 decision of that panel, which I remember Justice
16 Anderson was on it and Chief Justice Hearn. I can't
17 remember the third person, I think, wrote the
18 opinion.

19 Anyway, that's something you all need to be
20 prepared to address. And I don't know that there is
21 an answer because you've got all this law that is
22 much older, but also it's followed up through
23 current law that says that transferred intent can
24 make something -- some act be murder or
25 manslaughter. So if you say it can be murder or

1 manslaughter...

2 **MR. MEADORS:** Judge, if I --

3 **THE COURT:** How do you have sudden heat and
4 passion against -- I don't see how those things fit
5 together. I mean, to me -- I guess what I'm
6 struggling with is it seems that I understand
7 Justice Pleicones and Justice Moore's logic and I
8 think I follow the other ones. And I read very well
9 the law that says that you don't have transferred
10 intent that reduces murder to manslaughter.

11 Now, as far as I know, the defense may just
12 want murder or nothing, but y'all need to give some
13 thought to that and be prepared to talk about it.

14 **MR. MEADORS:** Judge, with that being said, if
15 we broke midday, would Your Honor just assume that
16 we might could have a charge conference so you can
17 get to drug court and we argue Friday morning? I
18 mean, is that a possibility?

19 **THE COURT:** Sure, that's a possibility. What I
20 generally try to do is print out my charge for you
21 in advance. Now, generally it's just printed out,
22 you get a chance to read it before you argue to the
23 jury and we talk about it and I try -- I've tried to
24 do that for the last several years. I think there's
25 only been one case, maybe two, where we were in such

1 a rush I couldn't get that done, but it helps me
2 because it reduces the amount of argument I hear
3 from the lawyers because once you see what I intend
4 to charge, you might quibble over a few words here
5 and there, but the concepts are basically the same.

6 So the answer to your question is, yes, that's
7 a possibility. Regardless of the outcome, I'd be
8 delighted to be over here on Friday. It doesn't
9 matter to me.

10 **MR. MEADORS:** The State would -- and I briefly
11 talked with them, we'd be happy to do this Friday if
12 we finished midday and do the conference and
13 obviously whatever Your Honor says --

14 **THE COURT:** If you're asking me realistically
15 what I think is going to happen, I think it's
16 probably going to be going to the jury on Friday.

17 **MR. COLLINS:** Just discussing with Mr.
18 Strickler one brief thing going back to the
19 recording, I believe that in the proffer one of the
20 answers to one of the questions was Mr. Barnes'
21 opinion as far as one of the responses of Mr. Moore.
22 We would just ask there be some instruction that he
23 not be allowed to register any opinions regarding
24 the responses in front of the jury having no
25 personal knowledge of that conversation.

1 **MR. STRICKLER:** And beyond that, Your Honor, if
2 you will, I just submit that the recording speaks
3 for itself. The jurors are possessive of all the
4 senses that the investigator is possessed of. They
5 can hear. It either says what he claims it says or
6 it doesn't. And they're capable of making that
7 decision. They don't need any help in that regard,
8 that requires no special expertise.

9 **THE COURT:** I will say just without ruling, as
10 far as, again, trying for one witness to say what
11 another person thought or meant, that's going to be
12 difficult to get in. Just like we did in the
13 motions on Monday with the other recording, you had
14 one participant in the conversation who was saying
15 what was said, that's typical.

16 When you've got a third party who's not part of
17 the conversation, it's going to be awfully hard for
18 this officer or anybody else to sit on the stand and
19 say that's what they said on that tape unless it's a
20 translation issue or a slang issue that the jury
21 might not be familiar with a term and the person has
22 some expertise that can assist the jury in
23 understanding.

24 So I will tell you as a general proposition, I
25 agree with the defense 's assertion that the witness

1 is not going to be able to sit up there and the
2 lawyer ask him what did they just say and he repeat
3 it. Okay?

4 **MS. WEISS:** Yes, Your Honor.

5 **THE COURT:** But I'll take that as it comes.
6 We're in recess until 9:30 in the morning.

7 (Whereupon, the proceedings were concluded
8 for January 30th, 2008.)

9 (The following proceedings were held on
10 January 31, 2008.)

11 **THE COURT:** Mr. Barnes, I think I need you back
12 up here.

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** State ready?

15 **MS. WEISS:** State's ready, Your Honor.

16 **THE COURT:** Defense?

17 **MR. COLLINS:** Defense is ready, Your Honor.

18 **THE COURT:** All right. Bring the jury in,
19 please.

20 (The jury enters the courtroom at 9:40 a.m.)

21 **THE COURT:** You may continue, Solicitor.

22 **MS. WEISS:** Thank you, Your Honor.

23 DIRECT EXAMINATION cont.

24 BY MS. WEISS:

25 **Q** Investigator Barnes, I'm going to start with

1 just a procedural issue. Do you recognize what's
2 been marked as State's Exhibits 19, 20 and 34?

3 **A** Yes. Those are the pictures of the victim's
4 vehicle when it was brought into the garage at the
5 sheriff's office to be processed by the forensics.

6 **MS. WEISS:** Your Honor, at this time, the State
7 would introduce Exhibits 19, 20 and 34 into
8 evidence.

9 **MR. COLLINS:** No objection.

10 **THE COURT:** Thank you.

11 (State's Exhibit Numbers 19, 20 and 34,
12 photographs, admitted into evidence.)

13 BY MS. WEISS:

14 **Q** Now, we're going to go back where we were
15 yesterday when we broke and talk about your
16 opportunity to talk to Delia Nix. Can you identify
17 for the jury, refresh the jury's memories, who Delia
18 Nix is?

19 **A** Delia Nix is the girlfriend of John Joseph
20 Moore, Junior, the defendant in this case. She was
21 staying at [REDACTED] and that's where
22 Mr. Moore was staying as well.

23 **Q** And did you have the opportunity to talk to
24 Delia Nix?

25 **A** I did.

1 **Q** And on what day were you able to talk to Ms.
2 Nix?

3 **A** It was, I believe, the 3rd of November 2000 --
4 bear with me just a moment -- it was the 3rd of
5 November 2005.

6 **Q** And what were the circumstances under which you
7 had the opportunity to talk to her?

8 **A** We had a search warrant for that house and an
9 arrest warrant for Mr. Moore. We served the search
10 warrant and arrest warrant that day. I pulled Ms.
11 Nix and Mr. Moore out on to the front porch and read
12 the search warrants to them. And I spoke with Ms.
13 Nix about the search warrant and what we were doing
14 for probably about 30 minutes. And we were there
15 for a longer period of time.

16 **Q** When you were talking to her, did she give you
17 any information, personal information, about
18 herself?

19 **A** She did. She stated that -- she gave me her
20 cell phone, her home phone and her date of birth and
21 that sort of thing.

22 **Q** What was her home phone number?

23 **A** Her home phone number was [REDACTED].

24 **Q** And where did that number go to? Where did she
25 tell you that number went to?

1 **A** To that Hard Scrabble Road address where she
2 lived.

3 **Q** Are you aware if she lived there with anybody
4 else?

5 **A** She lived there with a young lady named
6 Bridgett and I don't recall Bridgett's last name
7 right off the bat, but she did live there with a
8 young lady named Bridgett and also John Joseph
9 Moore, Junior.

10 **Q** And John Joseph Moore, Junior, is the
11 defendant?

12 **A** That is correct.

13 **Q** Did you have ample time during that
14 conversation to be able to recognize her voice at a
15 later date?

16 **A** Yes, I did.

17 **Q** And did you talk with her on the phone at a
18 later date?

19 **A** I did.

20 **Q** How did you know at that time that you were
21 talking to Delia Nix on the phone?

22 **A** Because I knew her voice and because I called
23 her number and asked for her and she got on the
24 phone and -- those identifiers.

25 **Q** Did you have the opportunity that same day to

1 talk to John Joseph Moore, Junior, the defendant?

2 A I did.

3 Q And did that start at the same time?

4 A It started at the same time.

5 Q And did you have a conversation with him at

6 [REDACTED]?

7 A Right, that's where I first talked to him and

8 then later on I talked with him a little bit more.

9 Q Did you have sufficient time during those
10 conversations that you would be able to recognize
11 his voice?

12 A I did.

13 Q On that day, on November 3rd, 2005, was that
14 the day that Mr. Moore was taken into custody?

15 A That is.

16 Q And where was he housed?

17 A At the Alvin S. Glenn Detention Center on Bluff
18 Road.

19 Q Between November 3rd and November 10th, do you
20 have firsthand knowledge as to whether or not he
21 left the Alvin S. Glenn Detention Center?

22 A He resided there for the whole time.

23 Q I'm going to show you what's been marked as
24 State's Exhibit 129 for identification only. Do you
25 recognize this C.D.?

1 **A** Yes, ma'am. This is the C.D. that I received
2 from Sergeant Shull at the Alvin S. Glenn Detention
3 Center when I requested phone calls that might have
4 come out of Alvin S. Glenn Detention Center on
5 several numbers that I provided to Ms. Shull. She
6 is -- she provided me with this C.D.

7 **Q** And is that C.D. referencing one specific
8 number?

9 **A** Yes, ma'am. It's referencing [REDACTED], that
10 would be Delia Nix' telephone number, John Joseph
11 Moore, Junior's telephone number, the defendant, at
12 [REDACTED].

13 **Q** And is there another word on there that
14 identifies whose number that is?

15 **A** Right. It's G-friend, girlfriend, underneath
16 the telephone number.

17 **Q** And are you aware of whether or not the
18 [REDACTED] is a cell phone or a landline?

19 **A** That is a landline telephone number.

20 **Q** Have you had the opportunity to listen to that
21 C.D.?

22 **A** I did.

23 **Q** Specifically, did you have the opportunity to
24 listen to track three of that C.D.?

25 **A** I did.

1 **Q** And I'm going to go back one second. On what
2 date did you receive that C.D.?

3 **A** I received this C.D. on 11/10/05 at 1510 hours,
4 that's 3:10 hours in the afternoon.

5 **Q** And at that time --

6 **A** And I initialed it and timed and dated it when
7 I received it.

8 **Q** And at that time, you personally were aware
9 that John Joseph Moore, Junior, was still
10 incarcerated at the Alvin S. Glenn Detention Center?

11 **A** That is correct.

12 **Q** And you were able to listen to track number
13 three of that C.D.?

14 **A** That is correct.

15 **Q** What voices, if any, were you able to recognize
16 on track three?

17 **A** I recognized the defendant's voice and Delia
18 Nix' voice.

19 **Q** And you recognized both of those voices from
20 the conversations you had with them on November 3rd
21 of 2005?

22 **A** That is correct.

23 **Q** When the recording begins, are you aware of
24 what the very first thing says on that recording in
25 general?

1 **A** It says, This is a call from the Alvin S. Glenn
2 Detention Center. You have a call from, and then
3 whoever's --

4 **Q** So it specifically says, you're having a call
5 from an inmate at the Alvin S. Glenn Detention
6 Center?

7 **A** Right.

8 **Q** And John Joseph Moore, Junior, was an inmate
9 there?

10 **A** That is correct.

11 **Q** Then it says, This is a call from, and it gives
12 a space. What name at that point is put in?

13 **A** John is the name that came across.

14 **Q** And that's consistent with the defendant?

15 **A** The defendant.

16 **Q** In listening to those conversations, to the
17 conversation between Delia Nix and John Joseph
18 Moore, Junior, are they discussing specific issues
19 related to this case?

20 **A** Yes, they are.

21 **Q** Are they discussing issues specifically related
22 to --

23 **MR. COLLINS:** Objection, Your Honor, leading.

24 **THE COURT:** Sustained.

25 **BY MS. WEISS:**

1 Q Did those conversations relate to what was
2 going on at the time in this case?

3 A Yes.

4 MS. WEISS: Beg the Court's indulgence.

5 (Pause.)

6 Q Show you -- I've got State's Exhibit 124,
7 specifically track number three on this tape. Have
8 you been able to listen to State's Exhibit 124?

9 A I have.

10 Q In its entirety?

11 A I have.

12 Q And is that the same exact recording as what
13 was on State's Exhibit 129 for I.D.?

14 A It is.

15 MS. WEISS: Your Honor, at this time, I'd like
16 to introduce State's Exhibit 124 into evidence.

17 THE COURT: Subject to the previous objection?

18 MR. COLLINS: Yes, Your Honor.

19 THE COURT: All right. Mark it in evidence,
20 please, ma'am.

21 (State's Exhibit Number 124, C.D., admitted
22 into evidence.)

23 MS. WEISS: Your Honor, at this time, I'd like
24 to play the recording.

25 THE COURT: Yes, ma'am.

1 (Whereupon, State's Exhibit Number 124 was
2 played for the jury.)

3 BY MS. WEISS:

4 Q That's the same recording that you listened to
5 from the Alvin S. Glenn Detention Center?

6 A That is.

7 Q And the male voice that you just heard on that
8 tape was who?

9 A The defendant.

10 MS. WEISS: Thank you. No further questions at
11 this time. Please answer any questions the defense
12 may have.

13 MR. COLLINS: Please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. COLLINS:

17 Q Good morning, Investigator Barnes.

18 A Good morning.

19 Q Let's go ahead and start about the recording we
20 just heard.

21 A Sure.

22 Q That's one of many phone calls made from the
23 jail from the numbers that you asked for, correct?

24 A That is correct.

25 Q Roughly around at least 20 calls in a one week

1 period?

2 A That's correct.

3 Q You don't know what time that that call took
4 place?

5 A No, I don't know what time that particular
6 call --

7 Q Some time over a one week period?

8 A Some time over that one week period.

9 Q You don't know if conversations took place
10 right before or right after that conversation?

11 A I believe there was conversations right before
12 that from the standpoint of another phone call.

13 Q But you don't know the time of the phone calls?

14 A I don't know the time of the phone calls.

15 Q You didn't listen to this conversation as it
16 took place either, did you?

17 A Real time? No. All I heard was the recording.

18 Q And you've been here all week throughout this
19 trial, correct?

20 A That's correct.

21 Q Have you seen Delia Nix around?

22 A Yes, I have.

23 Q So she's been here?

24 A Yes, she has.

25 Q All right. I'm just going to kind of back up

1 and start back from the beginning from a lot of
2 stuff we talked about yesterday. You've talked
3 extensively with the Solicitors about this case in
4 getting ready for this trial, correct?

5 A Of course.

6 Q You're the lead investigator on this case?

7 A That's correct.

8 Q And throughout all of the investigation and the
9 long periods of time of investigating leading up to
10 this trial, you took detailed notes of everything
11 you did, correct?

12 A I took some fairly detailed notes.

13 Q You've done a lot of things and you put forth a
14 lot of hard work to try to solve this case?

15 A I have.

16 Q You take pride in those notes you take because
17 you want to make sure they're very accurate?

18 A Well, I do my best. One can spend all their
19 time writing and not doing and so you try to find a
20 balance.

21 Q And this was a long investigation?

22 A Yes, it was.

23 Q In fact, it turned into a cold case?

24 A Well --

25 Q Took over a year to solve it, correct?

1 **A** It took over a year to solve. I guess, it's in
2 your classification of what a cold case is, but,
3 yes, it took over a year to solve.

4 **Q** And there were many tips that came in, correct?

5 **A** Yes.

6 **Q** There were several leads to follow up on,
7 correct?

8 **A** We went down several roads, but none of them
9 were -- we were able to corroborate back to the
10 facts of the case.

11 **Q** I believe your case file was almost 4,000 pages
12 worth of information, correct?

13 **A** It was a lot.

14 **Q** You investigated many people that had ties with
15 .45 caliber handguns, correct?

16 **A** We investigated the -- yes, I would say so.

17 **Q** Specifically black males?

18 **A** Well, we investigated a lot of people and not
19 all of them were black males and not all of them
20 were white males. We -- it's a hodgepodge of the
21 community. We investigated a lot, but --

22 **Q** Predominantly what's in your case file, black
23 males tied with handguns .45 caliber, correct?

24 **A** Well, I would say so based on the makeup of our
25 community.

1 Q You also investigated Chevy pick-up trucks tied
2 to black males, correct?

3 A And white males.

4 Q Predominantly in your case file, black males,
5 correct?

6 A Well, that was the description that we got --

7 Q I understand.

8 A -- from the first day, but --

9 Q In fact, you --

10 A -- to say that we, you know, every truck that
11 came up if it didn't have a white male -- I mean, if
12 it didn't have a black male tied to it then we just
13 excluded it, would be wrong, but we checked a lot of
14 people and investigated a lot of different leads
15 that came up.

16 Q You didn't preserve paperwork of a white male
17 owning a Chevy pick-up truck in your case file, did
18 you?

19 A In my notes, I do not recall those in the 4,000
20 pages of stuff that came up. I'm not going to sit
21 here and say that I didn't preserve any of that
22 because there's a lot of stuff that came up and the
23 names would come up and you look at them and you
24 follow up with initial stuff and you go, that's not
25 tied to this at all. And some of them, you know, I

1 didn't even check to see if they were white males or
2 black males, it was just these things that come up
3 in any investigation. I'm not going to narrow it
4 down in that way.

5 Q And there was a lot of press about this
6 incident when it first took place, correct?

7 A There was.

8 Q It was on the news a good bit?

9 A The community was very interested in this case.

10 Q And that puts a lot of pressure on the
11 sheriff's department to solve this case, doesn't it?

12 A Well, there was pressure from a lot of
13 different areas.

14 Q You want to find the people that did this,
15 correct?

16 A I would like to hold the right people
17 accountable.

18 Q You want to find the shooter?

19 A I would like to.

20 Q And you were using whatever means you had
21 necessary, whatever means at your disposal, to try
22 to find the shooter in this case, correct?

23 A I tried to use whatever means that were
24 available to me that were legal.

25 Q Understandable. You also even went to a

1 certain point where you hypnotized the witness from
2 the scene, Mr. Gene Derrick, correct?

3 **A** We were trying to ascertain the tag of that
4 truck after we had gotten a good description from
5 him about the time and place and events and
6 understood and felt pretty confident about what he
7 was saying about that time line. And, yes, we did
8 go back through hypnosis and tried to elicit when he
9 was less stressed in that particular hypnotic state,
10 that was the idea, to try to see if we could find a
11 tag number that might come back to a truck that was
12 involved in this.

13 **Q** And where did you guys hypnotize him?

14 **A** At the sheriff's office.

15 **Q** Sheriff's department?

16 **A** Uh-huh.

17 **Q** It was video taped, wasn't it?

18 **A** It was.

19 **Q** So there is video tape equipment at the
20 sheriff's department?

21 **A** There is, yes.

22 **Q** And in this hypnotism session, he stated he saw
23 a left arm hanging out the window, didn't he?

24 **A** If you'll stand by and let me go back to my
25 notes here and just see. (Pause) I don't recall

1 that in my notes.

2 **Q** You don't recall. When is the last time you
3 watched the video?

4 **A** I don't recall ever watching that video.

5 **Q** Okay. Do you recall putting out a patrol
6 directive on October 28th, 2004?

7 **A** In regards to...

8 **Q** In regards to sending it -- first of all,
9 explain what a patrol directive is.

10 **A** A patrol directive would be something that
11 would come up in the case that we may be interested
12 in finding. It's not necessarily -- it's not
13 necessarily something that we are very sure of, but
14 we're wanting to see if the patrol units find these
15 particular things that are out there so that we can
16 follow up with it. For instance, we may have a
17 patrol directive saying that we have a series of
18 house break-ins in a particular community, need you
19 to get into the community and keep an eye out and
20 see if anything comes up. And they will filter,
21 hopefully, some information back to the
22 investigators, much the same way -- I mean, if
23 you're talking about a patrol directive, that is
24 generally what a patrol directive would be.

25 **Q** And October 28th, 2004 would be after you had

1 interviewed Mr. Derrick and after he had given a
2 written statement, correct?

3 **A** Correct.

4 **Q** And after you had hypnotized Mr. Derrick?

5 **A** Correct.

6 **Q** If I showed you a copy of a patrol directive,
7 would it refresh your memory?

8 **A** It probably would, yes.

9 (Pause.)

10 **MR. COLLINS:** We're not intending to offer this
11 as evidence. I would like to have this marked as
12 Defense Exhibit Number 1 for I.D. purposes only.

13 **MS. WEISS:** Your Honor, if the defense wants to
14 enter it in evidence, the State has no objection.
15 However, if they don't wish to, we'd ask that they
16 not ask questions off of it if it's not in evidence.

17 **MR. COLLINS:** Your Honor, I'm trying to use
18 this to refresh his memory about a patrol directive
19 he sent out back in 2004.

20 **THE COURT:** The objection is overruled.

21 (Defendant's Exhibit Number 1, patrol
22 directive, was marked for identification purposes
23 only.)

24 **BY MR. COLLINS:**

25 **Q** Investigator Barnes, do you recognize what this

1 is?

2 A Yes. That was a patrol directive that we put
3 out in regards to kind of what we were looking for
4 as far as the pick-up truck to the best of our
5 ability at the time and best of our investigative
6 interviews at the time.

7 Q Does that refresh your memory about putting the
8 passenger was the shooter in the patrol directive?

9 A Right. That's what we put into the patrol
10 directive, that is correct.

11 Q That the passenger was the shooter?

12 A That's correct.

13 Q Thank you.

14 A As far as the patrol directive, that's correct.

15 Q So you're using all the resources to aid in
16 this investigation, following up on any leads out
17 there, correct?

18 A We're trying.

19 Q In fact, you focused on Mr. Gene Derrick for a
20 while, too, didn't you?

21 A Well, that is what we call victimization. And
22 I'll be happy to go into that if you like, but --

23 Q It was just a yes or no question.

24 A Yes.

25 Q I'm just going through all leads you followed

1 up on.

2 A Yes.

3 Q And moving on now to October 24th, 2005, do you
4 remember that date?

5 A (Witness reviewing document.)

6 Q I believe it was the date you received the
7 Crime Stopper tip report about Kerwyn Phillips and
8 John Joseph Moore?

9 A I seem to have -- I am missing pages 26 through
10 28 of my notes here.

11 Q I believe I have an extra copy.

12 A Thank you.

13 (Defendant's Exhibit Number 2, investigative
14 report, was marked for identification purposes.)

15 Q Do you recognize this?

16 A October 24th?

17 Q Yes.

18 A Yes, that would be when I received the Crime
19 Stoppers tip.

20 Q And as you stated before, you received a number
21 of Crime Stopper tips, correct?

22 A In this testimony, I recall saying that there
23 were a bunch of leads that we were following up. I
24 don't know about a number of Crime Stoppers tips and
25 I don't recall right now a number of Crime Stoppers

1 tips that would come in from that particular line,
2 but we did have a number of leads that we followed
3 up.

4 Q Your testimony is you don't remember a number
5 of Crime Stopper tips reports coming in over a year
6 on this case?

7 A You asked if I remembered -- had I followed up
8 on a number of Crime Stoppers tips up until this
9 point. And my answer is, I do not recall up until
10 this point following up on a number of Crime
11 Stoppers tips, I may have, but this particular Crime
12 Stoppers tip was very important and showed some
13 movement in this case.

14 Q Are you aware of other Crime Stopper tip
15 reports that came in about this case from October
16 2004 until October 2005?

17 A And it would help if you would show me those
18 particular -- that piece of paperwork and it would
19 refresh my memory.

20 Q If I showed you a stack of sample Crime Stopper
21 reports, would that refresh your memory?

22 A If it's tied to this case, it probably would.

23 (Defendant's Exhibit Number 3, Crime Stopper
24 reports, were marked for identification purposes.)

25 Q Do you recognize what these are?

1 **A** Yes.

2 **Q** And what are those?

3 **A** These are Crime Stopper tips that were followed
4 up during the course of this investigation.

5 **Q** And what form are those reports in?

6 **A** These are confidential Crime Stopper reports
7 that come in. And it has, Confidential Crime
8 Stopper report, 1-888-559-tips.

9 **Q** And they're all in that same general format,
10 correct?

11 **A** Yes, sir.

12 **Q** And that's a way to document how the tips come
13 in and when they come in?

14 **A** Uh-huh.

15 **Q** To your knowledge, is there a Crime Stopper tip
16 report for the Crime Stopper tip that came in
17 October 24th, 2005 that you followed up on?

18 **A** You're talking about a Crime Stopper tip report
19 on this particular form?

20 **Q** On the tip that came in that you testified led
21 you to Kerwyn Phillips and John Moore, you said it
22 came from Crime Stopper tips. Is there a formal
23 report from that tip October 24th, 2005?

24 **A** No.

25 **Q** There's not?

1 **A** No. And from time to time, that will happen.

2 **Q** And you stated that that was an anonymous tip?

3 **A** All Crime Stopper reports are anonymous.

4 **Q** Do you remember talking to the confidential
5 informant that gave this tip?

6 **A** I do.

7 **Q** So it wasn't so anonymous?

8 **A** I didn't know who she was and still don't know
9 who she is.

10 **Q** But there was a phone number you had, correct?

11 **A** I don't recall how -- between Chris Cowan
12 handing me that Crime Stoppers tip information, how
13 I ended up talking to her whether it was through a
14 phone being transferred -- a phone call being
15 transferred to me or a phone being transferred to
16 some cell phone, I'm not sure how that came in, but
17 I know I talked to the confidential informant over
18 the phone.

19 **Q** You got an e-mail first from Lieutenant Cowan,
20 correct?

21 **A** That is correct.

22 **Q** So it wasn't as if the call came in and was
23 transferred to you?

24 **A** I got an e-mail from Chris Cowan, who is over
25 our Crime Stoppers thing at the sheriff's office.

1 And in the e-mail, it detailed certain information.

2 And then I did ultimately talk to this woman who
3 then provided a little bit more information and then
4 we followed up on it from there.

5 Q And there was no report?

6 A Other than that e-mail that Chris Cowan sent to
7 me, no report ended up in my hands.

8 Q So from this, you got Kerwyn Phillips and John
9 Moore's name?

10 A That is correct.

11 Q And from that, you found out that Kerwyn
12 Phillips was under a federal proffer at the time,
13 correct?

14 A That is correct.

15 Q And he actually had a meeting set up already
16 within the next two days, correct?

17 A That is correct.

18 Q In which he was cooperating with authorities,
19 correct?

20 A That is correct.

21 Q And you understand what a federal proffer is,
22 don't you?

23 A Yes, sir.

24 Q That means whatever statements he gives to you,
25 you can't use against him to prosecute against him,

1 can you?

2 A Right. And I remember some discussion about
3 that prior to us going and engaging with Mr.
4 Phillips.

5 Q How to get a strategy before you went in there?

6 A You can call it strategy or you can call it do
7 we really want to, you know, do we believe this
8 information that's come in to the point where we
9 believe that Kerwyn was not the shooter, is there --
10 what's the possibility that Kerwyn is not the
11 shooter and -- or is the shooter or not the shooter,
12 those type of things came into play, same type of
13 questions we were asking about the defendant, you
14 know, is he the shooter or is he not the shooter.
15 And ultimately, the decision was made that based on
16 our conversations with the C.I. and the information
17 that we knew about the case that we needed to talk
18 to Kerwyn.

19 Q Because he was the passenger of the truck,
20 correct, that was the information you got?

21 A Well, that's the information we got and the
22 information we got was that he was the passenger in
23 the truck and he was not culpable in the actual
24 shooting.

25 Q From the anonymous tipster that there's no

1 report of a tip coming in, official report?

2 A You say official and my assumption is that this
3 is what you're calling official (indicating). I got
4 the Crime Stopper information from our official
5 source at the sheriff's office, Chris Cowan, in the
6 form of an e-mail.

7 Q Form of an e-mail.

8 A And it's documented.

9 Q Kerwyn Phillips, he was in trouble with the
10 feds because he was trying to buy ammunition, right?

11 A That is my understanding.

12 Q And I believe we've been over this before, but
13 he ran away when he was first confronted with this
14 information, correct?

15 A Yes, he did and then he called back later.

16 Q He called back later and a couple days, he came
17 back in, correct?

18 A He called back that night and apologized and
19 set up an appointment to come back in, that's right.

20 Q That was very nice of him. Now, you took a
21 statement from him, correct? You took a statement
22 from him, correct?

23 A I did.

24 Q And that's in your handwriting?

25 A That is.

1 Q Is that your normal practice to write other
2 people's statements for him?

3 A Well, my handwriting is not the best in the
4 world and I like to type it now with a computer, but
5 our procedures at the sheriff's office are that we
6 write these statements out and then go over those
7 statements with the defendant or the witness or
8 whoever we're talking to, make sure that everybody
9 agrees about the information and then the signatures
10 come. That's our policy.

11 Q And this wasn't videoed?

12 A No.

13 Q This wasn't recorded?

14 A No.

15 Q Kerwyn Phillips can read and write, can't he?

16 A Yes.

17 Q And in Kerwyn's statement, he states that he
18 saw the passenger reach under the seat for
19 something. If you can look at the statement, would
20 it refresh your memory?

21 A That would be great.

22 Q For I.D. purposes only State's Exhibit 121, do
23 you know what that is?

24 A This is the statement that I took from Kerwyn
25 Phillips.

1 **Q** I'll reference you to page five --

2 **MS. WEISS:** Your Honor, I object at this point.
3 If he's going to have Investigator Barnes read from
4 the statement or specifically quote from the
5 statement, I think the defense needs to enter it
6 into evidence. Otherwise, I object to him quoting
7 directly from the statement.

8 **MR. COLLINS:** Your Honor, I'm simply asking if
9 this refreshes his memory from taking the statement.

10 **THE COURT:** You're asking him if it refreshes
11 his memory?

12 **MR. COLLINS:** Yes, Your Honor.

13 **THE COURT:** Objection is overruled.

14 **MS. WEISS:** Thank you, Your Honor.

15 BY MR. COLLINS:

16 **Q** Does this statement refresh your memory about
17 Kerwyn's statement, statement that you wrote?

18 **A** Yes.

19 **Q** From after reading it, do you recall Kerwyn
20 Phillips stating that he saw the passenger of the
21 car reaching under the seat?

22 **A** What struck me -- we're talking about the
23 passenger of the victim's car or the passenger of
24 the suspect's car?

25 **Q** I'm asking if it refreshes your memory from

1 reading over the statement whether or not he said
2 the passenger of the car was reaching under the
3 seat?

4 A Right. Last page, yes, sir.

5 Q So it does -- that is in his statement?

6 A Yes, sir. That was passenger of the victim's
7 vehicle.

8 Q And he also told you where the gun was supposed
9 to be?

10 A Yes, sir.

11 Q And you guys searched for that not only once
12 but twice?

13 A Yes, sir.

14 Q You got the help of an archeology professor
15 from USC to help you out?

16 A Yes, sir, we did.

17 Q You didn't find any guns back there?

18 A We did not.

19 Q Now, after you took this statement, you wanted
20 Kerwyn to do some work for you, correct?

21 A Yes, sir.

22 Q And you gave him audio recording equipment?

23 A I did.

24 Q Did that come from Richland County Sheriff's
25 Department?

1 **A** That did, yes.

2 **Q** So there is audio recording equipment at the
3 Richland County Sheriff's Department?

4 **A** For that particular purpose, yes, sir.

5 **Q** Just for that purpose, okay. And you actually
6 had to give Kerwyn a working phone number for John,
7 correct?

8 **A** I recall that he had trouble getting a hold of
9 John, had advised me of that. I told him I would
10 call him back and give him some numbers that I had.
11 And then before I was able to call him back, he was
12 able to reach him on a number that he had found.

13 **Q** Okay. I'm going to skip back now. We're going
14 to go back to October of 2004 right after this
15 incident.

16 **A** Yes, sir.

17 **Q** You arrived at the scene and you met with some
18 other officers at the scene, correct?

19 **A** Yes, sir.

20 **Q** And in your -- you put some notes in your
21 investigative report about arriving at the scene and
22 about some information that you got when you got
23 there?

24 **A** Is this when I arrived at headquarters?

25 **Q** Yes, when you arrived at headquarters.

1 **A** Yes.

2 **Q** Is there anything in those notes that said the
3 driver was the shooter?

4 **A** I don't recall anything at the beginning of
5 this that would indicate that the shooting came from
6 the driver's side of the vehicle. So our initial
7 investigation led us to believe that it was coming
8 from the passenger side of the vehicle.

9 **Q** I believe you actually put in your notes, The
10 passenger leaned out and shot back towards him
11 again, page one; is that correct?

12 **A** And this would be coming not from my interviews
13 with --

14 **Q** This is just from when you arrived at the
15 scene. We're going to get to the interviews.

16 **A** When I arrived at headquarters not at the
17 scene.

18 **Q** When you arrived at headquarters.

19 **A** When I arrived at headquarters and was going
20 through a debriefing with the investigators that had
21 been on the scene.

22 **Q** Okay. Now, we'll move on to when you and
23 Investigator Faust were talking with Mr. Derrick, I
24 believe it was the following day?

25 **A** Yes.

1 Q And you wanted to make sure that he had time to
2 kind of collect his thoughts and rest because this
3 was very traumatic for him, right?

4 A Yeah.

5 Q And you also wanted to make sure you got every
6 detail he could give you because you wanted to find
7 the shooter, correct?

8 A That's right. We wanted to get as detailed a
9 statement as we could get.

10 Q So with this in mind, you had many conver -- at
11 least a few conversations with him before you ever
12 reduced the statement to writing?

13 A We spent a great deal of time with him that
14 day.

15 Q You actually did a ride along?

16 A We did.

17 Q Going to the places trying to spark any
18 memories that may come back to him?

19 A That's important.

20 Q And you took notes about what you guys talked
21 about during this ride along?

22 A I took notes and tried to make sure I covered
23 the highlights, yes.

24 Q And you put in your notes that there was no
25 sliding glass back window to the truck, it was a

1 solid rear window?

2 A That's what he said at the time.

3 Q And you put in your notes that around
4 Monticello Road, the passenger of the truck,
5 parentheses, the one doing the shooting,
6 parentheses, leaned out with his arm and fired back
7 towards the vehicle?

8 A That's what I put in the notes.

9 Q And this will be information you gathered from
10 Mr. Derrick?

11 A Yes.

12 Q Now, anywhere in these notes from October 18th
13 from your conversations with Mr. Grover Derrick, is
14 there anything in those notes talking about the
15 driver doing the shooting?

16 A No.

17 Q Is there anything in your notes about a muzzle
18 blast coming from the center of the truck?

19 A From my notes, no.

20 Q The only thing you have in your notes
21 specifically distinguishing between the two
22 passengers of the truck is that the passenger was
23 the shooter?

24 A That would be fair to say at the beginning of
25 the investigation.

1 **Q** When the only information you had came from
2 Mr. Derrick?

3 **A** That's correct.

4 **MR. COLLINS:** Thank you.

5 **THE COURT:** Redirect?

6 **MS. WEISS:** No further questions, Your Honor.

7 **THE COURT:** Thank you, sir. You may step down.
8 Call your next witness.

9 **MR. MEADORS:** Jennifer Stoner.

10 JENNIFER M. STONER,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Please have a seat there, ma'am.

13 State your full name for the record.

14 **THE WITNESS:** Jennifer M. Stoner.

15 DIRECT EXAMINATION

16 BY MR. MEADORS:

17 **Q** Good morning.

18 **A** Good morning.

19 **Q** Please tell these ladies and gentlemen of this
20 jury about yourself, specifically where you're from,
21 your background, education, training and, in
22 particular, training in the field of expertise I've
23 asked you to testify about today.

24 **A** My name is Jennifer Stoner and I'm employed by
25 the South Carolina Law Enforcement Division in the

1 trace evidence section. I have a Bachelor of
2 Science degree in chemistry from a small state
3 school in Pennsylvania, it's California University
4 of Pennsylvania. In 1997, I received my degree and
5 I performed an internship at SLED in the trace
6 evidence section.

7 After that internship, I was hired in the drug
8 analysis department where I performed their training
9 program and actively took drug cases. I then
10 transferred into trace evidence after performing
11 drug work for about a year and began a three year
12 training program in trace evidence. This program
13 started out, the first part of the training program
14 was to process -- to learn how to process and how to
15 analyze gunshot residue cases. This is the bulk of
16 the evidence that we receive so all new chemists
17 start in that area. I was in training under the
18 supervisor of the department and other senior
19 analysts in that department.

20 Upon completion of my gunshot residue training,
21 I took a competency test and then I was able to
22 actively take case work and I moved into other areas
23 of training in that department.

24 Q What is gunshot residue?

25 A Gunshot residue is a term that's used to

1 describe a cloud that comes out of a weapon once
2 it's fired. Gunshot residue is composed of three
3 elements, barium, antimony and lead. These are
4 elements that are present in the primer composition
5 of bullets. It's in the base of a bullet. You have
6 lead styphnate, antimony sulphate and barium
7 nitrate.

8 What the purpose of this primer is is to form a
9 spark to light your powder components in your bullet
10 so that you can fire the gun. Whenever your firing
11 pin hits this primer, it initiates an explosive
12 reaction. It forms a lot of high heat and high
13 pressure which vaporizes the inorganic components
14 that I told you about that we look for, which is the
15 barium, the antimony and the lead. Once they
16 vaporize, it becomes so saturated with these
17 components, they condense back out into droplets,
18 your powder burns build in pressure and the bullet
19 exits the gun. When this happens, this cloud exits
20 the gun also through any opening in the gun and
21 contains these particles which we call gunshot
22 residue and they will deposit on anything in the
23 vicinity of that weapon when it's fired.

24 Q What percentage of your time now is done with
25 gunshot residue?

1 **A** When I first started training, I was in gunshot
2 residue for approximately two years. We do
3 rotations in it. Currently, I am training two
4 chemists in arson and so I'm actively reviewing
5 gunshot residue cases that the new trainee is
6 working.

7 **Q** Do you receive gunshot residue kits from local
8 law enforcement agencies?

9 **A** From most of the agencies in the state.

10 **Q** And are you asked to look at those and make an
11 analysis and come into court and give your expert
12 opinion whether or not you think gunshot residue is
13 present?

14 **A** That's correct.

15 **Q** And how many of those examinations have you
16 done?

17 **A** In training, I probably performed, gosh,
18 hundreds, almost in the thousands of kits, of actual
19 kits because a case will have one to however many
20 kits they collect. Currently, we've had an increase
21 in cases. I don't know what they're doing now, but
22 I've performed in excess of a thousand.

23 **Q** And have you been offered as experts in courts
24 of record of this state in this field prior to this?

25 **A** Yes.

1 Q Were you in a court case earlier this week?

2 A Yesterday.

3 Q In the low country?

4 A Yes.

5 MR. MEADORS: Your Honor, at this time, we
6 would offer Agent Jennifer Stoner as an expert in
7 the field of gunshot residue.

8 THE COURT: Any voir dire or any objection?

9 MR. COLLINS: No objection, Your Honor.

10 THE COURT: She is so recognized. You may
11 continue.

12 BY MR. MEADORS:

13 Q If you fire a gun or handle a gun, are you
14 likely to find -- is it potential you could find
15 some gunshot residue on your hands?

16 A Yes, it is.

17 Q Getting right to this case -- is it all right
18 if I call you agent, Senior Agent Stoner?

19 A That's fine.

20 Q Did you receive the SLED two kits, if you will?
21 First, I want you to look at State's 96 and tell me
22 if you recognize that and is that what you got and
23 were asked to examine?

24 A Yeah, 96 was our item number five, which was
25 the gunshot residue kit from Stephanie Dover.

1 Q And how do you know that's the one you did?

2 A When I receive these kits, I initial and date
3 the kits and those are my initials.

4 Q J.M.S. What does the M stand for?

5 A May.

6 Q And please look at State's 65?

7 A State's 65 is our item number two and it also
8 has my initials on the GSR kit.

9 Q And from who -- who was this kit from?

10 A This one was from Grover B. (sic) Derrick.

11 Q And who performed this kit? Does it say what
12 officer?

13 A Can I check my other sheet that actually lists
14 the -- for the kit, it was collected by an I.S.
15 Richards of Richland County.

16 MR. MEADORS: Your Honor, at this time, we'd
17 offer these.

18 MR. COLLINS: No objection, Your Honor.

19 MR. MEADORS: 96 and 65 without objection.

20 (State's Exhibit Numbers 65 and 96, GSR
21 kits, admitted into evidence.)

22 BY MR. MEADORS:

23 Q Can we start with the gunshot residue kit from
24 Grover Eugene Derrick?

25 A That's fine. Do you just want the results on

1 it?

2 **Q** Tell these folks when you get this in from
3 Grover Derrick, the gunshot residue kit, tell them
4 what you do in the lab, take us there right now.
5 Tell us what your examination consists of and how
6 you did it and what your conclusions are, please.

7 **A** When we receive a gunshot residue kit, it's
8 logged into our log-in department. We pick it up
9 and it's processed. A gunshot residue kit is a two
10 part kit. We provide the kits to the agencies in
11 South Carolina. The purpose of it is to collect any
12 residue that's present on a person's hands whether
13 it's a victim or a subject to see if there's any
14 residue that is consistent with gunshot residue or
15 if we can find gunshot residue.

16 What they do is they take, it's about this big
17 (indicating), and it's called a carbon planchet.
18 It's in a -- it has a lid on it and it's just a
19 round disk of carbon that has an adhesive it. It's
20 somewhat like a Band-Aid adhesive, it's about that
21 sticky. And they dab it over each area of the hand
22 to pick up any particles that are present on the
23 hands. They'll perform the exam on the right palm,
24 the right back, the left palm and the left back and
25 they just collect it till the sticky -- till it

1 doesn't pick anything else up.

2 Once they've completed that part of the kit,
3 they take swabs and a mild solution of nitric acid,
4 they wipe the swabs and they run the swabs over each
5 area of the hand also. And this will pick up any
6 remaining residue that is present so we can analyze
7 that.

8 For the swabs, they'll also take a control.
9 They'll take a swab off that person's body,
10 somewhere that was under clothing, maybe if it's a
11 long sleeve shirt, on their elbow or middle of their
12 elbow, on their ankle, on their back, some area
13 that's covered because we want to know what is
14 present on that person's body to begin with because
15 you can have these elements on you in low amounts.

16 **Q** So a controlled swab from somewhere that's
17 covered basically?

18 **A** Correct.

19 **Q** And swabs from both sides of the hands?

20 **A** Both sides of the hands. When we receive the
21 kit in, we prep the swabs with a solution of nitric
22 acid. We add our internal standards and we filter
23 them and we set them up on our instrument to run and
24 it's called an inductively coupled plasma mass
25 spectrometer. We call it an ICPMS. It's a lot

1 easier than saying that all the time.

2 And what this does is we prep the swabs, so we
3 have a solution with whatever was on that swab. The
4 instrument -- it's in a solution form. The
5 instrument pulls it up and it analyzes it and tells
6 us what's present. It will tell us how many counts
7 of lead are there, how many counts of barium and how
8 many counts of antimony. These are the elements
9 that we look for to indicate the hands were in the
10 vicinity of a weapon when it was fired.

11 The purpose of the control is we subtract what
12 we find on the control from what we found on the
13 hands so that we are subtracting what naturally
14 occurs on that person's body so that we can have a
15 true count of what is on their hands at that time.

16 Q You love your job, don't you?

17 A I do.

18 Q When you looked at the samples taken from
19 Grover Eugene Derrick and after you conducted your
20 examination, can you tell this jury if the sample
21 submitted in that kit labeled Grover Eugene Derrick,
22 were those metals -- did that indicate to you
23 whether or not there was gunshot residue present on
24 the hands of Mr. Grover Eugene Derrick?

25 A In the samples that were submitted from the kit

1 from Grover Derrick, the quantities of metals
2 detected did not indicate the presence of gunshot
3 residue. This means that the metals that we found
4 were at such low levels, they didn't meet any
5 threshold to show that it was probably around a
6 weapon when it was fired.

7 Q So in your expert opinion in this field of
8 gunshot residue, Agent, would that be -- those
9 findings consistent with Grover Derrick not firing a
10 gun?

11 A They are.

12 Q Would it be consistent with him not even
13 handling a gun?

14 A They are.

15 Q Could we move on to the kit that you received
16 from Ms. Stephanie Dover? And while we're going on
17 this, too, just very briefly, is there a difference
18 from how long this residue -- is there a difference,
19 a time difference, how long a residue would stay on
20 a living, breathing human being versus a deceased?

21 A There is a difference. When you fire a weapon,
22 the residue is going to deposit on anything in that
23 area. You can't see the gunshot residue because it
24 is so small, but if you think of it, if you're
25 baking and you get flour on your hands, you can see

1 that light dusting of flour, that's what it would be
2 like, but if you brush that flour off, you're going
3 to remove it. So once you fire a weapon, there's no
4 reasonable expectation to find anything on your
5 hands after six hours has passed.

6 **Q** Six hours?

7 **A** Six hours on a living, because you're going to
8 sweat, you can absorb the residue, your hands are
9 going to be in and out of your pockets, mostly what
10 you do, you're going to do with your hands so you're
11 going to remove that residue. So after six hours,
12 we don't test the kits if they're collected because
13 we don't expect to find anything. And if we did
14 find something, we couldn't link it to that
15 incident.

16 On a deceased individual, once you stop living
17 and once you stop breathing, you stop moving. So if
18 anything -- if something's deposited on your hands
19 the moment you die, it will remain there until it's
20 physically removed by an outside source. So if
21 you're out in the rain and it washes it off or if
22 you -- actually if the body starts to decompose,
23 that can remove the residue. But once you stop
24 moving, stop living, it's going to stay on your
25 hands until something removes it and normally that

1 is the GSR kit that we take will remove that
2 residue.

3 **Q** And a matter of fact is there a time limit from
4 when you at SLED or your policy won't test a gunshot
5 residue kit on a living human being?

6 **A** On a living human being, we won't test it after
7 six hours. On a deceased individual, we will test
8 it indefinitely until it's collected.

9 **Q** And is it fair to say on a human being or
10 anything else, the environment and wind and
11 environmental factors will affect gunshot residue,
12 correct?

13 **A** It will. Wind can blow the gunshot residue.
14 Small quarters can affect it. If you're in a
15 bathroom or a small area, that cloud will be
16 contained to that area and you're more likely to get
17 it on your hands. If you're outside and the wind's
18 blowing, there may be a chance it will blow it away
19 from you and you won't receive as much residue. So
20 all of the environmental factors do come into play.

21 **Q** Can you tell these ladies and gentlemen about
22 your findings and your opinion as to Ms. Dover, the
23 kit that you received from her?

24 **A** In the sample submitted in the kit labeled
25 Dover, Stephanie Lynn, the quantities of metals

1 detected did not indicate the presence of gunshot
2 residue, which also means when we tested it, the
3 levels were so low that they did not meet our
4 threshold to indicate anything was there.

5 **Q** And in your expert opinion, would that be
6 consistent with her not having a gun and not firing
7 a gun?

8 **A** It is.

9 **MR. MEADORS:** Thank you. That's all.

10 **THE COURT:** Cross?

11 **MR. COLLINS:** No questions, Your Honor.

12 **THE COURT:** Thank you, ma'am. You may step
13 down.

14 Call your next witness.

15 **MR. MEADORS:** Clay Nichols, Doctor Clay
16 Nichols.

17 CLAY ALLEN NICHOLS,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Please have a seat there, sir.
20 State your full name for the record.

21 **THE WITNESS:** Clay Allen Nichols,
22 N-I-C-H-O-L-S.

23 DIRECT EXAMINATION

24 BY MR. MEADORS:

25 **Q** Good morning, Doctor.

1 **A** Good morning.

2 **Q** Please tell the jury about Doctor Clay Nichols,
3 your background, your training and, in particular,
4 your training in the field of expertise that I'm
5 asking you to be qualified as an expert today,
6 Doctor.

7 **A** Okay. I received my Bachelor of Science degree
8 from the University of Oklahoma in 1981. After
9 that, I received my M.D. degree also from the
10 University of Oklahoma in 1985. After that, I
11 entered a residency program in both anatomic and
12 forensic pathology at MUSC, completing that in 1990.
13 I was on the faculty at MUSC for ten years teaching
14 pathology and forensic pathology.

15 In 2000, I entered private practice here in
16 Columbia where I'm the chief medical examiner of
17 Richland County. And I also hold an unrestricted
18 license to practice medicine and surgery in the
19 State of South Carolina. I'm board certified by the
20 American Board of Pathology in both anatomic and
21 forensic pathology.

22 **MR. STRICKLER:** And I'll stipulate to his
23 qualifications in both the areas that he stated,
24 Your Honor.

25 **MR. MEADORS:** And we'd have him offered as an

1 expert in the field of forensic pathology. Thank
2 you.

3 **THE COURT:** He's so recognized.

4 **BY MR. MEADORS:**

5 **Q** Just very briefly, what's the difference
6 between pathology and forensic pathology?

7 **A** Essentially, pathology is a laboratory branch
8 of medicine. We don't see patients as our normal
9 part of practice. They also have training doing
10 autopsies on people. A forensic pathologist has
11 additional training in performing autopsies on
12 people who die of suspicious or unnatural deaths.

13 **Q** How many have you done?

14 **A** Over 5,000.

15 **Q** And your office is where?

16 **A** Over at Richland Memorial.

17 **Q** In the morgue?

18 **A** Upstairs, yes.

19 **Q** You're one above the morgue?

20 **A** Right.

21 **Q** You do your work in the morgue?

22 **A** That's correct.

23 **Q** Now, did you have an occasion to perform an
24 autopsy in this case on Stephanie Dover?

25 **A** Yes, I did.

1 Q Can you please tell the ladies and gentlemen of
2 the jury what date that was?

3 A October 17th, 2004 at 9:00 a.m.

4 Q Before we get to that, Doctor, tell these folks
5 in what condition do you like to see -- generally
6 and preferably, you know, in an ideal world, what
7 condition do you like to see the body of a deceased?
8 What's the potential crime involved when it gets to
9 you, what condition?

10 A We like to see it in the best condition
11 possible, preferably clothed, if possible. But if
12 the person's been through the emergency room or
13 trauma center, the clothes are usually removed and
14 there's some additional evidence of resuscitation,
15 such as indotracheal tubes and I.V. lines.

16 Q Can you take us to the morgue right now like
17 where you're performing it and tell these jurors how
18 you perform an autopsy, specifically what you did
19 with Ms. Dover's body this time?

20 A The autopsy begins with a phone call, which is
21 a request for an autopsy. At that time, initial
22 information is given. The body is in a refrigerated
23 area and removed at that time. An external
24 examination is performed looking at the general
25 condition of the body, any sort of evidence of

1 medical intervention, once again, lines or tubes.
2 The body is then examined unclothed if it was
3 clothed to begin with, once again, looking for any
4 evidence of significant injury or evidence of the
5 cause of death.

6 After that, an internal dissection is performed
7 where the organs are removed one by one, they're
8 weighed, dissected down further, once again, looking
9 for any significant finding. Small portions of each
10 major organ system is submitted for a microscopic
11 examination. And if necessary, toxicologic
12 evaluation is initiated with the collection of blood
13 and urine.

14 Q The external description?

15 A Yes, sir. This is a body of a well developed,
16 well nourished white female appearing compatible
17 with the stated age of 20 years. The height is 61
18 inches, which is five foot one and the weight is
19 estimated at 140 pounds.

20 Q What evidence of trauma did you find, Doctor?

21 A Specifically two gunshot wounds were identified
22 to the body. They were arbitrarily labeled numbers
23 one and two, that doesn't designate the firing
24 sequence, it just designates how I found them and
25 numbered them.

1 The first one is a close gunshot wound to the
2 left forehead, two point five inches from the top of
3 the head and two point five inches to the right of
4 the midline, which is approximately in this area
5 here (indicating). The area around the wound has
6 been previously shaved and sutured. The suture is
7 removed. The wound is circular measuring zero point
8 four inch in diameter. There is a zero point one
9 inch abrasion border from the 12 to five o'clock
10 position. No soot or powder stippling is
11 identified.

12 The bullet was found to enter the cranium or
13 the head at this site with fracturing of the
14 underlying cranial bones with appropriate inward
15 bevelling. The bullet travels through the
16 deceased's brain causing a hemorrhagic laceration
17 and exiting the right side of the head at a distance
18 of three point five inches from top of the head and
19 three inches to the right of midline, which is
20 approximately here (indicating). The exit wound is
21 lacerated with a maximum diameter of zero point
22 three by zero point six inch. The approximate angle
23 of trajectory is to the right 60 degrees, backwards
24 30 degrees and downward ten degrees. The bullet
25 exited and was not recovered.

1 The second gunshot wound I have a complicated
2 description of it, but, essentially, the middle
3 finger was bent down like that (indicating). The
4 bullet goes in at the base of this knuckle, in, out
5 here, in again and out here, so the perforation of
6 the left middle finger with the finger bent over in
7 this position (indicating).

8 **Q** Doctor, with your position --

9 **MR. MEADORS:** Excuse me, Your Honor, with your
10 permission, I apologize, would you allow the doctor
11 to step down?

12 **THE COURT:** Yes, sir.

13 (Witness leaves the witness stand.)

14 **MR. STRICKLER:** And, Your Honor, of course, we
15 will stipulate as to the doctor's finding as to
16 cause of death. And I understand he's got
17 photographs and while I submit they're completely
18 unnecessary with our stipulation, I have no
19 objection to them, sir.

20 **MR. MEADORS:** There's actually one picture that
21 he did not want in and I took that out. And we're
22 -- for the record, Your Honor, State's 131, 130,
23 127, 128, 125 and 123, if Your Honor got all those,
24 are without objection.

25 **THE COURT:** That lady over there is the one you

1 need to make sure got all of them. Give it to the
2 court reporter, make sure everything is straight.

3 (State's Exhibit Numbers 123, 125, 127, 128,
4 130 and 131, photographs, are admitted into
5 evidence.)

6 BY MR. MEADORS:

7 Q This is State's 123, Doctor?

8 A Yes, sir.

9 Q Can you tell the jury what that is?

10 A This is an x-ray of the skull. This is not the
11 bullet here. This is a reflection off of a flash.
12 We have posts in each ear. These are earrings. You
13 can see the fillings of the teeth. The eye sockets
14 are here. And right here, this dark area, is the
15 entrance wound to her skull.

16 Q And, Doctor, you described the injury to the
17 finger. State's 128 and 127, do they show an
18 entrance and an exit?

19 A This shows the entrance middle finger at the
20 base by the hand. Then this shows the exit here and
21 then the reentrance up here.

22 Q And, again, put my -- what would it be
23 consistent with the way...

24 A Like that (indicating).

25 Q Doctor, this is State's 131 and State's 125, I

1 believe, tell us what those are.

2 **A** This is the entrance wound to the left side of
3 the forehead and right here at the hairline is the
4 exit wound.

5 **Q** Are you able to determine where the hand may
6 have been in relation to the head?

7 **A** No. The hand can be any place, up, down,
8 around, that the hand just got in front of the
9 bullet or the bullet went through the hand wherever
10 the hand was.

11 **Q** Can you sit here and tell these folks right now
12 where Ms. Dover's head would have been when she
13 received that shot?

14 **A** No.

15 **Q** Specifically, in a specific position?

16 **A** No, I cannot.

17 **MR. MEADORS:** And, Your Honor, I'm going to
18 withdraw 130. It's kind of duplicative. If that's
19 -- I'll withdraw 130. I didn't realize 130 was kind
20 of duplicative to one of the other ones.

21 **Q** Thank you, Doctor. You can have a seat back.

22 **A** (Witness resumes the witness stand.)

23 **Q** And, Doctor, those pictures, for the record,
24 were of the body of Stephanie Dover, correct?

25 **A** Yes, sir.

1 **Q** And based on your examination -- and the other
2 thing, were the hands bagged when they came in?

3 **A** I do not note that and I don't know if they
4 were.

5 **Q** State's 133, do you recognize that?

6 **A** This shows a bag over, apparently, the forearm
7 and hand of Ms. Dover.

8 **Q** And seeing that, would that -- her hands were
9 bagged?

10 **A** Yes.

11 **MR. MEADORS:** Your Honor, I believe...

12 **MR. STRICKLER:** Without objection.

13 **MR. MEADORS:** 133.

14 (State's Exhibit Number 133, photograph,
15 admitted into evidence.)

16 **BY MR. MEADORS:**

17 **Q** Why are hands bagged when they come in?

18 **A** The hands are bagged to preserve any sort of
19 trace evidence that might be collected by law
20 enforcement, specifically the sheriff's office in
21 this case.

22 **Q** Do you know how long Ms. Dover might have lived
23 after the shot?

24 **A** Matter of minutes afterwards from the time the
25 bullet entered her head till she was technically

1 dead. No more than an hour.

2 Q And can you tell these jurors to a reasonable
3 degree of medical certainty based on your expertise,
4 the proximate cause of death for Stephanie Dover?

5 A Ms. Dover died as a result of cerebral
6 laceration due to the gunshot wound to her head,
7 which technically means the bullet lacerated a pore
8 through her brain causing death.

9 MR. MEADORS: Thank you.

10 MR. STRICKLER: Please the Court, sir?

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. STRICKLER:

14 Q Good morning, Doctor.

15 A Mr. Strickler.

16 Q Just a couple things really, if you please.
17 You testified that in reference to the hand wound
18 when you were talking with Mr. Meadors, the bullet
19 went through the hand leaving the implication that
20 your findings are that the bullet that made the hand
21 wound also made the head wound. Now, as a forensic
22 pathologist, you were given information in addition
23 to what you have on your examination of the body,
24 correct?

25 A Yes. But, also, I did not want to give the

1 impression that the bullet that went through the
2 hand caused the head injury and more than likely it
3 did not.

4 Q Indeed in this case, it probably did. The only
5 point I'm trying to make is that your field operates
6 in conjunction with findings in -- from law
7 enforcement, too, or they can be of assistance to
8 you in rendering an opinion?

9 A That's correct.

10 Q But absent additional information from law
11 enforcement, you couldn't say whether it was one
12 shot or two, I would assume, at least in this
13 particular situation?

14 A Once again, I favor two shots at least.

15 Q Okay. Just based purely on the information
16 from your autopsy?

17 A That's correct.

18 Q Now, you described in your testimony on the
19 stand, the location of the entrance wound and the
20 exit wound in this case, correct?

21 A That's correct.

22 Q And the location and the somewhat convoluted
23 description you had to go through for the injury to
24 the finger, correct?

25 A That's correct.

1 **Q** Okay. And nothing more than what you described
2 on the stand is depicted -- or you described the
3 posts located in the ears?

4 **A** Right.

5 **Q** Okay. And that's what's depicted in the
6 photographs, correct?

7 **A** Yes, sir.

8 **Q** Okay. So the photographs merely depict what
9 you have testified to while you're sitting on the
10 stand, correct?

11 **A** That's correct.

12 **Q** Now, and lastly, you have no idea based on your
13 autopsy who fired the shots that killed this young
14 lady, correct?

15 **A** That's correct. The autopsies seldom, but
16 certainly can, but not in this case, would point to
17 a particular shooter. It does not in this case.

18 **Q** And you certainly couldn't say that if there's
19 controversy regarding whether a passenger or a
20 driver in another vehicle fired these shots whether
21 it was the passenger or the driver, correct?

22 **A** That's correct.

23 **MR. STRICKLER:** All right. Thank you very
24 much, Doctor.

25 **THE COURT:** Redirect?

1 **MR. MEADORS:** Just very briefly.

2 REDIRECT EXAMINATION

3 BY MR. MEADORS:

4 **Q** One of these wounds was an entrance wound and
5 one was an exit wound, correct?

6 **A** Yes.

7 **Q** On her face?

8 **A** Yes, sir.

9 **Q** And you said the injury to the hand --

10 **A** Uh-huh.

11 **Q** -- like this, correct (indicating)?

12 **A** Yes.

13 **Q** One bullet could have gone through the hand
14 into the head, correct?

15 **A** It could have, but from the forensic evidence,
16 I think two bullets.

17 **Q** On State's 132, can you show me where the
18 entrance wound is, roughly?

19 **A** Entrance wound, approximately there
20 (indicating).

21 **Q** So that's on the left side?

22 **A** That's correct.

23 **Q** And the exit wound?

24 **A** Approximately here (indicating).

25 **Q** And if Ms. Dover had had her hand up like this,

1 it could have gone through here and into the head,
2 correct?

3 **A** It could have.

4 **MR. MEADORS:** Your Honor, 132.

5 **MR. STRICKLER:** Without objection, Mr. Meadors.

6 **THE COURT:** Mark it in evidence.

7 (State's Exhibit Number 132, Styrofoam head,
8 admitted into evidence.)

9 **MR. MEADORS:** That's all. We'd ask him to be
10 excused.

11 **MR. STRICKLER:** Nothing further, sir, and
12 without objection.

13 **THE COURT:** You're free to go. Thank you.

14 All right. Ladies and gentlemen, we'll be in
15 recess for 15 minutes. Don't discuss the case.

16 (The jury retires to the jury room.)

17 **THE COURT:** Fifteen minutes.

18 (Brief recess.)

19 **THE COURT:** Does the State have any further
20 witnesses?

21 **MS. WEISS:** No, sir, Your Honor. The State
22 rests.

23 **THE COURT:** Are there any motions?

24 **MR. COLLINS:** Your Honor, at this time, the
25 defense would renew all previous motions and

1 objections, specifically regarding the phone calls
2 from the jail for the previously stated reasons. We
3 would also move for a directed verdict on all counts
4 based on, in the light most favorable to the State,
5 no reasonable jury could come back with a guilty
6 verdict.

7 Specifically, Your Honor, we'd also move for a
8 directed verdict slash dismissal on possession of a
9 gun of a person under 21 years old based on the
10 statute being unconstitutional. South Carolina code
11 16-23-30 subsection (b) creates it criminal for
12 anyone under the age of 21 and over 18 to possess a
13 handgun. I understand that the standard is that
14 it's presumed constitutionally valid unless it's a
15 clear showing to the contrary and that it's so
16 clearly shown that there's no room for reasonable
17 doubt that it violates some provision of the
18 Constitution.

19 Article 1 Section 20 of the South Carolina --
20 provides the right to bear arms. This right has
21 recently been referenced as a basis for the
22 protection of persons of property act, Section
23 16-11-410, which specifically states that Article 1
24 of the South Carolina Constitution guarantees the
25 right of people to bear arms and the right shall not

1 be infringed.

2 Furthermore, Article 17 Section 14 of the South
3 Carolina Constitution provides every citizen over
4 the age of 18 years old with full legal rights
5 provided that the general assembly may restrict the
6 sell of alcohol. That's the last provision that has
7 been added into Article 17 which allows for the
8 restricted sell of alcohol to citizens under 21
9 years old. The General Assembly specifically put
10 that in there to infringe upon the rights of
11 citizens over the age of 18. There's no provision
12 in Article 17 referencing the right to bear arms,
13 that is why -- and that's our position as to why
14 this statute is unconstitutional. We would ask for
15 a dismissal based on that.

16 **THE COURT:** Motions are respectfully denied.

17 Mr. Moore, I need to go over some things with
18 you now and I need to have your responses under
19 oath. Would you raise your right hand for me?

20 JOHN JOSEPH MOORE, JR.,
21 having been duly sworn, testified as follows:

22 **THE COURT:** You may have a seat.

23 Mr. Moore, we've reached the stage of the trial
24 where the State has rested its case in chief. And
25 the next thing that would happen is that I would

1 give your side the opportunity to present evidence
2 for the jury to consider. Do you understand where
3 we are in the trial?

4 **DEFENDANT MOORE:** Yes, sir.

5 **THE COURT:** Now, if you want to call witnesses,
6 your attorneys may call witnesses. And if you want
7 to testify, you may testify. Do you understand
8 that?

9 **DEFENDANT MOORE:** Yes, sir.

10 **THE COURT:** Regardless of whether you testify
11 or not, you could call witnesses if you wish to have
12 witnesses called in your behalf; do you understand?

13 **DEFENDANT MOORE:** Yes, sir.

14 **THE COURT:** You have no obligation to put up
15 any case. You are presumed to be innocent and I'm
16 going to tell the jury that you're presumed to be
17 innocent once again many times; do you understand?

18 **DEFENDANT MOORE:** Yes, sir.

19 **THE COURT:** You're in a criminal court setting
20 and nobody can force you to testify; do you know
21 that?

22 **DEFENDANT MOORE:** Yes, sir.

23 **THE COURT:** You have an absolute right to
24 remain silent. If you choose not to testify, I'm
25 going to tell that jury they cannot hold your

1 silence against you in any way. They're not to
2 discuss it in the deliberations. It's not to enter
3 their mind in making the decision of whether you're
4 guilty or not guilty. Do you understand?

5 **DEFENDANT MOORE:** Yes, sir.

6 **THE COURT:** Do you understand that this
7 decision about whether you testify or not is your
8 own decision to make and your decision alone?

9 **DEFENDANT MOORE:** Yes, sir.

10 **THE COURT:** I expect that you would confer with
11 your attorneys, with family members, with friends,
12 anybody whose opinion you value on an important
13 decision like this, but ultimately it is your call
14 to make. You're the person on trial and you're the
15 only one who gets to decide whether you testify or
16 not. Do you understand?

17 **DEFENDANT MOORE:** Yes, sir.

18 **THE COURT:** If your side offers no evidence,
19 your attorneys get to make the last argument to the
20 jury. Otherwise, the State makes the last argument.
21 Do you understand that?

22 **DEFENDANT MOORE:** Yes, sir.

23 **THE COURT:** Does he have a prior criminal
24 record that would subject him to impeachment?

25 **MS. MCDUFFIE:** Yes, sir, I believe he does.

1 **MR. MEADORS:** Your Honor, he does have. I
2 don't know if you heard her.

3 **THE COURT:** I need to know what it is.

4 **MR. MEADORS:** Okay. Judge, he has a unlawful
5 carrying of a weapon in April of 2004, possession of
6 stolen vehicle greater than --

7 **THE COURT:** How is unlawful carrying of a
8 weapon --

9 **MR. MEADORS:** I didn't say it would be. I'm
10 just reading his record.

11 **THE COURT:** I want to know if he takes the
12 stand, what you intend to ask him about as far as
13 his prior criminal record.

14 **MR. MEADORS:** Okay. I didn't understand. I
15 thought you wanted his record. Possession of a
16 stolen vehicle greater than 5,000, which I think
17 would be.

18 **THE COURT:** From when?

19 **MR. MEADORS:** April 2004. Also, April 2004,
20 sell or possession of -- by a certain person of a
21 stolen pistol, which I believe does carry over a
22 year conviction, same date. I think that carries
23 five. That's it.

24 **THE COURT:** Do you all want to be heard about
25 his record?

1 **MR. COLLINS:** What he read is correct.

2 **THE COURT:** I mean, do you want to take a
3 position as to whether he could be asked about those
4 things if he testifies?

5 (Pause.)

6 **MR. COLLINS:** At this time, he's not planning
7 on testifying.

8 **THE COURT:** All right. Well, then I'll just
9 make the call.

10 Mr. Moore, if you take the stand, and I'm not
11 suggesting you should or you shouldn't, I have to go
12 over this with everybody who's on trial whether
13 they're on trial for a traffic offense or murder, if
14 you take the stand, the State would be allowed to
15 ask you if you were convicted in April of 2004 of
16 possession of a stolen motor vehicle greater than
17 \$5,000. Do you understand that?

18 **DEFENDANT MOORE:** Yes, sir.

19 **THE COURT:** I would not let them ask you about
20 possession of or sell of a stolen pistol because I
21 cannot make the finding required under the rule that
22 the prejudicial value of that as balanced against
23 the probative effect meets the standard of the rule.
24 So I wouldn't let them ask you about that unless you
25 in some way open the door to that. Do you

1 understand what I mean?

2 **DEFENDANT MOORE:** Yes, sir.

3 **THE COURT:** Opening the door would mean, for
4 example, if you got on the stand and said, I never
5 had a pistol in my life, well, then they'd be able
6 to ask you about that conviction. All right?

7 **DEFENDANT MOORE:** Yes, sir.

8 **THE COURT:** Now, if you took the stand and if
9 you were asked about that possession of a stolen
10 vehicle charge, I would then tell the jury that they
11 could only consider that on the issue of your
12 credibility or your believability and no other
13 purpose, you understand?

14 **DEFENDANT MOORE:** Yes, sir.

15 **THE COURT:** Now, today, I realize you're
16 incarcerated, but today are you under the influence
17 of any kind of medicine or any substance that
18 adversely affects your thinking?

19 **DEFENDANT MOORE:** No, sir.

20 **THE COURT:** Do you suffer from any physical or
21 mental problems that affect your thinking today?

22 **DEFENDANT MOORE:** No, sir.

23 **THE COURT:** You're clearheaded? You know what
24 you're doing?

25 **DEFENDANT MOORE:** Pretty much, yes, sir.

1 **THE COURT:** Have you understood everything I've
2 been over with you?

3 **DEFENDANT MOORE:** Yes, sir.

4 **THE COURT:** All right. Now, what I'm going to
5 do at this point, Mr. Moore, is I'm going to make a
6 finding that your decision as to whether you testify
7 or not is your decision and yours alone; that you
8 understand you have a right to testify or not to
9 testify; you understand that nobody can make you
10 testify; you understand that I would tell the jury
11 they could not hold your silence against you if you
12 chose not to testify; you understand what I would
13 let the State ask you about as far as your prior
14 criminal record if you testified and what I would
15 tell the jury about that only being used for
16 impeachment purposes and no other purpose; you
17 understand that if you do not offer any evidence,
18 that your lawyers get to make the last closing
19 argument; and most importantly, you understand that
20 this decision is yours to make and yours alone.

21 So if anybody attempts to unduly influence you
22 in making your decision, you have to let me know
23 that right away, all right?

24 **DEFENDANT MOORE:** Yes, sir.

25 **THE COURT:** Do y'all need a minute to talk?

1 **MR. COLLINS:** Just a brief moment.

2 **THE COURT:** All right.

3 (Pause.)

4 **MR. COLLINS:** Your Honor, I think he's made his
5 decision.

6 **THE COURT:** Okay. Mr. Moore, do you want to
7 testify or not testify?

8 **DEFENDANT MOORE:** Not testify.

9 **THE COURT:** Is that your own decision, made of
10 your own free will?

11 **DEFENDANT MOORE:** Yes, sir.

12 **THE COURT:** All right. What I'm going to do is
13 I'm going to bring the jury back in. I'm going to
14 ask the State if the State has anything further to
15 present. Then I'm going to tell the jury that
16 that's all the evidence that they have to consider
17 and I'm going to give the instruction about that the
18 jury cannot hold the defendant's silence against
19 him.

20 After that, I'm probably going to send them
21 back in the jury room for just a few minutes and try
22 to get my bearings as to how we're going to proceed
23 this afternoon. My preference would be to continue
24 moving the case and go forward this afternoon after
25 an extended lunch break. However, as I told you

1 yesterday, there are some rather difficult issues of
2 law.

3 Bring the jury in.

4 (The jury returns to the courtroom.)

5 **THE COURT:** Anything further from the State?

6 **MS. WEISS:** No, Your Honor. At this time, the
7 State rests.

8 **THE COURT:** Ladies and gentlemen, you now have
9 all of the evidence you're going to have to decide
10 the case. And I need to give you an instruction at
11 this point, please pay close attention.

12 I emphasize to you, ladies and gentlemen, that
13 the fact that the defendant in this case elected not
14 to testify is not a factor to be considered by you
15 in any way in your deliberations and in your
16 consideration on the question of whether he is
17 guilty or not guilty. His decision not to testify
18 must not be considered by you in any manner
19 whatsoever against Mr. Moore. An accused has a
20 constitutional right to remain silent and the
21 assertion of that right cannot and must not be
22 considered by you in your deliberations in any
23 manner whatsoever against the defendant.

24 Under the oath you've taken, you are to reach
25 no inference and you are to draw no conclusion

1 whatsoever from the fact that Mr. Moore elected not
2 to testify. His decision not to testify should not
3 be discussed by you in your deliberations in the
4 jury room. It should not enter your mind in making
5 your decision on the question of whether he is
6 guilty or not guilty.

7 The burden of proof, as I've told you
8 repeatedly, is entirely on the State to prove every
9 essential element of an offense charged beyond a
10 reasonable doubt and an accused has no burden to
11 prove anything at all.

12 Now, I told you yesterday when we broke that
13 after the morning break, I would probably be in a
14 better position to tell you where I think we're
15 going as far as how we're going to proceed with the
16 trial. And as I just told you, you've got all the
17 evidence now. There are two stages that remain in
18 this trial, the closing arguments from the attorneys
19 and the charge where I tell you the law.

20 I stayed here last night and talked to the
21 attorneys some about the law. There are a couple of
22 issues that I told them to think about and talk to
23 me about today. And I don't know what they think
24 about those issues and it's going to affect my
25 decision as to whether I send you home for the rest

1 of the day because I think it's going to take us
2 that long to work through those issues and then you
3 come back tomorrow and hear the closing arguments
4 and the charge or whether we continue on this
5 afternoon after an extended lunch break for you.

6 Now, my preference, I don't mind telling you,
7 is to keep going, but by the same token, I don't
8 want to have you sitting in that room for an
9 extended period of time unnecessarily. So I need to
10 confer with them for a few minutes having just found
11 out where we are with the evidence and then I'll get
12 you in here within ten minutes and tell you whether
13 you're free for the rest of the day or whether I
14 need you back at a particular time this afternoon,
15 okay. All right, don't discuss the case, follow the
16 bailiff.

17 (The jury retires to the jury room.)

18 **THE COURT:** All right. In broad general terms,
19 I need to know whether there is a position being
20 taken on issues of lesser included offenses,
21 specifically including manslaughter, whether there's
22 an issue about transferred intent and whether there
23 is an issue about self-defense and anything else, I
24 guess, that you all want to talk to me about.

25 My law clerk said that the defense was asking

1 for a mere presence charge and I think that's
2 probably appropriate. I don't have it in here yet,
3 but I think that's probably appropriate. Is the
4 defense requesting a charge of voluntary
5 manslaughter?

6 **MR. STRICKLER:** Yes, we would request voluntary
7 manslaughter. Yes, we would request self-defense.
8 I've tried to figure a way to actually look at you
9 and request involuntary manslaughter, but I haven't
10 been able to work my way to that.

11 **THE COURT:** Well, just to ease anyone's
12 concerns about that, you can ask for it all day
13 long, I'm not charging it.

14 **MR. STRICKLER:** I spent enough time reviewing
15 the law again this morning and realized that, so I
16 won't press that issue. But, yes, as to voluntary,
17 yes, as to self-defense.

18 **THE COURT:** All right. Now, I have to, at this
19 stage, view all the evidence in the light most
20 favorable to the defendant. And I need to recognize
21 that my recollection apparently of -- my
22 recollection of the testimony was that apparently
23 there was an assertion that the driver of the car
24 made some obscene gesture to the driver of the
25 truck, or to the truck, the people in the truck, and

1 then later tried to run the truck off the road. I
2 don't know that the obscene gesture would be enough,
3 the running -- the evidence about trying to run the
4 truck off the road would be what I would be dealing
5 with as far as sudden heat of passion.

6 The self-defense, is that coming from these
7 statements about running off the road, trying to run
8 the vehicle off the road, or is that coming from
9 somebody saying that the passenger or the driver of
10 the car was making some movement underneath the
11 seat?

12 **MR. STRICKLER:** Well, one augments another. I
13 mean, certainly start from running off the road, but
14 certainly this is supported by, and this is from the
15 State's witness, these movements via by the
16 passenger or the driver under the seat, that's --
17 the inference being movements to get a weapon. In
18 that regard, to the extent that you have to rely on
19 that as opposed to trying to veer off the road as
20 supporting self-defense, I mean the law in this
21 state is that you don't have to let someone else
22 have the opportunity to do damage to you or to get
23 the drop on you as it were, classically in a
24 situation involving a firearm, having a right to act
25 in a somewhat preemptory fashion in that situation.

1 It's certainly -- perception is that the
2 movement was to -- was interpreted as moving towards
3 a weapon.

4 **THE COURT:** And, again, I don't want to get
5 bogged down in this right now. I want to take as
6 much time as is necessary.

7 Here's what I'm struggling with. These are two
8 vehicles going down the interstate. There's a brake
9 pedal, presumably, in that truck. How do you get to
10 self-defense when another vehicle is beside you?

11 I'm assuming he could not see, whoever he was,
12 could not -- in the truck, could not see somebody at
13 some distance behind them after midnight at night
14 reaching down underneath a seat, if it could be seen
15 when they're side by side or close to being side by
16 side. How is it that someone can act in
17 self-defense when there are two vehicles going down
18 the interstate? That's what I'm struggling with.

19 **MR. STRICKLER:** Yes, sir. Well, two vehicles
20 going down the interstate under one version of the
21 testimony, certainly --

22 **THE COURT:** That's what I'm looking for. And I
23 realize there's times when they say the vehicles
24 were behind -- one was behind the other and they
25 were chasing each other. And there's testimony one

1 of them pulled off the side of the road. I don't
2 know how a police interceptor would have caught back
3 up with the truck in the distance, but that's really
4 not for me to decide.

5 **MR. STRICKLER:** And that's testimony from the
6 driver of that vehicle and it may be supported by
7 the testimony from the passenger in Mr. Moore's
8 vehicle, pulled off and evidently caught back up
9 with them, and that indeed is a problem. I mean,
10 you can slow down, speed up.

11 The testimony before this court is that the
12 rate of speed had something to do certainly with not
13 only the potential for the harm to the defendant's
14 vehicle and the defendant, but the ability to avoid
15 any problems and I would submit a heightened
16 perception on the part of the defendant and the
17 passenger, who's the one that testified about -- or
18 gave a statement relating to the passenger in the
19 victim's vehicle reaching down for something,
20 heightens their perception as to what might be on
21 the minds of people in that car.

22 And if you have a car slowing down, pulling off
23 to the side, then flooring it and catching back up
24 with them, I mean it's analogous to the situation
25 that, you know, I don't have to put my back to the

1 wall if I can't get away from it. If it increases
2 my danger to go ahead and try to remove myself from
3 the situation, then that requirement's not present
4 as far as self-defense goes. And so you have
5 actions on the part of the operator of the victim's
6 vehicle consistent with the mindset of both the
7 driver and passenger of Mr. Moore's vehicle that his
8 actions in operating the car, once again, in the
9 light most favorable to the defendant at this point
10 in time --

11 **THE COURT:** I understand. I've got to consider
12 everything in the light most favorable to the
13 defendant.

14 **MR. STRICKLER:** His actions in the operation of
15 the motor vehicle would make useless any other
16 action on their part other than acting in
17 self-defense and that's certainly a view of the
18 evidence -- a view of the facts as supported by the
19 evidence -- view of the law as supported by the
20 evidence, pardon me.

21 **MR. MEADORS:** Judge, Mr. Strickler a moment ago
22 said that was testimony of the driver. My
23 remembering, Mr. Derrick said he just kind of went
24 off the side of the roadway. It was Mr. Kerwyn
25 Phillips who said they may have gone off for an

1 extended period of time. Judge, I --

2 **THE COURT:** It was a statement, I remember -- I
3 remember it being elicited, I think, through
4 Mr. Barnes' testimony that the vehicle pulled off to
5 the side of the road out there on the interstate and
6 the truck continued going. And believe me, this is
7 a very, very, very tragic situation no matter which
8 side of the room you're on and nothing I'm saying is
9 trying to be taken to make light of anything that
10 happened that night.

11 **MR. MEADORS:** We all understand that, Your
12 Honor.

13 **THE COURT:** What I'm saying that if you've got
14 vehicles traveling at -- and I don't get to decide
15 the evidence, I don't get to weigh the evidence, I
16 don't get to decide what's believable or not, but
17 I've been up and down that interstate a bunch in my
18 lifetime and if one vehicle pulls off to the side of
19 the road and the other one keeps going at interstate
20 speeds between Broad River Road and -- giving every
21 benefit of the doubt, I guess you're talking maybe
22 four minutes to travel that distance. I thought he
23 said he pulled over out there near where Blanchard
24 Machinery is or wherever that space, that -- the
25 landscaped area out there on the interstate,

1 whatever it is.

2 **MR. MEADORS:** Judge, my memory of Mr. Derrick's
3 testimony was that the shots were fired around the
4 golf course area of Broad River. It was after that,
5 he pulled off to the right and kept going. His
6 testimony was he didn't stop, that I remember.
7 That's when he went over across the lanes to try to
8 get the tag of the vehicle.

9 **THE COURT:** I know he said he didn't stop.

10 **MR. MEADORS:** And I understand the other
11 evidence. And I was at the oral argument of
12 Childers when there was a colloquy back between
13 Justice Pleicones and Her Honor, Chief Justice,
14 about something similar to this issue we're talking
15 about right now quite frankly. And, I guess, the
16 issue after that is after the swerve, is
17 Mr. Derrick's testimony, a swerve back and I don't
18 -- a swerve, anybody can swerve on the interstate on
19 somebody inadvertently or whatever at that point. I
20 don't know what swerve they're -- Mr. Derrick's
21 testimony was he came back after the shots were
22 fired.

23 Mr. Phillips' testimony, that I remember, that
24 it was initiated by the defendant who was flicking
25 their lights at him, came up beside them and that's

1 when they thought there was a gesture. Arguably, it
2 could be the cigarette being flipped, I don't know.
3 But it's at that point afterwards that the
4 confrontation happened and he puts it in a little
5 different place, I think Mr. Phillips does, but
6 clearly puts it in that I-20 area, Judge.

7 I'm going to -- first, voluntary, whether
8 there's a sufficient adequate legal provocation, I'd
9 like to -- and the self-defense, I quite frankly
10 didn't even know we'd be discussing that. I would
11 like some time to do some research on that. And I'm
12 going to ask Your Honor to consider hand of one,
13 hand of all and State v. Mouzon. If they're going
14 to argue it's the passenger, there are some other
15 issues there. And shooting into a car recklessly
16 going down the highway, I think Mouzon could apply,
17 Judge, as another way to show malice.

18 **THE COURT:** Bring the jury back in, we're going
19 to talk about law all afternoon. Bring the jury in.

20 (The jury returns to the courtroom.)

21 **THE COURT:** Ladies and gentlemen, I told you
22 before we took that little break there, that my
23 preference was to continue going today and try to
24 get the case to you this afternoon. That's
25 unrealistic. So I don't get what I want a lot of

1 times and I don't know if what you want coincides
2 with what I was trying to accomplish there, but I
3 could leave you sitting back there in that room and
4 maybe around four o'clock, we could start this. And
5 the Chief Justice has given us instructions not to
6 do that and I'm not -- I mean, she gave us some
7 discretion, but there is no reason to tell you to be
8 back here around four o'clock and then start
9 arguments and charge then.

10 So we're going to stay here and we're going to
11 work and I expect we're going to be here most of the
12 afternoon. Then I'll put on paper what it is that I
13 intend to tell you and I'll give that to the
14 attorneys and we can talk about all those things
15 that normally you would have to wait on us to do
16 anyway in most trials. And, hopefully, we'll get
17 all of that out of the way so that when you come
18 back in the morning, you're going to hear the
19 lawyers argue and then you're going to hear me tell
20 you the law and you'll get the case some time late
21 tomorrow morning.

22 So it's really important you not be exposed to
23 any media coverage and you not let anybody talk to
24 you in any way about this case. And remember all of
25 those admonitions. I need you back here in the jury

1 room in the morning at 9:30. Thank you. Don't
2 discuss the case.

3 (The jury was excused for the day.)

4 **THE COURT:** All right. I, for the first time,
5 have had the benefit of having real time. And I
6 will say that I've heard judges talk about it for a
7 long while since it started coming into practice and
8 I never really thought much of it, but it has been a
9 real aid.

10 But since it's brand new to me and I didn't
11 really know that I was going to have it set up, I
12 haven't been able to go back and look at the
13 previous days. I can look at part of them, but I'm
14 apparently not saving the files right. So I may
15 need to get the court reporter to help me with that
16 or look at the law clerk's computer because the law
17 clerk said she can go back and see previous days.

18 What I recall Mr. Kerwyn Phillips saying, and I
19 did take old-fashioned notes, what I recall him
20 saying was that the driver of the car swerved over
21 and basically was forcing the truck off the road.
22 Am I in error in that?

23 **MR. COLLINS:** Your Honor, I remember him
24 testifying -- his testimony that, yes, the car
25 swerved at them before any shots were fired and then

1 also the driver was reaching underneath the seat, or
2 somebody inside the car was reaching underneath the
3 seat for something. And, also, the truck had to
4 swerve over to the left side near the concrete
5 median.

6 **THE COURT:** You know, when I'm saying off the
7 road, that's really not -- that's not really what
8 I'm meaning. I'm meaning swerving to avoid a
9 collision.

10 **MR. MEADORS:** Judge, that's what I need to go
11 back in my mind, if I'm wrong, I'm not trying to be
12 because it is what it is, you'll read it, I thought
13 that there was testimony they went back and there
14 was kind of like a back and forth like that before a
15 swerve, that's what I can't remember in my mind.
16 That there were lights flicked, came up beside them,
17 they thought there might have been a gesture and
18 then that's where they were, you know, kind of going
19 back up in front. And I thought that was before the
20 swerve, I may be wrong.

21 (Pause.)

22 **MR. MEADORS:** Clearly, I remember Mr. Phillips
23 said he thought the passenger went down and didn't
24 say he saw -- specifically said he didn't see
25 anything, see that person with anything. And if my

1 memory's correct, on the tape then, just thinking of
2 all the evidence that's come in this morning, on the
3 Alvin S. Glenn tape, that the defendant tells Ms.
4 Nix, I believe, sees him reach under the seat at
5 that point.

6 I'm just struggling with -- I've been on that
7 road 46 years, you know, the issue is, I see people
8 doing it all the time in different cars, just as to
9 voluntary manslaughter, sufficient legal
10 provocation, I just want to get to some case law
11 that I have in my file in my office and maybe if
12 we're going to break for lunch, I just want the
13 opportunity to be heard on that on all of these
14 issues and also self-defense.

15 And I apologize. I did not know that would be
16 an issue today, I should have and I apologize, as
17 far as self-defense.

18 **THE COURT:** Well, obviously, the reason I sent
19 the jury home is so we can talk about all of this,
20 so I'm certainly going to hear from you. But before
21 I break for lunch and start thinking about these
22 things, I want to make sure that I've got in my mind
23 a version of the evidence in the light most
24 favorable to the defendant, which is what I have to
25 have.

1 And, you know, the mere fact that one witness
2 said one thing and one said another, I don't get to
3 pick and choose between that, that's a jury's job.
4 I've got to take the parts from one witness that are
5 the most beneficial to the defendant and put them
6 together with the portions from the other witnesses
7 that are most beneficial to the defendant.

8 I mean, because obviously you talked about the
9 Childers case, Justice Toal started focusing in on
10 self-defense and I guess that colloquy that you were
11 talking about that occurred during the arguments of
12 the Supreme Court was when -- was something that
13 occurred when they were wrestling with the same
14 sorts of concepts. You've got an assertion, I
15 didn't do the shooting, the other guy did the
16 shooting. You've got an assertion when they're
17 asking for a self-defense charge, well if you
18 believed I did the shooting or I'm somehow
19 responsible for the shooting, then it's excused
20 because it's self-defense which means it's not an
21 unlawful act, which is what Justice Toal was
22 focusing on.

23 **MR. MEADORS:** Exactly.

24 **THE COURT:** And then you've got this issue
25 about transferred intent, which if you now have

1 evidence that the passenger was the one who was
2 reaching under the seat and that that somehow gives
3 rise to the creation of malice, well then that seems
4 to take away the transferred intent issue because
5 she's the one they say was reaching for something
6 under the seat, which I didn't understand until
7 today. I never thought there was any assertion that
8 she was reaching under the seat. I guess I just
9 missed that.

10 **MR. MEADORS:** I wouldn't say it's the seat from
11 her. I thought the testimony just saw her reaching
12 down. I think the seat came in today through this
13 defendant.

14 **THE COURT:** And I agree with you. I guess I'm
15 going to have to decide as some sort of blended
16 issue of fact and law as to whether somebody
17 reaching down in a car can possibly give rise to the
18 things that they're asking me to give the jury the
19 option to decide, which got to my point about if I'm
20 riding down the road and some car is beside me, you
21 know, some of my cars have judge's tags and when I
22 see people pull up beside me, sometimes I kind of
23 slow down and tap the brakes because if they just
24 sit there, I don't know who those folks are and what
25 they think of me and whether they're going to decide

1 to do something crazy.

2 So I can tell you from real experience that if
3 a car comes up beside me and there's some sort of
4 threatening gesture going on or something I
5 interpret that way, there's a brake pedal in my cars
6 that slows it down and there's an accelerator that
7 speeds it up. And so Mr. Strickler's argument about
8 the area of the law that you don't have to let
9 somebody basically get the -- what's the term?

10 **MR. STRICKLER:** Get the drop on you.

11 **THE COURT:** Get the drop on you, I don't watch
12 enough Westerns I don't guess, he's right, there's
13 plenty of law on that. You don't have to stand
14 there and wait for somebody to pull a gun out and
15 point it at you, but making a leap that just because
16 the passenger in the other side is reaching down and
17 there's combined, in the light most favorable to the
18 defendant, that there's obscene gestures going on
19 that that somehow justifies a self-defense charge,
20 I'm straining with that because there's -- the
21 element of self-defense is that you have no other
22 probable means to avoid the harm. And as I've said
23 very verbosely, every truck I've ever been in has
24 been equipped with an accelerator and a brake.

25 Now, as to whether it makes any sense at all

1 that instead of hitting the accelerator or the
2 brake, and I know they said there was a chase that
3 ensued, I'm not minimizing that, that somehow you
4 can pull out a gun, aim it and fire it, that's a
5 jury issue, that isn't really something I get to
6 decide. Does it make any sense at all that instead
7 of trying to do the other evasive things, you pull a
8 gun out and you start shooting into another vehicle?
9 Maybe the jury will wrestle with that. It matters
10 not whether I would wrestle with it.

11 All right. Just before we break, because my
12 head's starting to spin a little bit, the State was
13 saying they wanted the hand of one is the hand of
14 all.

15 **MR. MEADORS:** Last night, late, I started
16 thinking about their arguments, my arguments, and
17 that popped in my head, so, yes, sir, I'd like to
18 think about that.

19 **THE COURT:** Was the defense asking for that,
20 too? My law clerk came back and said something
21 about they were asking for it and I didn't know who
22 they was.

23 **MR. COLLINS:** I was just foreseeing the issue
24 coming down, but we would not -- we would be opposed
25 to a hand of one hand of all jury instruction in

1 this case.

2 **THE COURT:** Y'all be back here at 1:30.

3 **MR. STRICKLER:** Can I ask just one thing, Your
4 Honor? I mean, I just ask that if the Court would
5 inquire, I have written down hand of one hand of
6 all, Mouzon. I mean, I've indicated to the Court
7 the issues that I think from the defense side. I'd
8 just ask if there are any other issues that the
9 State thinks would be raised when we get back so
10 that I have an opportunity to take a look at them
11 also because I -- that's everything that I can think
12 of, those two issues. And we may have to deal with
13 transferred intent issues and I've been looking at
14 that. You talked about that yesterday.

15 **MR. MEADORS:** I couldn't handle anymore.
16 That's all.

17 **MR. STRICKLER:** I just want to make sure.

18 **THE COURT:** I can tell y'all what I've already
19 got in this very, very, very rough draft. Other
20 than the boiler plate, I've got an expert witness
21 charge tells them they don't have to accept the
22 opinions of an expert witness. I've got the charge
23 about the failure of the defendant to testify which
24 I've already given, but I'll repeat during the
25 charge, the presumption of innocence and then I

1 don't use the language about reasonable person,
2 hesitate to act. I don't stop the lawyers from
3 arguing it. It's still the law. I don't understand
4 it.

5 So what I use is the most recent thing which
6 our Supreme Court adapted from the U.S. Supreme
7 Court about being firmly convinced of the
8 defendant's guilt. I do add some language which I
9 did before that says that the defendant doesn't have
10 to raise any doubt or any other possibility, it's
11 the burden of the State to prove that he is guilty
12 to the exclusion of any other reasonable hypothesis
13 or any other reasonable -- any other possibility,
14 not reasonable, any other possibility.

15 I've got a circumstantial evidence charge.
16 I've got a charge about the statement and I've got
17 some distinguishing language in there trying to make
18 sure the jury knows that when I'm talking about all
19 of these factors they have to consider aside from
20 whether the defendant in fact made a statement,
21 there's a different inquiry that goes on when you're
22 talking about the statement made to the law
23 enforcement officer versus statements made to other
24 people not in response to police questions. But I
25 go through all of the Miranda stuff and that it has

1 to be a knowing and intelligent waiver and can't be
2 induced by promises and threats and whatnot.

3 Then I go through the indictments. I've got a
4 murder charge and malice. And then the one thing
5 that I expect that we may have some discussion
6 about, and honestly I pulled this charge up from one
7 I had given in another case and I haven't modified
8 any of this at all so far about the inference of
9 malice, but I've got some language in here from that
10 other case that talks about if the conduct of the
11 defendant results directly in the death of another
12 and it was so culpable and inexcusable, so
13 aggravated and grossly reckless as to show an
14 active, intentional disregard of the consequences to
15 human life thus devoting -- thus denoting a
16 malignant spirit, a heart devoid of social duty and
17 fatally bent on mischief, an inference of malice may
18 arise.

19 But to infer malice requires more than
20 carelessness, more than recklessness, more than a
21 passive indifference to the safety of others, there
22 has to be a deliberate and intentional design to use
23 or employ or handle a deadly weapon so as to
24 endanger the life of another without just cause or
25 excuse. You may infer malice if you determine that

1 the alleged conduct on the part of the defendant in
2 using a deadly weapon demonstrated such an
3 intentional disregard for human life.

4 But I do explain to them about malice being an
5 essential element of murder, it has to be proven
6 beyond a reasonable doubt and that this is just an
7 evidentiary inference.

8 I've got self-defense in this thing, but I
9 don't know if I'm going to charge it. And I've got
10 voluntary manslaughter in here just in case I charge
11 it. Matter of fact, I've got two voluntary
12 manslaughters.

13 **MR. STRICKLER:** Yes, sir.

14 **THE COURT:** I've got that the defendant may act
15 on appearances if it's a self-defense situation so
16 that he doesn't actually have to have been in
17 danger. It's what a reasonable person would have
18 believed under the circumstances.

19 The charge is 23 pages long. And I haven't
20 added the part about possession of a firearm by
21 someone under 21 -- possession of a pistol by a
22 person under 21.

23 I don't think you're going to get hit with a
24 bunch of surprises, Mr. Strickler, but if you do and
25 you need some time, you tell me and I'll let you run

1 to your office.

2 **MR. STRICKLER:** I will, sir, that sounds all
3 very much what I expected. I was mostly concerned
4 that I be able to address whatever he brought up.
5 The only other thing, Judge, is the getting the drop
6 language, of course, that's from a South Carolina
7 case from the 1880's, which was close to the Wild
8 West, I'm sure, but it's not my idea of Wild West.

9 **THE COURT:** Well, there's bullet holes in the
10 courthouse over in Edgefield, they can get the drop
11 on some people over there.

12 **MR. STRICKLER:** Did you say 1:30, sir?

13 **THE COURT:** I said 1:30. We'll shoot for that,
14 okay. Court's in recess till 1:30.

15 (Whereupon, there was a luncheon recess.)

16 **THE COURT:** I had an opportunity during the
17 break to go back and look at the testimony. One of
18 the critical factors in my mind was the relationship
19 between this assertion that the car was giving chase
20 to the truck, the relationship between when the
21 chase is said to have begun and when the shots were
22 first fired. And the testimony in the light most
23 favorable to the defendant, I think, on that issue
24 comes from Kerwyn Phillips.

25 And Mr. Phillips stated basically that there

1 was this exchange where the car was in front, the
2 truck came up behind it, the defendant flashed his
3 lights at the car. Mr. Phillips said that he
4 believed that made the occupants of the car mad,
5 that there was an obscene gesture made and that,
6 again all of this is according to Mr. Phillips'
7 version, that the defendant pulled up beside the
8 car, made faces at them, made a responsive gesture
9 apparently and drove off.

10 According to Mr. Phillips' version of the
11 facts, after the truck got ahead of the car, the car
12 pulled over to the side of the road and then came
13 back after the truck in a fast manner. Mr. Phillips
14 said that the car pulled over to the side of the
15 road near the golf course and he said right after
16 you pass Broad River Road a little bit. Mr.
17 Phillips said that he thought it was the police
18 coming after the truck, but it wasn't the police.
19 Then he said that the car caught up to the truck,
20 pulled up beside it and that's when Mr. Phillips
21 claims that the car pulled over toward the truck,
22 swerved towards the truck and the defendant swerved,
23 almost hit the wall.

24 And then Mr. Phillips said he ducked. And I
25 believe in that context, he's talking about the

1 defendant ducked down and then he said -- even
2 though I didn't realize it when he was testifying, I
3 thought he was talking about the driver of the car
4 the whole time, he said that he saw the man put his
5 hand under his seat like he was digging for
6 something. He never saw anything, but then he said
7 when John came back up, which is why I think he must
8 have been referring to the defendant ducking down,
9 he said that he dug from under the seat and told me
10 to lean back and that John had rolled down the
11 window by using the power windows for the driver's
12 -- excuse me -- rolled down the passenger side
13 window and shot into the car.

14 Then he said he set the gun down between the
15 two of them and he tried to leave, but the car
16 slowed a little bit and then picked back up running
17 after the truck. He said the defendant was trying
18 to outrun the car, the car was running pretty
19 strong, too.

20 He said there was a sliding window in the back
21 of the truck that was broken, all you have to do is
22 pull it open and he said the defendant stuck the gun
23 out the back window and shot at the car, it slowed
24 down at the time. He believes the gun was empty.
25 And then he tried to outrun the car and he took the

1 Fairfield Road exit almost lost control -- well, Mr.
2 Phillips thought that he was going to lose control
3 of the truck and the car was right behind them.
4 They made a turn, ran through the light and the car
5 also ran through the light and that's when they went
6 down the dirt road shortly after that.

7 I also reviewed the cross-examination questions
8 that were presented to Mr. Barnes about what Mr.
9 Phillips told Mr. Barnes, but I don't think they're
10 anymore favorable to the defendant than the
11 testimony of Mr. Phillips.

12 So it appears in the light most favorable to
13 the defendant, that the situation was one in which
14 there was some dirty looks and gestures made, the
15 truck went on ahead. The shots did not begin until
16 the car had given chase, had pulled off to the side
17 of the road and then came back after them and that
18 the occupants of the truck believed, again in the
19 light most favorable to the defendant, that someone
20 had reached underneath the seat of the car or was
21 reaching down in the car to get something which
22 presumably could have been a weapon, though nobody
23 ever saw a weapon.

24 All right. What do y'all need to talk to me
25 about?

1 **MR. MEADORS:** I think I remember it as Your
2 Honor did that thought he was referring to the
3 defendant about going under the seat and all of
4 those references, but just rereading what we think
5 we wrote, obviously...

6 **THE COURT:** I mean, what I've got is not the
7 transcript. I realize that. It's rough notes.

8 **MR. MEADORS:** No, I'm saying what you have is
9 correct. No question about it. I wasn't
10 questioning you.

11 **THE COURT:** When I heard it, I didn't take it
12 that he was -- well, I don't know.

13 **MR. MEADORS:** Judge, I guess I start with this,
14 then I would like to sit down and listen I guess,
15 but I start with this premise that I don't know what
16 Your Honor's still thinking about based on that, if
17 their whole defense is that he's not the shooter,
18 which has been the defense, and I start off with
19 that simple statement, then under that, if that is
20 their defense, I don't see how they're entitled to
21 voluntary manslaughter, much less self-defense, if
22 they're saying I'm not the shooter.

23 **THE COURT:** Well, that part I understand, but
24 he didn't take the stand.

25 What else you got, Mr. Strickler?

1 **MR. STRICKLER:** I was just going to respond
2 that we're not restricted. I mean, if we do that,
3 we get accused of scattershooting things and the
4 State can go ahead and do with that what they will,
5 but we're certainly not restricted to one defense in
6 the case.

7 **MR. MEADORS:** And I wasn't trying to -- but I'm
8 -- questions and in opening statements, the
9 statement was made the real shooter is coming in
10 here, but that's all I'm saying, you can't have your
11 cake and eat it, too. Although, I know he didn't
12 take the stand.

13 I will still take the position that there was
14 not sufficient -- our position, respectfully, for
15 the record, is not sufficient legal provocation.
16 Even under Mr. Kerwyn Phillips best -- most
17 favorable to the defendant, coming down the road
18 upon a vehicle, they swerve, is that sufficient
19 legal provocation? And then the bending down, John
20 ducked down and then saw the man dig under his seat
21 and then John went under his seat. That would be
22 our argument as far as there is not sufficient legal
23 provocation.

24 I think you're riding down a highway and
25 anybody can swerve, you can see somebody going down

1 the street, I just don't, you know, people come up
2 firing guns on the highway, I just think that's a
3 dangerous concept. So we'd object to voluntary
4 manslaughter. And then as far as -- well, I'd like
5 to take them one by one. That's all I would have as
6 to that.

7 **THE COURT:** Why do -- does the defense think
8 they're entitled to voluntary manslaughter?

9 **MR. STRICKLER:** Yes, sir. The issue becomes a
10 question of fact for the jury. The facts before
11 this court such as they are are capable of being
12 construed in a number of ways, what does or does not
13 constitute sufficient legal provocation. And what
14 you have to have is, as far as voluntary goes, you
15 know, sudden heat and passion, sufficient legal
16 provocation.

17 Would someone swerving at you be an action
18 such -- a swerving action so you swerve into, almost
19 run into the center concrete wall be an action such
20 as would inspire fear in you so that you'd act in
21 self-defense? Well, that's certainly a construction
22 that is reasonable in my mind. Would it also be
23 possible that it's an action such that it would
24 inspire anger in you, sudden heat and passion? That
25 too is a reaction that is reasonable to draw from

1 the evidence in my mind.

2 I mean, were I to have to take a -- you'd have
3 to be there I guess. I know my adrenaline would be
4 up in that situation, whether I'd be reacting out of
5 fear or anger is open, you know, I don't have a gun,
6 but that would be open to question. But the
7 question as to the mental state, and that's what
8 you're getting to is the mental state of the person
9 that does the shooting, that's a question for the 12
10 people over there in that box to resolve. So I
11 think we're definitely entitled to voluntary in that
12 regard.

13 And just in response to Mr. Meadors, swerving
14 towards you is not sufficient legal provocation.
15 Swerving towards you to the point that you have to
16 swerve away and almost make contact with the center
17 concrete retaining wall could cause an accident
18 resulting in your death I would say would be
19 sufficient legal provocation that would, while not
20 dethroning the reason entirely, cause a person of
21 normal prudence and courage to react in a fashion
22 such as this. And I think that's what the law
23 requires as far as sufficient legal provocation.

24 **MR. MEADORS:** Just to briefly follow up to
25 that, respectfully, I guess any -- if you swerve and

1 it was an accident and somebody got in a wreck, that
2 doesn't give them sufficient legal provocation to
3 pull out a gun and start shooting.

4 **MR. STRICKLER:** Then there would have been a
5 cooling period. We'd probably have to talk about
6 that, but that's not the issue here.

7 **THE COURT:** All right. Y'all bear with me and
8 I'll give you an answer in a minute.

9 (Pause.)

10 **MR. MEADORS:** Judge, something that just popped
11 in my mind, those statements that you read were from
12 Kerwyn Phillips saying he saw the man, I believe,
13 reach, which couldn't, I don't think, be imputed to
14 the defendant. And the defendant's statements were,
15 if I remember correctly, that they was pump faking
16 on the tape to -- he was pump faking me. And in the
17 tape to Delia was, I don't have those words right in
18 front of me, to Ms. Nix that may be where he said he
19 reached down.

20 But as far as Kerwyn's statements, I don't
21 think those -- Kerwyn's observation that the man
22 went down can necessarily be a reason for a
23 sufficient legal provocation for the defendant's
24 action, Kerwyn's words, I guess, Kerwyn's
25 observations.

1 **THE COURT:** If the only evidence were -- first
2 of all, I don't get to disregard the testimony of
3 some witness that favors the defendant because some
4 other witness said something that would refute that.

5 **MR. MEADORS:** I understand that, yes, sir.

6 **THE COURT:** Well, I don't understand the
7 argument.

8 **MR. MEADORS:** I'm saying Kerwyn's observations
9 wouldn't give the defendant sufficient legal
10 provocation.

11 **THE COURT:** Kerwyn is describing what happened.

12 **MR. MEADORS:** Kerwyn is describing what he saw
13 down there, but that doesn't mean the defendant saw
14 that, the man reaching down there, Kerwyn's words,
15 is all I'm trying to say.

16 **THE COURT:** You lost me.

17 **MR. MEADORS:** Okay. Kerwyn's saying he sees...

18 (Pause.)

19 **THE COURT:** Y'all aren't going to win this
20 argument. I'll be glad to let you put it on the
21 record, but --

22 **MR. MEADORS:** I was arguing with co-counsel
23 there, I'm sorry. But Kerwyn can't say what he sees
24 the driver see. Kerwyn's saying what he saw was my
25 point, I guess.

1 (Pause.)

2 **THE COURT:** The evidence in the light most
3 favorable to the defendant is, as I recited earlier,
4 that the defendant was being chased by a car, the
5 driver of which had already attempted to cause
6 contact at a relatively high rate of speed,
7 interstate speeds were testified to in other
8 testimony, that the car that was giving chase had
9 pulled over to the side of the road and then the
10 chase ensued. It was somewhere between midnight and
11 3:00 a.m., I think the testimony went through that
12 whole range of times. And that the car pulled up
13 beside the truck, there was some motion made which
14 was interpreted as being like going for a weapon, no
15 weapon was ever seen. I concede that no weapon was
16 ever seen in the car.

17 Though, I honestly didn't think when I was
18 coming over here this morning, that voluntary
19 manslaughter would be charged, I don't see where I
20 have any option but to charge it.

21 Now, do y'all want to talk about self-defense?

22 **MR. MEADORS:** I request that it not be charged.

23 **MR. STRICKLER:** Your Honor, I think as to
24 self-defense, I believe I expressed myself prior to
25 the break we took regarding self-defense. I don't

1 really think I can add anything more to that as to
2 whether or not the elements of it have been met.

3 And I guess the only thing I would add is just
4 what I said in addressing the Court just a few
5 minutes ago, and I almost have to think of it this
6 way myself because the concepts of voluntary and
7 self-defense are, to me, from a mental state,
8 closely intertwined, and to me, it's a question of
9 anger on one part and fear on the other part. I
10 know that's a very simplistic way of viewing it, but
11 that's just how I look at it for my sake.

12 And as I said earlier, I submit that issue is
13 one the jury would have to resolve. I submit the
14 other elements are met and that it's an appropriate
15 charge under the law. There -- certainly, there's
16 some cases that in my review of the cases early this
17 morning, in which the court has found and has been
18 upheld that know it's appropriate to charge
19 voluntary but not self-defense. There are numbers
20 of cases in which it's been found to be appropriate
21 under the facts of that particular case to charge
22 both and I think largely for just the reason that I
23 mentioned to the Court. So I submit it should be
24 charged.

25 **THE COURT:** The charge that I pulled up -- when

1 I prepare charges, usually I just go to one I've
2 done before, I pull it up and then I cut and paste
3 and delete. The one that I pulled up had murder,
4 voluntary manslaughter and self-defense in it.

5 The difficult -- the problem that appears to
6 the Court to be the major problem at this point is
7 the issue about being without fault in bringing on
8 the difficulty, even though I talked before lunch
9 more about not having any other probable means of
10 avoiding --

11 **MR. STRICKLER:** Yes, sir. As I listened to
12 Your Honor review the testimony, come up behind the
13 car, flick the lights at the car, which -- if I
14 remembered what you read correctly, and at that
15 point in time, I guess the responses that began,
16 according to Mr. Phillips, the gesture or whatever.
17 So as I look to the very beginning of the
18 difficulty, it would be flashing your lights in the
19 rearview mirror of the car ahead of you.

20 Now, I don't know whether that's -- I just
21 submit that that's not actions sufficient to
22 constitute bringing on any difficulties. Some
23 people flash lights in the rearview mirror to
24 indicate they want to pass someone.

25 **THE COURT:** The flashing the lights is not the

1 only determining factor. This whole evaluation is
2 based on a combination of things on both sides when
3 I'm looking at it from either side.

4 What I recall in the light most favorable to
5 the defendant was the defendant flashed the lights
6 which angered the people in the car, that some
7 obscene gestures were made, that the defendant
8 pulled up beside -- or the two vehicles were side by
9 side, that Mr. Phillips testified that the defendant
10 made faces at the people in the car and there were
11 some obscene gestures made from the truck to the car
12 and then the truck went on.

13 Now, a question whether that was a withdrawal
14 of whatever confrontation there was at that point
15 might be in play if that is considered to being at
16 fault in bringing on the difficulties because if the
17 truck then went on and didn't do anything else to
18 perpetuate that difficulty, then one might determine
19 that the defendant had withdrawn from the situation
20 and that, not by words but by conduct, had clearly
21 communicated to his adversary that that matter was
22 over. He's gone on ahead.

23 **MR. STRICKLER:** The question is whether it's a
24 series of events or one single stream of events, I
25 guess, I mean, whether there's a break in the

1 conduct.

2 **THE COURT:** All right. What does the State
3 want to say about self-defense?

4 **MR. MEADORS:** If Your Honor's already made his
5 mind up, we're fine with --

6 **THE COURT:** No, I haven't. If I made my mind
7 up, I would tell y'all what I was going to do and
8 why I was doing it.

9 **MR. MEADORS:** I think without fault, I -- in
10 the light most favorable to them, to the defense,
11 the lights, they pulled up besides, I think there's
12 testimony from Kerwyn Phillips there might have been
13 a gesture coming back their way, but then the
14 defendant makes another gesture, smiles at them,
15 then he goes on. At that point, Mr. Phillips does
16 say they go off to the side of the road, I don't
17 know how long under his scenario they went off, I
18 guess that can be argued any way, and then it comes
19 back on.

20 I would say that there isn't a significant
21 enough break for a withdrawal. I don't think they
22 would get past the first step, come in with clean
23 hands basically. And we'd ask first and foremost
24 why that shouldn't -- that self-defense shouldn't be
25 charged.

1 If we get past that, again it's like Mr.
2 Strickler put it in kind of simplistic terms, to
3 believe his life was in danger or was it actually in
4 danger, I'd say no. Would a reasonable person
5 believe that he was in danger of suffering serious
6 bodily injury or death under the facts of this in
7 the light most favorable to them, I don't think so.
8 So if you got to the second or third prong, I don't
9 think there's evidence in the record to justify the
10 self-defense on those two, but I don't think we get
11 past step one in my opinion.

12 (Pause.)

13 **MR. MEADORS:** And I guess, and, Ms. Weiss, I
14 want to thank you for that, that we are talking
15 about just a few miles stretch, I mean, if you're
16 practically looking into it. So, I mean, the time
17 period with cars moving, the testimony of so many
18 miles per hour, there's only so much time it would
19 have taken to do that practically and factually, so
20 that would, I think, hopefully strengthen our
21 argument that there was not enough time to -- for a
22 withdrawal.

23 **THE COURT:** I mean, again, if you believe the
24 testimony of the victim...

25 **MR. MEADORS:** Shots had already been fired.

1 **THE COURT:** Sure.

2 **MR. MEADORS:** Yes, sir, I'm with you. I
3 understand.

4 **THE COURT:** And if the shots were fired, that's
5 why I said at the very beginning when I sat down,
6 the critical issue is whether there's any evidence
7 related to the sequence of shots being fired in
8 relationship to the other things that were going on.
9 And if shots were fired and then the chase ensued,
10 there's no way you can claim that you were not at
11 fault in bringing on the difficulty. But when I
12 went back and read the real time notes, that's not
13 what Phillips said happened. He said the shots
14 didn't start until later.

15 **MR. MEADORS:** I agree.

16 **THE COURT:** And so that puts me in the
17 situation -- again, I'm not -- I have no idea what
18 the jury is going to decide the facts are, but it
19 can certainly be said that the facts were
20 substantially different in some ways than what Mr.
21 Phillips said and that there can be reasonable
22 explanations as to why he could be, and I'm not
23 saying he is or he isn't, but he could be trying to
24 tell the truth, but in all that that was going on at
25 that particular time, it may be a little bit here, a

1 little bit there, that's all, but I've got to take
2 everything in the light most favorable to the
3 defendant. And I don't think I have to go out so
4 far on the limb that I just am on the furthest
5 branch and there's no basis whatsoever for a jury to
6 make the determination that I'm allowing them to
7 make.

8 And had the defendant taken the stand and
9 testified, then I'd be in a situation sort of like
10 Justice Toal was where I can say, well, he, himself,
11 didn't say it happened this way. I would have
12 narrowed those various options. But he didn't take
13 the stand and that's fine. And I think Mr.
14 Strickler is right, he's entitled then to any
15 challenge that might refute the State's version of
16 the facts.

17 I'm not ruling right now, but I can tell you
18 that the scenario that someone is out on the
19 interstate in the early morning hours and a car
20 is -- there's been some little back and forth that
21 probably everybody in this courtroom has been
22 involved in to some degree or another, if there's
23 anybody in here who drives who hadn't been flipped
24 off, I'd like to know them, but something has
25 happened, it escalates and then all of a sudden,

1 you're on a stretch of interstate late at night and
2 a car is chasing after you and won't stop, if that's
3 what happened, that is a very frightening scenario.

4 Now, just opposed against that if you believe
5 that's not at all what had happened, the thought
6 that somebody would ride down the interstate and
7 fire a gun into another vehicle is just completely
8 horrifying, which is why I think this thing has
9 probably generated so much interest in the community
10 is because if that's what happened, that could
11 happen to anybody. The jury doesn't have to believe
12 that that man was driving down the road talking to
13 his fiancée about getting married and just out of
14 the blue this truck pulls up beside him and starts
15 shooting into the car.

16 All right. Y'all give me a few more minutes.
17 I'm not going to make y'all stay here all afternoon.

18 **MR. MEADORS:** Your Honor, along with that, is
19 Your Honor still going to let us know about hand of
20 one, hand of all?

21 **THE COURT:** Yeah, we're going to go through
22 every issue hopefully. We're at ease for a few
23 minutes.

24 (Brief recess.)

25 **THE COURT:** We've been back there reading, and

1 I just have to tell you I've gone back and forth and
2 back and forth. And so I've had somewhat of a
3 change of game plan so that you all won't have to
4 just sit here and wait on me. I know you've got
5 other things to do.

6 I'm going to tell you what I'm inclined to do
7 at this moment, and realize that I might talk myself
8 out of it, but the plan is, as far as logistics,
9 that I'm just going to leave here, I'm going to go
10 to my office in Edgefield and I'm going to finish
11 doing the charge and I'm going to e-mail it to you.
12 So I need an e-mail address where you will get it
13 and, hopefully, you'll check it tonight. If you're
14 an early riser, that's a different thing. And then
15 I'm going to ask you all to be back here in the
16 morning at 8:45 so that you can put any objections
17 on the record and talk about anything you want to.
18 And realize that I might change my mind overnight
19 and I might change my mind after you talk to me, so
20 I'm going to probably err on the side of putting the
21 stuff in there.

22 I've really been wrestling with this
23 self-defense issue. Right now, what I think I have
24 to do, based on my reading of the law, is that I
25 have to charge self-defense and I have to charge

1 voluntary manslaughter. I'm not charging
2 involuntary manslaughter.

3 I think I have to charge accomplice liability
4 because there was a scenario, if you believe
5 Mr. Derrick's version of the facts, whereby even if
6 the jury believed that the passenger was the
7 shooter, there had to be some -- or there could be a
8 finding beyond a reasonable doubt there was some
9 cooperation between the driver of the truck and the
10 shooter to accomplish the killing. So I think that
11 the State's going to be entitled to that charge.

12 I think if I do go forward with my present
13 thinking of self-defense, it's really only based on
14 the portion of the law that deals with withdrawal
15 because I think that if you consider it as one
16 continuing course of events, I'm hard pressed to
17 charge self-defense. If you consider it as though
18 there's a possibility for a jury to determine that
19 there was a withdrawal, in other words, that there
20 was this initial thing that went on between the two
21 vehicles, the people in the two vehicles, and then
22 the truck went on down the road on its merry way,
23 the car pulled off to the side, knew the truck was
24 continuing on away from them and then gave chase,
25 then I think that you could have a withdrawal

1 situation that would break that link between
2 bringing on the difficulty.

3 I've still got some problems with other
4 elements of self-defense, too, but I think I've
5 aired those, particularly the last one about there
6 being no other probable means of avoiding the danger
7 of serious bodily injury or death except to act as
8 the defendant allegedly did. I really struggled
9 with that one before lunch, but right before we
10 broke this last time, I think I explained to you all
11 that if you're on an interstate late at night and
12 you take one version of these facts, that can be an
13 extremely frightening and threatening course of
14 events for someone if it is a self-defense
15 situation.

16 Now, I still am really struggling to see why
17 you can't just keep driving away until you know
18 there's a gun or something like that. And, again,
19 this gets into facts and I probably ought not even
20 say it, the fact that the chase continued on so long
21 is one of the real reasons I think I have to give
22 the jury some ability to go down that road of
23 exploring whether the defendants were -- the
24 defendant was actually being chased for a different
25 reason than what Mr. Derrick was asserting.

1 I'm sorry I can't just give y'all the charge
2 this afternoon. I mean, I don't have to anytime,
3 but if y'all can give me an e-mail address that I
4 can get it to you and you can look over it and meet
5 me at 8:45. And the security people assured me that
6 the defendant will be here by eight o'clock so that
7 shouldn't be a problem. Is that a problem with
8 anybody, 8:45?

9 MS. WEISS: I'll do my very best. I just have
10 to do childcare issues.

11 THE COURT: Well, if I've got two lawyers, I'll
12 be okay for that part.

13 MR. MEADORS: Thank you, Judge.

14 THE COURT: All right. Thank you very much.
15 Court's in recess until 8:45.

16 (Whereupon, the proceedings were concluded
17 for January 31, 2008.)

18 (The following proceedings were held on
19 February 1, 2008.)

20 THE COURT: All right. What comments do you
21 have about the proposed charge?

22 MR. MEADORS: First and foremost, thank you for
23 sending this to us. I got it late last night from
24 Ms. Joanna McDuffie.

25 I guess one of the reasons we're meeting here,

1 and for the record, we would again ask Your Honor
2 not, I think I'm allowed to do this here, just not
3 to charge self-defense. And just thinking about it
4 last night and thinking about the Childers case,
5 when Mr. Childers testified, and he testified and I
6 think that's one of the reasons he got that charge
7 in that case, Your Honor, he actually said the words
8 he was in imminent danger of suffering serious
9 bodily injury or death, actually put that in the
10 record.

11 It was ludicrous. It didn't make any sense.
12 The jury didn't believe it. He came stalking his
13 ex-girlfriend in a coat and had a gun there and said
14 he was using the gun to shoot dogs in case he got
15 hurt going to see her, it just made no sense, he'd
16 been sitting out there, but the fact he said the
17 words, he got it.

18 I don't think there's any evidence in this
19 record that this defendant was in actual or had a
20 reasonable belief that he was in danger of suffering
21 serious bodily injury or death. I don't think
22 there's any. And I'd -- respectfully, I don't think
23 we're allowed to infer, like we are inference of
24 malice, infer imminent danger. I think there's got
25 to be some testimony of it. In this case, I think

1 there's actually just the opposite.

2 We could argue later on his comments, I didn't
3 care. On the tape in the end he says, I shot nine
4 times. And he should -- at the end of the tape, He
5 should be gone, too. No evidence at all that he was
6 in danger. And that's, again, we'd ask Your Honor
7 in these next 35 minutes to reconsider self-defense.
8 I'm certainly going to argue all that if Your Honor
9 does charge it, but that's the only other thing I
10 need to put on the record. Thank you.

11 **THE COURT:** Well, just so I respond to that
12 while I'm thinking about it. This is the
13 appropriate time for you to raise whatever
14 objections you may have to the charge. Obviously,
15 I'm going to give you another chance after I charge
16 it because I never read the charge verbatim and so
17 you need to listen carefully when I do talk to the
18 jury because I may say something and not even
19 realize I say it.

20 But as I said yesterday, I don't get to choose
21 whether I think any of this stuff is believable or
22 not. I have to go by the any evidence standard.
23 And there's evidence in the record that I went into
24 great detail yesterday on so I won't repeat it
25 today, but about the chase, about the swerving, to

1 knock the car off the road, all that sort of thing,
2 the circumstances which I think require me to give a
3 self-defense charge. And, Solicitor, I will tell
4 you that I have wrestled with this long and hard and
5 had a lot of the same doubts, but I think I have to
6 charge it.

7 **MR. MEADORS:** And I respect that and I know
8 Your Honor has.

9 **THE COURT:** And you do your job. You tell me
10 what you disagree with and I'll tell you if you
11 change my mind.

12 **MR. MEADORS:** And I do respectfully disagree
13 and I know you care and do what you think's right,
14 Judge, and I really do respect that.

15 Judge, also, on the front page, You may
16 consider the lack of evidence presented by the
17 State, I've always heard that charge, I guess, in
18 different places would be -- I don't have anything
19 else, that's all.

20 **THE COURT:** Well, the deputy solicitor in
21 Lexington one time years ago, I've been giving that
22 charge for years and years, and the deputy solicitor
23 one time told me, Dayton Riddle said I had it in the
24 wrong place. And he's probably right, but I can't
25 remember where he said it ought to be.

1 **MR. MEADORS:** I guess that's what my -- I've
2 seen it just in different places. I mean, you hit
3 the nail on the head.

4 **THE COURT:** Well, Dayton hit the nail on the
5 head.

6 **MR. MEADORS:** And that's unusual for Mr. Riddle
7 if the record will reflect.

8 **THE COURT:** The thing is he didn't change what
9 I was doing.

10 All right. From the defense?

11 **MR. STRICKLER:** Beg the Court's indulgence one
12 moment.

13 (Pause.)

14 **THE COURT:** Do y'all need a minute to confer or
15 anything?

16 **MR. STRICKLER:** No, sir. Your Honor, I really
17 don't have any changes but to ask you on pages three
18 and six, you have headings for the charges that
19 you're going to deliver, and my only concern was
20 with the headings not the body of the failure of the
21 defendant to testify.

22 **THE COURT:** I never read the headings.

23 **MR. STRICKLER:** And the sixth, the heading's
24 confession.

25 **THE COURT:** I think that -- the heading I never

1 changed. It used to have failure in the body and I
2 changed that to elected not to testify years ago.

3 **MR. STRICKLER:** With those issues, I don't have
4 anything, Your Honor.

5 **THE COURT:** Okay. Well, we'll be at ease till
6 the jury gets here. Now, you all be careful because
7 these doors might be open and the jurors will be
8 coming down this hallway, so y'all just be mindful
9 of that. We're at ease till the jury's here.

10 (Brief Recess.)

11 **MR. MEADORS:** Judge, there's one word that I
12 just missed, I don't know how else to say it, in
13 accomplice liability.

14 **THE COURT:** Can you tell me a page number?

15 **MR. MEADORS:** Under line four.

16 **THE COURT:** I don't know what page yet.

17 **MR. MEADORS:** 15, I'm sorry, 15. I don't know
18 if that's a mis -- but I think it needs to say the
19 law is, because I don't -- the State asserts, I
20 mean, that would be like saying the State asserts
21 murder and voluntary. I think that's the law. And
22 we just ask Your Honor take out the State asserts
23 because I just think it's the law.

24 **THE COURT:** I'll just take the State asserts
25 and say Mr. Moore may.

1 **MR. MEADORS:** Thank you.

2 **MR. STRICKLER:** It will then be up to the comma
3 and then Mr. Moore may nonetheless be found guilty
4 under the theory of -- that's fine, Judge. Thank
5 you.

6 **THE COURT:** Is the State ready to argue?

7 **MR. MEADORS:** Yes, Your Honor.

8 **THE COURT:** Defense?

9 **MR. COLLINS:** Defense is ready.

10 **THE COURT:** Bring the jury in.

11 (The jury enters the courtroom at 9:40 a.m.)

12 **THE COURT:** Ladies and gentlemen, thank you
13 very much. We're going to now proceed into the
14 closing arguments and following those, we'll have
15 the charge on the law. As I told you yesterday,
16 those are the only two stages of the trial that
17 remain before you get the case.

18 Now, the way this will work is that the State
19 will make the first closing argument and then the
20 defense will make the defense's closing argument. I
21 always take a break between the conclusion of both
22 closing arguments and the part where I start telling
23 you the law so I can get set up out here and usually
24 it's a very short break. Sometimes I take breaks in
25 between the two closing arguments, it just sort of

1 depends on how long the attorneys talk. So we'll
2 play it by ear.

3 I can tell you that the charge in this case is
4 going to be rather lengthy, so when I do talk to
5 you, it's going to take me about 45, 46 minutes to
6 tell you the law. So we'll again play that by ear.
7 We'll see how that goes. I have, in a few cases,
8 sort of broken up the charge and done it in two
9 segments, so I'll let you know if I change my mind
10 as to whether I'm going to go straight through or
11 not, but we'll try to take periodic breaks.

12 And your lunch has been ordered and whenever we
13 finish these steps and you start deliberating on the
14 case, when your lunch gets here, it will be brought
15 in to you. I invite your close attention.

16 Which of you is going to argue? Mr. Meadors,
17 you're recognized for your closing argument.

18 **MR. MEADORS:** May it please Your Honor. Ms.
19 McDuffie, Ms. Weiss, Mr. Collins, Mr. Strickler.

20 Mr. Foreman, ladies and gentlemen of the jury,
21 good morning. My name is John Meadors. I was
22 introduced by the Judge, but I want to formally
23 introduce myself to you now. I'm the Deputy
24 Solicitor for the Fifth Judicial Circuit.

25 Monday, I guess it was, we were in that

1 courtroom over there and the Solicitor, Barney
2 Giese, was sitting up in this chair, which was over
3 there, and y'all were back up in the audience, he's
4 the elected Solicitor for the Fifth Judicial
5 Circuit. I'm here on behalf of Barney Giese, the
6 Solicitor's office, representing the people of the
7 State of South Carolina, the people of Richland
8 County, Stephanie Dover, Gene Derrick and their
9 families against the defendant who's sitting there,
10 Mr. John Moore, Junior, represented by Mr. Collins
11 and Mr. Strickler.

12 I want to start off like my mama taught me like
13 I always do and thanking y'all for being here. And
14 I'm not just saying that, but thank you. Thank you
15 for being here. Thank you for being a juror. You
16 came in when you were summoned. Thank you for being
17 here. Without y'all, this system wouldn't work.
18 That's what makes our system great, this jury
19 system, y'all.

20 And it was last year, I think, that I heard it
21 phrased this way for the first time. We were in the
22 same room where y'all were Monday, there was a
23 judge, Carmen Mullen, from down in Beaufort, a new
24 judge, female judge, nice lady. She was talking to
25 the jury like y'all were being talked to by Judge

1 Manning Monday and she told them -- because, folks,
2 we've all got our roles, His Honor said that to
3 y'all, I guess, Monday or Tuesday, I can't remember,
4 he's the judge of the facts. We've got our roles.
5 Mr. Strickler and Mr. Collins has got their roles.
6 By the way, we love our job. This is our office.
7 This is where we work day-in and day-out. This is
8 what we do.

9 But as Judge Mullen told the jurors that day,
10 we're here week-in and week-out, but y'all come in,
11 y'all being the jury, come in every week. And it's
12 sort of like a basketball team, football team,
13 whatever where the most valuable player comes in
14 every week. And that's really true and I'm not just
15 saying that, it's true. You are the franchise
16 player of this team where everybody's trying to seek
17 justice and determine what justice is in every case.

18 So every week the most valuable player comes
19 in. We play our supporting roles in all respect to
20 His Honor. Your role is most important. Because as
21 His Honor told you, you are the judge of the facts,
22 the finder of the facts and that's what it's all
23 about in this courtroom, that courtroom, those
24 courtrooms, every courtroom around the State, around
25 the country.

1 Now, Ms. Scott is not in here right now, but
2 y'all reported to her. She does an excellent job.
3 Did she have a school for you to go to to learn how
4 to be a juror? Did you go through a quick little
5 course and take a test? No. But you've been in
6 school your whole life to have the qualifications to
7 be a juror and y'all know what it is, it's the
8 school of common sense, watching people, listening
9 to people, learning how to evaluate things, that's
10 what serving on a jury is.

11 And Ms. Scott didn't have you check your common
12 sense down there in the jury room. You brought it
13 up here into this jury box and you've used it while
14 you listened to the evidence and you're going to
15 take it with you back to that jury room after you
16 hear our arguments, after you hear the Judge's
17 charge and you're going to use your common sense to
18 decide what the truth is here.

19 What are we doing right now? This is called
20 closing arguments. You say, well, no kidding.
21 Well, I've always thought it was a crazy name for it
22 because an argument assumes y'all can ask me
23 something, you can ask Mr. Collins something back
24 and forth, what do you think.

25 Well, you can't do that. But it's a chance for

1 us to give you our view or opinion on what the
2 evidence is and the reasonable inferences from that
3 evidence that came from this box and that's all
4 we're allowed to do, here's what the evidence was,
5 here's what we think the reasonable inferences are,
6 here's what we think y'all ought to consider.

7 It's divided up into two parts really for me.
8 I'm required actually to briefly go over the law as
9 part of the closing argument to start with, give you
10 briefly what the law is, what the State thinks the
11 law is, and then His Honor will ultimately give you
12 the law, and he is the judge of the law, and then
13 I'll get into the facts.

14 Now, there are a couple of basic, basic
15 premises which make this country great and I start
16 off with it in every closing, two basic ones are the
17 presumption of innocence. Mr. John Moore, Junior,
18 sits over there at counsel table presumed innocent.
19 He's presumed innocent unless and until the State
20 proves him guilty. And how do we have to do that?
21 What's our burden?

22 You can all -- you're thinking about it right
23 now as I say it. Y'all know what it is. The burden
24 on me, the burden on the State, the Solicitor's
25 office here, it's the same burden that's being

1 talked about I bet this moment across the country,
2 it's beyond a reasonable doubt. We've got to prove
3 John Moore, Junior, guilty beyond a reasonable
4 doubt, across the country the same verdict.

5 It's not beyond all doubt. You can doubt
6 anything if you want to. It can't be a whimsical,
7 fanciful, imaginary doubt, beyond a reasonable
8 doubt.

9 Sometimes it's a hard concept. You know, I've
10 been fighting over 20 years how to explain it, some
11 folks say beyond a doubt that would make reasonable
12 folks hesitate to act. I think Your Honor is going
13 to charge you that you must be firmly convinced. If
14 you're firmly convinced that the State has met its
15 burden, you must find the defendant guilty. You
16 must find him guilty if you take that oath, if
17 you're firmly convinced. If, on the other hand, you
18 think there's a real possibility he's not guilty,
19 you should find him not guilty.

20 Not beyond all doubt, I could tell y'all the
21 river's not going to run tomorrow, even though it's
22 been dry, it hadn't been raining much, but that's
23 not a reasonable doubt, that's a fanciful, imaginary
24 doubt. But it comes back down to what I think
25 you've been getting your whole life is common sense.

1 Reasonable doubt's like common sense, you kind of
2 know it when you hear it. You know it, might be a
3 better way to say it, I know it. You know he shot.

4 One thing a few years ago I was reading a
5 transcript on a conflict case I was having for the
6 next Solicitor down in Horry county, Solicitor
7 Wilson. And Solicitor Wilson when he was in this
8 same moment was explaining to a jury, and I thought
9 about it ever since, you know, sometimes, folks, you
10 might have questions, there might be a question
11 here, a question there, that's not unusual in life,
12 but just because you have a question, that's not
13 reasonable doubt, there'll always be questions.
14 Beyond a doubt to make reasonable folks hesitate to
15 act. There's not a reasonable doubt here. I submit
16 there's not a doubt here.

17 What's he charged with? He's charged with
18 murder. All of you know what murder is. I'm going
19 to briefly explain it. Murder is the unlawful
20 killing of another living, breathing human being
21 with malice aforethought.

22 Everybody knows what malice is, that's kind of
23 one of those words when you hear it, you know what
24 it is. You see it written, you see something that
25 shows it, you know what malice is. Malice is a

1 wickedness, an evilness, a spitefulness one person
2 shows to another. Y'all know what malice is.
3 Malice, meanness, evilness, wickedness.

4 How can we show it? How can we show malice to
5 y'all like we have to? Well, there are several
6 ways, and the Judge will tell you all this, ladies
7 and gentlemen, several ways the State can show
8 malice to you.

9 Malice can be shown expressly. Well, that
10 makes sense, doesn't it? I'm going to kill you. If
11 somebody tells you, I'm going to kill you, that's
12 expressed malice if they then kill them, expressed.

13 Malice can also be inferred, that's what the
14 law says, and that makes sense, doesn't it? Because
15 not everybody's going to come up and say I'm going
16 to kill you right before they do it, so malice can
17 be inferred.

18 There are several ways to infer it. Malice can
19 be inferred by conduct of someone whose actions are
20 totally devoid of any social concern, are so
21 reckless, so wanton that it shows a malignant heart.
22 Firing into a club where people might be behind it,
23 you don't know who's behind there, firing into a
24 church, don't know if anybody's behind there or not,
25 probably should be because it's a business or a

1 church or some other establishment, but you don't
2 care, you just fired, that's an example of malice,
3 you don't care what's back there, you're just mean.

4 Firing into an occupied car, don't care if you
5 hit anybody or not but just firing, that's allowed
6 if you find that in an inference of malice, devoid
7 of any social concern, malicious, that's another way
8 to show malice.

9 What's the most common way if you don't have
10 expressed malice? The most common, I say most
11 common, the most common we see, you can infer malice
12 from the use of a deadly weapon, a weapon, a .45,
13 shooting into a car. Can you infer malice? Yes.
14 Malicious, evil, I got a gun and I shoot. There are
15 all kind of ways you can infer malice in this case.

16 Aforethought, it's a term of art. I'm not sure
17 I understand it. I can explain it, doesn't mean I
18 understand it. You don't have to have premeditation
19 in this state. You don't have to plan to kill
20 somebody. Malice, that meanness, that evilness,
21 that wickedness just has to exist the instant you're
22 pulling that trigger (indicating), aforethought,
23 right then, it's a term of art, pulling the trigger,
24 malice aforethought.

25 To kill a living, breathing human being, in

1 this case Stephanie Dover, with malice aforethought.
2 And that we must prove that she died as a proximate
3 result thereof, in this case by receiving a bullet
4 from a firearm into her head. Doctor Nichols showed
5 cause of death, possible cause of death yesterday is
6 from the bullet in her head.

7 There are two other charges, possession of a
8 firearm of someone less than 21 and possession of a
9 firearm during the commission of a violent crime.
10 Those kind of speak for themselves. I don't think I
11 really need to go into those. The Judge will go
12 over this. Established his date is less than 21,
13 date of birth. He's in possession of a firearm,
14 there's no dispute about that. Murder is a violent
15 crime.

16 Now, the Judge is also going to tell you about
17 some other offenses. Look at me, ladies and
18 gentlemen, they don't apply in this case. Let me
19 say that again, they don't apply in this case. But
20 he's going to instruct you on an offense called
21 voluntary manslaughter. It doesn't apply in this
22 case. But he's going to instruct you, factually, we
23 submit, it doesn't apply in this case. To prove
24 voluntary manslaughter, the State must prove beyond
25 a reasonable doubt that the defendant took the life

1 of another in the sudden heat of passion based upon
2 sufficient legal provocation.

3 Now, Your Honor's doing the right thing
4 charging this, no question about that. He knows the
5 law better than anybody I know, but I'm telling you
6 the facts of this case don't justify this is what
7 I'm saying to you. That's why I'm saying it doesn't
8 apply here.

9 Prove beyond a reasonable doubt that the
10 defendant took the life of another in the sudden
11 heat of passion based on a sufficient legal
12 provocation. There are times that the law says in
13 our lives where you get so angry, you get so upset
14 and when you got so upset, if you have sufficient
15 legal provocation, there's something legally,
16 sufficient legal provocation, that doesn't justify
17 what you do, you don't get away with it, but there
18 are certain times in life, certain actions, certain
19 events where they say, well it's not murder, but it
20 might be manslaughter.

21 You're so angry, you get upset and sudden heat
22 of passion that's based on the sufficient legal
23 provocation, well in those circumstances, it don't
24 mean you didn't do it, but it might mean you're
25 entitled to a lesser offense of voluntary

1 manslaughter.

2 And if the heat of passion had cooled or if
3 there was enough time between the provocation, if
4 any, and the cooling for the passion of a reasonable
5 person to cool, the killing would not be voluntary
6 manslaughter. In deciding whether a reasonable
7 person would have had time to cool off, you should
8 consider all of the circumstances. The exercise of
9 a legal right no matter how offensive to another is
10 never sufficient legal provocation for voluntary
11 manslaughter.

12 I do better without these boards, but let me
13 give you an example, classic example, of voluntary
14 manslaughter. You walk in a motel or wherever, you
15 see your spouse with somebody else engaged in sexual
16 relations, you get mad, you get angry, rightly so,
17 and you strike a fatal blow, you're angry, you
18 strike a fatal blow, do you get away with it? No,
19 sir, no, ma'am. As the law says in certain
20 circumstances like that, well you might have had a
21 reason, not a legal reason, you still shouldn't kill
22 somebody, but in that circumstance, then that might
23 be a circumstance, sufficient heat of passion --
24 it's got to be legal provocation.

25 Now, what's significant in this case, why this

1 does not apply, and that when Your Honor charges it
2 to you, I submit you may talk about it a second, but
3 it doesn't apply, words alone aren't enough, words
4 alone aren't enough, that's not sufficient legal
5 provocation. I don't care how nasty and mean they
6 are, gestures alone aren't enough, making a gesture,
7 pump faking at you, that's not enough to justify
8 murder to a manslaughter. Overt words accompanied
9 by acts could in certain circumstances.

10 Manslaughter doesn't apply here. I've talked about
11 it longer than I meant to anyway, but the Judge is
12 going to charge you that. It's not this case.

13 A couple of other things I think the Judge will
14 charge you, which, respectfully, I don't think have
15 anything to do with this case. Tuesday morning Mr.
16 Collins precisely, straight to the point, said, My
17 man's not the shooter, that's what he told you. The
18 real shooter's going to come in this courtroom maybe
19 today or Wednesday, is what he said. That's not an
20 issue because we've shown through his own words who
21 was the shooter, but their theory through the whole
22 case, he's not the shooter, he's not the shooter,
23 Kerwyn's the shooter. Based on what the -- Gene
24 said that first day, Gene, and I'll explain to you
25 later, was saying it was coming through the window.

1 So this doesn't apply under that theory, can't
2 apply.

3 I'm assuming they won't even argue it. If they
4 do, well if they do, then he is the shooter. The
5 Judge is going to charge you on self-defense. If
6 he's not the shooter, this doesn't apply. And
7 Kerwyn sure didn't say he was in danger of anything,
8 suffering serious bodily injury or death. He said
9 he may have saw the fellow lean down, didn't see a
10 gun. You heard those phone calls, never even
11 expressed about, man, I was scared to death, none of
12 it, but I got to go over this for you.

13 Self-defense, it's my understanding of the law
14 for self-defense, and this is a complete defense, if
15 you find self-defense in this case -- it's a
16 complete defense. But for self-defense to be
17 established, it's got to be four things, sort of
18 like a chair, four things have got to be shown to
19 y'all. The State's got the burden of proving beyond
20 a reasonable doubt, but for self-defense to be
21 proven, there's got to be four things, just like a
22 chair, if you lose one of them, it's gone.

23 First is the defendant must be without fault in
24 bringing on the difficulty. Well, the chair's on
25 the floor right now, it's down. Well, number one,

1 he's not the shooter so this doesn't even matter,
2 but if somehow they say, well he might be the
3 shooter, well anyway. So I doubt you even get to
4 this, I doubt they'll argue it, but in case they do,
5 without fault in bringing on the difficulty, he
6 brought on the difficulty. He started it. He
7 brought it on. The chair's down, shouldn't even
8 have to go further.

9 But if you want to go further just to talk
10 about it, the defendant must be in actual, imminent
11 danger. I can say it better without looking at it.
12 The defendant must be in actual or imminent danger
13 of suffering serious bodily injury or death, must
14 actually be in imminent danger of suffering serious
15 bodily injury or death. Well, we know that's not
16 true.

17 Or, he must believe that he is in imminent
18 danger of suffering serious bodily injury or death.
19 And if it's believed -- if it's based on belief,
20 then the reasonable, hypothetical reason an ordinary
21 person in that position would believe they were in
22 danger of suffering serious bodily injury or death.
23 Well, the actual belief, reasonable belief, that's
24 gone. There is no evidence in the record whatsoever
25 that John Moore, Junior, thought he was in imminent

1 danger of suffering serious bodily injury, none. As
2 I got to admit these phone calls, I don't care about
3 it, uses the F word, I don't care about that shit.
4 And I won't say that word again. He wasn't in
5 danger, no evidence whatsoever. I hope you won't
6 consider this line, just read through it. I doubt
7 they'll argue it because he's not the shooter.
8 Kerwyn Williams -- Kerwyn Phillips sure wasn't in
9 danger. That's gone. Self-defense is out because
10 that prong goes down, all four prongs have got to be
11 met.

12 Finally, there must be no other way to avoid
13 the danger than to strike the fatal blow as he did.
14 You'll never get to that prong because he's not the
15 shooter, because he was at fault in bringing on the
16 difficulty. There's no evidence he was in imminent
17 danger.

18 But if somehow you want to go through the
19 fourth one, there was no other way to avoid the
20 danger, duty to retreat, the law in October of 2004
21 was you have to a duty to retreat in your car on the
22 highway, that was the law then. He could have gone
23 on. He could have stopped. There's no
24 self-defense. It does not apply in this case,
25 respectfully.

1 Very briefly, very briefly on the law, the
2 other types of evidence you've heard is direct
3 evidence. Y'all know what that is. It's evidence
4 you get with one of your senses. I say you, I mean
5 a witness gets, gathers with one of their senses,
6 they see it, they smell it, they touch it and they
7 come in here and tell you all about it.

8 There's also circumstantial evidence. The
9 Judge is going to tell you about very briefly. It's
10 just as strong as direct evidence. It's just as
11 strong. If you -- circumstantial evidence is proof
12 of a chain of facts and circumstances indicating the
13 existence of a fact. Proof of a chain of facts and
14 circumstances indicating the existence of a fact.
15 The law makes absolutely no distinction of the
16 weight to be given to them, one is just as strong as
17 the other.

18 Y'all know what the classic example is. You go
19 to bed, it's cold outside, nothing on the ground.
20 You wake up, there's snow there. You didn't see it
21 snow, but it snowed.

22 That's circumstantial evidence right there.
23 There's a bullet hole in that tailgate, Kerwyn told
24 them about that. Kerwyn told them about that. It
25 wasn't covered then. He doesn't remember that liner

1 being in there. Wonder why Mr. John Moore, Junior,
2 covered that liner up to hide that? That's
3 circumstantial evidence.

4 What other type of evidence? Documentary
5 evidence, you've heard the tapes, phone calls, all
6 kind of evidence.

7 And, finally, credibility, believability, which
8 in most every case comes down to, every case comes
9 down to credibility, believability of the witnesses.
10 I think the Judge will instruct you that you can
11 believe all of what a witness says, part of what a
12 witness says, none of what a witness says. That's
13 up to you. And what do you decide that with? Your
14 common sense, watching them, seeing their reactions.
15 You determine the credibility and believability of
16 witnesses. Y'all do, the most valuable player does.

17 Let's go back as the evidence took us -- and,
18 y'all, this is not complicated case, it's important.
19 It is an important, one of the most important cases
20 that's ever been tried in this courtroom. It's
21 important for John Moore, Junior. It's important
22 for Stephanie Dover, Eugene and his family. It's
23 important for this community. This is an important
24 case.

25 **THE COURT:** Mr. Meadors, since there's that

1 noise going on, let me take this opportunity, folks,
2 if y'all don't keep your eyes open, I've got to
3 stop, okay. I know some folks think with their eyes
4 closed, you have to keep your eyes open. If not,
5 I'll have to send you in the jury room, let you get
6 a little caffeine, a little break, whatever you need
7 and then we'll start back, okay? Thank you.

8 **MR. MEADORS:** I think this is the most -- as
9 important a case to be tried. I want to thank y'all
10 for listening and thank you for your attention.
11 Let's go back to October of 2004, October 17 of
12 2004, right now like the evidence took us there.

13 **THE COURT:** All right. We've got to stop.
14 Ladies and gentlemen, step in the jury room. Don't
15 discuss the case. If you need a drink of a
16 Coca-Cola or Pepsi or something, get it.

17 (The jury retires to the jury room.)

18 **THE COURT:** All right. I've got one juror
19 fighting sleep. He hasn't gone to sleep, but he's
20 fighting it pretty bad. So let's give them a break.
21 We're at ease.

22 (Brief Recess.)

23 (Court's Exhibit Number 5, jury note, was
24 marked for identification purposes.)

25 **THE COURT:** All right. Bring the jury in,

1 please.

2 While we're waiting, one of the jurors sent out
3 a note, I assume it was the same young man. He was
4 just explaining he has a sinus infection and his
5 face is swollen and it may cause his eyes to appear
6 to be closed at times. He said he's fine to serve.
7 And I've had that shown to the attorneys. I don't
8 think that's an issue. We'll mark it as a Court's
9 Exhibit.

10 **MR. MEADORS:** It certainly makes me feel
11 better, too.

12 (Pause.)

13 **MR. STRICKLER:** My apologies, Your Honor. I do
14 have something nagging at me relating to the charge.
15 It may be in there, I've read it three times. It's
16 what I call the Elmore language regarding
17 inferences. And it's -- I don't want -- my
18 negligence in bringing it to the Court's attention,
19 I don't want it to be a problem in this case. I
20 think the language is and -- to the inferences in
21 regard to deadly weapon, it's permissible inference
22 only. You're free to accept or reject this
23 permissible inference depending on your view of the
24 evidence.

25 **THE COURT:** If you'll hand up the language. I

1 was intending to put that in there. If I didn't
2 state it well, then I'll be happy to consider
3 anything you would have.

4 **MR. STRICKLER:** I'm reading over it again as
5 the arguments are being done, but it's right in that
6 section.

7 **THE COURT:** Bring in the jury.

8 (The jury returns to the courtroom.)

9 **THE COURT:** Okay. You may continue, Mr.
10 Meadors.

11 **MR. MEADORS:** May it please the Court.

12 **THE COURT:** Yes, sir.

13 **MR. MEADORS:** Mr. Foreman, ladies and
14 gentlemen, October 17, 2004, we're going to go back
15 there right now and we're going back initially
16 through Gene's testimony. I think they'd been at
17 the flea market, one of those things, that morning
18 over in Lexington, I'm not sure. He'd been out with
19 his girlfriend/fiancée, the victim in this case,
20 Stephanie Dover, their two children. Gene had been
21 working as a lineman going around putting up the
22 line poles. He, I think, his testimony was he'd
23 been in Florida shortly before this, down there,
24 working a hurricane down there, had been down there
25 working for a period of time, came back shortly

1 before this incident, I don't know how many days,
2 but shortly before this incident, made some money
3 down there, worked, bought this new car.

4 They were going out, went to the flea market,
5 if you will, then went to see their friend in
6 Pelion. Coming back from Pelion, take Highway 6, I
7 believe they said, stopped at the peanut store that
8 had the peanut sign out front, go in and get some
9 cigarettes. They then go to I-20, start heading on
10 I-20 back to the house. They start going down,
11 heading down right now, heading down I-20 under
12 Broad River into Richland County, that's what
13 evidence we've got to prove a lot of those questions
14 right there, this happened between Broad River and
15 down there at Fairfield Road that's where this
16 incident happened in between there. That's in
17 Richland County, it's not in dispute, another
18 element, though, we must prove to y'all.

19 Gene's driving, Stephanie's in the passenger
20 side, the two kids are in the back. After they go
21 over Broad River Road, Gene testifies her window
22 won't roll down. He says throw these cigarettes, he
23 said he throwed some cigarettes out, the window's
24 halfway down. He rolls the other window down.
25 You've got his statement back here, too, that you're

1 going to have, it's been admitted into evidence, go
2 read it, see if that's in there the statement he
3 gave the day after this happened, fresh in his mind,
4 says he flicks her cigarette out, then he flicks
5 another cigarette out.

6 Now, I don't know, this may be one of those
7 questions I talked to you about. It's not a
8 reasonable doubt, but what he did, you know, people
9 have habits, you know, he shouldn't have been
10 littering, he shouldn't have been littering, maybe
11 get a fine for that or something, but Stephanie
12 doesn't need to go to the grave for eternity for it
13 that's for sure. But he flicks that cigarette out,
14 and I don't know if that's what John Moore saw or
15 not, I don't know if that's what they saw, they come
16 up and thought somebody was shooting them the bird,
17 I don't know, but he testified he did that. Could
18 that be considered a gesture? Could be a reasonable
19 inference from that.

20 Be that as it may, right after that, shortly
21 after that, he hears shots fired, several shots
22 fired. Stephanie, isn't this consistent, in the
23 passenger side, does like this maybe when she hears
24 the first shot, goes down, there's a shot that goes
25 through her finger and her head. I think Mr.

1 Strickler and I both talked to Doctor Nichols,
2 probably one shot, could it have been two, sure.
3 Probably one.

4 But as she hears those shots, she goes --
5 that's when the kill shot was. The first shot is to
6 the side. There's no other explanation. I don't
7 think there will be any dispute about that, or from
8 the side. The second shots come from the front,
9 there's no damage to the front. There's four shots.
10 And I'm not going to bang or do that. He says we
11 tried to do that to get y'all -- appeal to y'all's
12 emotions. We don't. I tell you one thing,
13 Stephanie heard them, first heard a shot and went to
14 there, then she gets killed. That's real.

15 And what does Gene do? Emotions pumping, shots
16 fired, he goes after them, said he goes after them
17 to try to get their tag. State's 16, just a few
18 miles from this courthouse, on public roads or
19 highways of this state, I-20. As he's heading down,
20 he says he remembers the first shots around this
21 area (indicating), around the river, around the golf
22 course.

23 Now, when shots are being fired, have y'all
24 ever been on the highway, you tried somebody on the
25 cell phone, what mile marker are you at? Well, you

1 don't know, it takes a little while to find it.
2 Well, shots are being fired, you're not going to
3 really know exactly where you are. Is it going to
4 be a little difference between witnesses' testimony
5 and where they were? Sure. If it was the exact
6 same place, that's when -- but he kind of remembers
7 it was around that golf course, around that river.
8 It doesn't matter exactly where it is in there, but
9 he says it was right there the best of his memory.
10 He hears those shots and then he starts to follow
11 them.

12 And then he goes down, then he says he gets
13 behind them and then they get in front of him,
14 describes a black truck, get in front of him and
15 then he says he hears some more or sees some more
16 shots coming back toward him. Did they hit him?
17 No. Is there any evidence they hit him? No.

18 And at that point, he says the first time, and
19 I'm going to get to this, he says when the first
20 shots come, it looks like, I think I did it during
21 the trial, it looks like there's an elbow up here
22 and then an arm. Y'all remember that testimony?
23 That's what Kerwyn said up here -- excuse me --
24 that's what Gene said up here. Go look in his
25 statement and see if that's in his statement. Right

1 here like this.

2 And the only issue, who's the shooter, he said
3 that in his -- that's the only issue and it's not an
4 issue. I see an arm right here. Bullets are coming
5 from the passenger side. That's no question about
6 it, that's where -- that's not in dispute, they're
7 coming from the passenger side, I see it. Does he
8 think they're coming from there? Yes. Does he
9 think the passenger did it? Probably so right then.
10 They're coming from there.

11 Keep following down and then he says he sees
12 some shots come out in the back. He testified to
13 that. He said it looked like a left arm to him,
14 that's here, but he says it comes out in the back of
15 the window, that's significant. We learn how
16 significant that is later on through the testimony.
17 But none of those shots hit him. None of those
18 shots hit the car. The kill shots were from the
19 side, no dispute about it.

20 And where do they go? One, two, three, one of
21 them goes in, thank God, hits little Zachary. I'm
22 allowed to show you this. There's nothing wrong,
23 I'm not trying to appeal to anything. This goes to
24 malice. This goes to that conduct so devoid of
25 social duty, you don't care who's in the car, you

1 don't care. Is it likely that kids are going to be
2 in the back of a car? Yes. Families in a car, a
3 four-door car? Yes.

4 I don't care, I'm going to shoot anyway. I
5 don't care what's in there. And it does get hit.
6 This flies off and hits Zachary. He's got his
7 injuries back here. Malice, malicious. I'm
8 entitled to show you that. I'd be fired if I didn't
9 show you that, a shot in the car and it hits and
10 hurts a little child.

11 I don't care, he says that later. He says that
12 later, I don't care, I don't think about this
13 anymore, I don't care. He didn't care that night.

14 He keeps going down. Now, Gene follows him.
15 He follows him trying to get a tag. He goes on down
16 to Fairfield Road, goes around. He says the second
17 shots happened around Monticello Road. He follows
18 them to Fairfield Road, cut up, they're heading back
19 to Hollywood Hills, you heard Kerwyn, that's where
20 they're from. Gene follows them up there some ways
21 and decides to stop and turn around.

22 He then says, Stephanie, Stephanie, call 911,
23 give me the phone, call 911. What does Stephanie
24 say? Nothing. He testified she's there, she's shot
25 in the head. Is he excited? Is adrenaline running?

1 Is he going after the folks that shot in his car?
2 Yes. Did he know she was dead? No. She doesn't
3 answer. He turns around and flies back to the
4 Flying J, talks to law enforcement, tells them what
5 happened, gives a written statement.

6 Stephanie's dead. Stephanie is dead. She's
7 dead. That's what this case is about. She is
8 riding down I-20 on a public road and gets shots in
9 her car and she's dead. This is road -- this is
10 inexcusable conduct. It's got to stop. It's got to
11 stop today.

12 Who did it? Who did it? Who did it? It's a
13 road. It's a car. Who did it? There are no
14 suspects. So what happens to it? It sits there.
15 He tries to describe the truck, describes the
16 individuals what they looked like. Do you know who
17 did it? I don't know who did it.

18 The law enforcement, Barnes, all of them, they
19 go up, they go search, they walked out there, looked
20 for shell casings, do the whole stretch, can't find
21 anything. And it sits there. They look at
22 everybody. They looked at Gene. They looked at
23 everybody. You heard some of the questions that Mr.
24 Collins asked. That's just what they do, they look
25 at everybody. And it sits.

1 November, December, January, no arrests for the
2 murder of Stephanie Dover. It sits and it sits
3 until the media runs an anniversary special looking
4 for suspects again.

5 And thank goodness there's a Crime Stopper tip.
6 Chris Cowan who works at the sheriff's department
7 gives an e-mail to this man and says, here's a tip.
8 Does he know what it is? No. He says it's a
9 female. Is he supposed to know who it is? No.
10 That's why they have Crime Stoppers tip, anonymous.
11 People are not going to call if their name is going
12 to be given out. If we're going to sit here and
13 tell who it is, they're not going to call. We're
14 not going to get the cases solved, that's why it's
15 anonymous.

16 Now, what does the information say? Well, you
17 might want to look at Kerwyn Phillips and John
18 Moore, Junior, and John Moore, Junior's daddy's
19 truck, the black Chevrolet. Well, that's
20 significant because that's what Gene said, that's
21 what Gene said back a year earlier, kind of fits the
22 description Gene gave. So they start looking into
23 John Moore, Junior's family. They discover the
24 black truck. They discover they live in Hollywood
25 Hills, that's significant, that's where the car was

1 heading.

2 So what do they do then? They locate Kerwyn
3 Phillips. Previously, he already had an appointment
4 with the feds. He didn't know about the appointment
5 with the feds. Kerwyn got up here and told you,
6 Yeah, I was a little trouble when I was younger,
7 pled to strong arm robbery, did a 90 day shock
8 incarceration. Then I was at a pawnshop, went to
9 buy some ammo for a .38, I think, \$39 worth in a
10 pawnshop. And for that, I got 30 something months.

11 By the way, he got four months for doing this,
12 four months. You didn't hear much cross about that.
13 He didn't get much of a deal. He came in and told
14 it because it was the right thing to do. Under his
15 proffer with the feds, he agreed to cooperate and
16 tell the truth. He got up here and did that. Four
17 months is all he got. And he's going to have to
18 live in his world as a snitch where he is, but he
19 did it and you saw him, you saw his demeanor. Who's
20 the shooter? There's no issue about the shooter and
21 that is the only issue.

22 They go up to talk at the Strom Thurmond
23 building just a block or two from where we are right
24 now. They go in there. Do you know anything about
25 this? I need to talk to my attorney.

1 Anything wrong with that? Talks to his
2 attorney. You remember I asked him, I said, Tell it
3 all, Kerwyn, tell it all.

4 I left. He went to see people, I understand,
5 who I'd go to see. He went to see his child's
6 mother, then he went to see his mama. And then he
7 called back the next day and he said, y'all, I'm
8 sorry I left. You saw his mannerism. You know
9 habits, you can't make up habits. You can tell how
10 somebody's raised and they're reactions and how they
11 say yes or no, ma'am. He called back and said, I'm
12 sorry. I talked to them. Yeah, I know about it.
13 Let me tell you what I know about it. Not only do I
14 know about the truck, but a couple days after that,
15 he called me, said look at the shot in the tailgate.
16 And that's significant.

17 This piece of evidence right here is about --
18 we can't bring it all in. I would have driven the
19 car here if I could, that's not realistic. But this
20 tailgate comes off and this tailgate is significant
21 because he said a couple of days later, he came
22 over, he told me, he said, you know what, shooting
23 out of the back, there's a shot back here in the
24 back, come look at it. Did you go look at it?
25 Yeah. Did you touch it? Yeah. Did you put your

1 hands on it? Yeah.

2 And, ladies and gentlemen, I'm going to ask
3 y'all, I don't know if -- I'm going to ask you to
4 take this back there, somebody will take it back
5 there in the jury room with you, take it back there
6 and touch it, look at it, lift up that tailgate.
7 And you touch this right there, you're touching
8 malice. It's one of the few times you get to touch
9 malice.

10 Yeah, he doesn't know they're already killed
11 back there, but he's shooting back in the back
12 randomly again, he doesn't care what he's shooting
13 at, doesn't care who's in that car. And here's
14 circumstantial evidence of the shot and then he
15 tells Kerwyn it's the shot.

16 And you remember what David Collins said up
17 here -- I think it was Mr. Strickler said, couldn't
18 that come from the passenger side? Well,
19 gymnastically, it might be tough, but it's
20 consistent with coming from the back window,
21 shooting back right here. And I think Mr. Strickler
22 even said something about which way the angle went
23 and Mr. Collins said that could have ricocheted, I
24 don't -- that could have happened anywhere. That's
25 consistent with coming in that back window, like

1 Gene Derrick said, from the back window it came. He
2 thought it was a left arm.

3 And what does Kerwyn say? He said they were
4 coming back and they were flashing lights on them.
5 Y'all remember that. He said they were flashing
6 lights. Kerwyn puts the shooting down a little bit
7 more. Says after they were flashing lights and did
8 the gestures back and forth, he said he saw them
9 pull off the road a little bit and then come back.
10 Kerwyn's got the shooting down here a little bit,
11 just a little bit farther. It doesn't matter, no
12 withdrawal.

13 Back down here, what did Kerwyn say -- this is
14 the case, what did Kerwyn say that John Moore told
15 him when the car was there beside him? Lean back,
16 lean back. And then Kerwyn said he put the gun in
17 front of him and shot. That's that shoulder Gene
18 Derrick said he saw over there. That's the arm
19 coming in front of him. That's pure.

20 Kerwyn doesn't know Gene Derrick. Told me to
21 lean back. Y'all saw Kerwyn. Is Kerwyn telling the
22 truth? Is there any doubt about it? And he shot.
23 What did you see? Well, I saw the guy in the front
24 reaching down, but I didn't see a gun. No testimony
25 he was afraid or anything. He said when they came

1 back, they swerved towards them. No evidence they
2 were in danger of suffering serious bodily injury or
3 death. It's road rage. It's anger on I-20 right
4 near from here.

5 The second shots Kerwyn has a little bit closer
6 to Fairfield Road, still two sets of shots, still
7 him shooting, still him shooting out the back. I'm
8 glad it's not exactly right, then y'all may say well
9 that's too perfect, nothing's perfect in life.
10 There are two sets of shots. He did the shooting,
11 two sets of shots.

12 Then he says they go on off Fairfield Road. I
13 think Kerwyn said they almost lost control when they
14 went around there. He says this vehicle behind them
15 comes and eventually they go down a road that's got
16 rocks. They go somewhere, I think he goes to his
17 grandmama and granddaddy's and they hide about 30,
18 35 minutes. Credible. Believable. Who's the
19 shooter?

20 Well, I submit to you that's good evidence.
21 But what did the police say? Well, you're bringing
22 this to a jury, the jury might want more. I submit
23 to you that's enough. The jury might want more so
24 what do you do? Do you think you can get a
25 statement from him? I think I can get a statement

1 from him. Mr. Strickler made a big deal, you wanted
2 to go talk to him in private. Doesn't that make
3 sense? Is he going to talk about shooting out the
4 back of a truck after they know it's on the news now
5 that somebody's killed them in front of a bunch of
6 people? So he calls him.

7 You got the tape. I was going to play it, but
8 I'm not going to play it. Y'all can go back and
9 play it. He calls him on the phone and he said, you
10 remember that stuff? He said you know it's about a
11 year anniversary, it was on the news the other day.
12 What did it say? Well, it kind of -- so, you know,
13 when that thing first started, why did you shoot?
14 Not because I was scared, man, I was in danger of
15 losing my life. Pump faking. What's pump faking?
16 Doing like that (indicating). You ever reach for
17 your rearview mirror, reach for something in the
18 middle of your car, reach up to do your hair or your
19 cell phone?

20 Who's the shooter? He just told you in his own
21 words there, I'm the shooter. Is there any issue
22 now? He told you that. They was pump faking, so I
23 shot them.

24 And he also said on there, and I told y'all I
25 wasn't going to say this word again and I won't, he

1 said, Well, you ever think about it? What did he
2 say? S happens. S happens. A lady's dead,
3 Stephanie Dover's dead and he says shit happens.
4 That's the real John Moore, Junior.

5 well, one other thing -- two other things he
6 says -- three other things he says, please go back
7 and listen, play it, play it. I was going to play
8 it in here over and over. Play it, you'll have it
9 back there.

10 Malicious, malice, criminal intent. It's over
11 and done with. I don't think about that S no more.
12 I don't care about it. It ain't nothing. It's just
13 like shooting in that car, I don't care who's in
14 there. Is that malice? Is that malicious? Go
15 listen to that tape. I don't give a damn. And
16 listen to the very end, go listen to the very end.
17 Malice, malicious, don't care who's in that car, go
18 listen to it.

19 At the very end of the tape, John Moore to
20 Kerwyn Phillips, I shot nine times. Go listen to
21 the end. Be real quiet in that jury room, get this
22 thing and listen. He should have been, too. That's
23 what you can make out. I shot nine times, he should
24 have been, too. Gene Derrick should have been dead,
25 too. That's malice. That's not caring. That's not

1 self-defense. That's not voluntary manslaughter.

2 Based on that information, the truck, the
3 tailgate, the tape, they do a search warrant. They
4 go and they talk and they go to where he resides,
5 search warrant's read. He's read his advice of
6 rights by Investigator Faust. Investigator Faust
7 testified, Did he understood (sic) he rights? Yes,
8 he seemed to. Did you threaten or coerce him? No.
9 Was his statement freely and voluntary? And he
10 tells Investigator Faust when he goes to talk to
11 him, he knows the date of that incident, what did
12 John Moore, Junior say? I was in bed that night.
13 That's not the truth. That's evidence of guilt,
14 denial, doesn't know what they have on him at this
15 point.

16 Then he's locked up at the Alvin S. Glenn
17 Detention Center, no dispute about that. And I tell
18 y'all, that's why I asked -- I think it was Ms.
19 Weiss that asked Investigator Barnes one more time,
20 does it say up there that your calls are recording?
21 Does it say it? Yes, it does. Is there a sign?
22 Yes. Does it say it on the phone? And y'all heard
23 it, These calls will be recorded. You're warned,
24 don't say anything on there, they're being recorded.

25 What does that mean? If it comes into our

1 possession, if they implicate themself in a crime,
2 are we going to use it? Of course, we are. Warned
3 them not to say anything. Don't, you know, it's on
4 the tape, I can't -- don't blame me because he
5 admits the stuff and the calls are recorded at the
6 jail. They warn folks down there no matter who they
7 are, no matter who's using the phone these calls are
8 being recorded. And that's all that's required and
9 I'm glad they are in this case.

10 And you'll listen to what's been identified as
11 his girlfriend as they try to figure out what to do,
12 what to say the night he's in danger. Go listen to
13 that tape as they try to figure out and get the gun
14 in Kerwyn's hands, say Kerwyn was shooting as they
15 try to start to develop a plan or a story. And
16 she'll say at first, Y'all were at the crime, you're
17 at the crime. They got you at the crime. They got
18 your daddy's truck. You can't get around that. So
19 you and Kerwyn both had a gun, right? And listen to
20 John Moore. No, no, it's just one gun. It's just
21 one gun.

22 This is the case, this board is the case.
23 What, were you shooting in front of Kerwyn? What,
24 were you shooting in front of Kerwyn? Yeah.

25 And if you need more, That's why I figured S,

1 I'd put it all on him. Those are his words, not my
2 words, not his words, not his words, his words. I
3 said that's why I was just going to put it all on
4 him, listen, ladies and gentlemen, Because I mean I
5 was shooting the gun right in front of his face.

6 He's the shooter. The Judge is going to charge
7 you if somebody back there thinks that -- if
8 somebody back there thinks that Kerwyn's the
9 shooter, which there's no evidence of that, no
10 credible evidence of that, but he's going to charge
11 you the law says under the hand of one, hand of all,
12 he'd still be guilty because he's the driver of the
13 truck. He decided when it went up, when it went
14 back. But he's the shooter, there's no question
15 about that.

16 He's going to charge you about mere presence,
17 see that's what fits Kerwyn. Kerwyn's in the
18 passenger seat. He didn't have the gun. He didn't
19 shoot. He couldn't be -- Mr. Strickler said, You
20 weren't worried about being charged with murder?
21 No, you see his expression, no, I didn't do it. I
22 wasn't there. He wasn't driving the car. He didn't
23 control with his foot and his mind where and back it
24 went, that's why he couldn't be under the hand of
25 one, hand of all.

1 But there's no issue who the shooter is.
2 Because, I mean, I was shooting a gun right in front
3 of his face. I shot nine times. He should have
4 been dead, too.

5 I'm through. I want to thank y'all for your
6 patience. When you walked up here everyday these
7 past few days, I bet some of you noticed it, as you
8 come up to the courthouse, you look to the left, you
9 see these two scales of justice on the iron gates, I
10 think they are there. And when you come up to the
11 elevator on floor one outside of Ms. Scott's office
12 and the public defenders office, you look on the
13 elevator it says, Justice will direct our course.
14 And it's directed at all of you. It's going to
15 direct you back in that jury room.

16 Besides being the MVP, you're what's called
17 Lady Justice. You've got a blindfold on. You take
18 the blindfold down to look at the witnesses and
19 evaluate their demeanor and testimony, but you're
20 Lady Justice. You decide what's right. You decide
21 what's just based on this evidence and the law the
22 Judge gives you.

23 The final thing I'll say is the greatest power
24 we have, greatest power we have, and my mother
25 taught me this, is the power to choose, the power to

1 choose what we do to ourselves, what we do to
2 others, how we treat others. It's our choice.

3 John Moore, Junior, chose on October 17th,
4 2004, to shoot into that vehicle no matter who was
5 there, no matter what with no evidence he was in
6 danger of suffering serious bodily injury, no
7 evidence he was in imminent danger, he just shot
8 because he was mad at a gesture. And he shot again.
9 He chose to do that. He chose not to tell about it
10 until he was -- all this evidence when he was
11 arrested was found. He didn't tell anybody. He
12 didn't care. He didn't care.

13 Now, it's time for you to choose. When you go
14 back to your room to make your choice, to exercise
15 your greatest power, all I can ask you to do is use
16 your common sense, follow the law that the Judge
17 gives you and come back with a verdict.

18 And verdict simply, simply, means to speak the
19 truth. And the truth in this case, respectfully,
20 ladies and gentlemen of the jury, is that on October
21 17th, 2004, John Moore, Junior, fired into a vehicle
22 with Gene Derrick, Stephanie Dover and their kids,
23 struck Stephanie in the head for no reason, no good
24 reason and she's dead and we're going to find him
25 guilty of that. Thank you.

1 **THE COURT:** Thank you, Mr. Meadors.

2 All right. Ladies and gentlemen we'll take a
3 very brief break, five minutes, then I'll get you
4 back out here to hear the defense's closing
5 argument. Don't discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** We're at ease for five minutes.
8 Thank you.

9 (Brief Recess.)

10 **THE COURT:** Defense ready for the jury?

11 **MR. COLLINS:** Defense is ready.

12 **THE COURT:** State?

13 **MR. MEADORS:** Yes, sir.

14 **THE COURT:** Mr. Collins, are you going to
15 argue?

16 **MR. COLLINS:** Yes, Your Honor.

17 **THE COURT:** Okay. Bring in the jury.

18 (The jury returns to the courtroom.)

19 **THE COURT:** Mr. Collins, you're recognized for
20 your closing arguments.

21 **MR. COLLINS:** Thank you, Your Honor.

22 Good morning. This case hasn't been nearly as
23 clearcut and clear as we thought it was going to be.
24 At times, it's been downright confusing. We've got
25 a whole pile of mess over here, most of it's not

1 even relevant to this case.

2 Mr. Meadors held this up, said he has to
3 present that. What's this doing here? We still
4 don't know. It's just been here the whole time.

5 There's been a lot of misstatements. There's
6 been misquotes. He took all those boards out of
7 here, I'm glad he took them out of here because they
8 don't belong in here. Those recordings are what
9 they are.

10 I don't usually bring my notes up here in the
11 closing argument, but I feel like I need to because
12 I don't want to miss anything. I don't want you
13 guys misled, because basically when it comes down to
14 it, most of this stuff over here, most of these
15 pictures, the bullet fragments, everything that's
16 over here, most of it's not relevant, it's not their
17 case. The case boils down to two things, Kerwyn
18 Phillips and his audio recording and then one call
19 made from the jail from John Moore to his
20 girlfriend. We want to know who the shooter is.
21 Those are the only two things that they have
22 presented that helps us with that, that helps their
23 case. There's other things that are relevant, but
24 that's the only two things that help their case.

25 Number one, Kerwyn Phillips, it's the recorded

1 phone call. You heard the recording. It's not that
2 great a quality. I was surprised to hear Richland
3 County Sheriff's Department had audio recording
4 equipment. Investigator Faust said that they didn't
5 have it. But, regardless, he had it and recorded
6 the conversation, we don't know the exact context.

7 We heard Kerwyn Phillips' version of what pump
8 faking means, possibly means when one person tries
9 to say somebody else did what they did. We don't
10 know, we heard his version that suits him best. You
11 never heard John Moore say, I shot in the car; not
12 in that recording. Listen to it.

13 Then we have Kerwyn Phillips' testimony.
14 Surprising enough, the first part of his testimony
15 kind of makes sense. We were all wondering how did
16 this random shooting happen. He talked about the
17 car pulling over because of an altercation, the car
18 chasing after the truck, swerving at the truck and
19 then reaching under the seat, that kind of made
20 sense.

21 But when it stopped making sense is when Kerwyn
22 Phillips said John Moore pulled out the gun. Let's
23 think about this. His testimony is they're both in
24 the truck, John's driving, a car comes up from
25 behind, pulls beside them, swerves at the truck

1 probably going 70, 80 miles per hour. And Kerwyn's
2 testimony is that in one fell swoop, John Moore,
3 who's driving going 80 miles per hour trying to
4 avoid a car swerving at him, reaches down, grabs a
5 gun, somehow rolls the passenger window down with a
6 third arm I don't know that he has, reaches across
7 Kerwyn's face with a .45 caliber hand cannon, fires
8 it off four times while the shell casings are
9 shooting off to the right.

10 We heard David Collins testify, the ballistics
11 expert, that the gun in this crime, the shell
12 casings shot out to the right, which would be
13 shooting right into Kerwyn's face four times. And,
14 yet, Kerwyn's here today with no burns on his face.
15 Miraculously, he still has his hearing. Does that
16 make any sense?

17 He talks about the shot to the tailgate, Mr.
18 Meadors, I'm glad he pointed it out, I'm going to
19 get to that a little bit later, it's important.
20 Then Kerwyn goes on in his testimony talks about he
21 told John, Take this exit. He told John, Turn right
22 here, turn left here, spin the gravel up, John.
23 Who's in control of this situation? Probably the
24 guy with the gun.

25 Now, I'm going to move on to the phone

1 conversation from the jail. You saw some poster
2 boards of what they say is said on the tape. What
3 the poster boards leave out are inflection in the
4 voice, sarcasm. And people that can tell you about
5 the context of the conversation are the people that
6 were in the conversation, Delia Nix.

7 You heard Investigator Barnes testify she's
8 been here the whole time. This is the State of
9 South Carolina, this isn't just these Solicitors,
10 it's the whole state. All the resources that law
11 enforcement, the entire state, right at their
12 disposal and they don't even call a witness who's
13 sitting right outside the whole week and put her on
14 the stand, what are they trying to hide? They want
15 to pick and choose and pick quotations out of
16 context to try to use it against him, try to make
17 their case.

18 And a classic example is in opening, Ms. Weiss
19 stated, You're going to hear a recording in which
20 John Moore said I shot in front of Kerwyn's face.
21 Yeah, he said it, but please go back and listen to
22 that recording, he's being sarcastic. They're
23 talking about how ridiculous of an accusation that
24 is, a .45 caliber hand cannon going off right in
25 front of your face and the shells shooting and

1 hitting you in the face, that doesn't make sense.

2 In the end when you look back at what the State
3 is saying is their key pieces of evidence, you have
4 bad quality recordings, doesn't clearly say exactly
5 what's going on. Does that leave you firmly
6 convinced beyond a reasonable doubt, just these
7 recordings nothing else? You have the testimony of
8 a witness, Kerwyn Phillips. He's going to say
9 whatever they want him to say. He doesn't want to
10 get charged with murder. Talking about the only
11 deal he got was four months knocked off his federal
12 sentence, he got the deal of a lifetime, he didn't
13 get charged with murder, that's the deal Kerwyn
14 Phillips got and that's an incentive to say whatever
15 they want you to say.

16 Now, I want to back up a little bit. I want to
17 talk about the facts that everybody agreed were the
18 facts back in 2004 when this originally happened.
19 Gene Derrick came in here and testified, back in
20 2004, he spoke with Investigator Faust, Investigator
21 Barnes and whoever else would listen, the passenger
22 was the shooter. No doubt about it, the passenger
23 was the shooter. He told everybody he could tell,
24 verbally. He even put it in a written statement.
25 It's right here. This is the testimony we need to

1 be concerned about. Please read through this
2 statement. Many things in here, the passenger hung
3 his arm out, passenger was the shooter. It's clear.

4 There's also a point in this statement talks
5 about the back window of the truck was solid glass.
6 The one thing missing from this is any muzzle flash
7 from the middle of the back window of the truck.
8 That's nowhere in that statement. It wouldn't make
9 sense to go along with that statement because he
10 says the back window was solid glass. He said the
11 shots came from the passenger side, the second shots
12 from the passenger hanging out and shooting back at
13 them. And that was the day after it happened, after
14 he met with the investigators, after he rode the
15 same route in trying to trigger any memories, that's
16 when it was fresh.

17 The police in 2004, every investigator that got
18 on the stand had in their notes the passenger was
19 the shooter. Not one of them had in their notes the
20 driver could have been the shooter. The inner
21 office memos they sent out, the passenger shooter.
22 Never saw a driver shooter, passenger.

23 Now, on October 24th, 2005, that's an important
24 date, too, that's when everything with this case
25 changed. Crime Stopper tip came in about John Moore

1 and Kerwyn Phillips. Mysteriously, we don't have an
2 official report of this tip. We have the reports
3 from all the other reports that came through, but we
4 don't have a report for the most important tip in
5 the case. I find that a little bit suspicious.
6 Maybe the original tip said that Kerwyn was the
7 shooter.

8 But you know what, they did a little bit of
9 investigating and they found out Kerwyn Phillips has
10 a federal proffer meeting scheduled, conveniently,
11 where he's cooperating with the feds. This is when
12 Investigator Barnes realizes Kerwyn Phillips, at
13 this point, is kind of untouchable. Anything he
14 says in a federal proffer they can't use against
15 him. We've got to change something. We've got to
16 convict somebody. All this pressure, the press is
17 all over this, we've got to convict somebody.

18 And this is when the case turns towards the
19 driver, John Moore. Not when they thought, oh, well
20 the driver is the shooter, but it's when they
21 realized they couldn't prosecute the right person,
22 got to get somebody.

23 So what happens? Investigator Barnes
24 testifies, goes and meets with the solicitors, the
25 federal prosecutors, they get a strategy together.

1 I submit they did get a strategy together on how to
2 fabricate a case. What they did is they scared
3 Kerwyn Phillips. They scared him good. He ran
4 right out the back door of that federal courthouse,
5 down in the basement, he was doing anything to get
6 the heck out of there, went home, talked to his
7 mama, baby mama. I submit he probably talked with
8 his attorney, comes back in and meets with them.

9 And Investigator Barnes testified they met with
10 him, he gave all the details very forthright, they
11 didn't give him any kind of information. But who
12 wrote the statement? Investigator Barnes. Kerwyn
13 Phillips got on the stand says, I can barely even
14 read that. But he signed it because it's sign it or
15 else. He's got a murder charge hanging over his
16 head. He knows he shot somebody.

17 Now, they've got the script. This is what
18 Investigator Barnes wrote. Now, they've got the
19 script and Kerwyn's got to follow this because
20 they've got a big murder charge hanging over his
21 head.

22 And then we come to the trial. Mr. Derrick
23 gets on the stand. He met with Investigator Barnes
24 a few times. He met with the solicitors preparing
25 for trial. Everything he testifies to it's almost

1 exactly the same down to the number of packs of
2 cigarettes he buys on the night as his written
3 statement.

4 The only things that changed is any reference
5 to the passenger being the shooter and then he adds
6 in one more thing saying he saw a muzzle blast in
7 the center of the back window, that wasn't in this
8 statement.

9 Now, I think that's the best representative
10 piece of evidence in this case to show that they are
11 fabricating a case to convict somebody. Why else
12 would those be the only two pieces of his testimony
13 that changed? Is he sticking with the program
14 maybe? He wants somebody to be punished. He now
15 knows they can't get the right guy.

16 Luckily, and again thank God we have it, this
17 is what he signed the day after it happened. This
18 is Gene Derrick's testimony, not what he came and
19 said after talking with the solicitors and
20 investigators. This is what he says happened. And
21 you know he was trying to be accurate the day after.
22 He wants to find that -- he wants to find that
23 person that shot his wife. He wants to find that
24 shooter, the passenger.

25 Now, while we're talking about Mr. Derrick, I

1 just want to sidetrack for just a little bit.
2 Regardless of who you find the shooter to be, the
3 Judge is going to instruct you on voluntary
4 manslaughter and self-defense. And Mr. Meadors said
5 that doesn't apply in this case. I submit it does
6 apply because the Judge has instructed you, so it
7 obviously does apply in this case.

8 And when you think about the series of events
9 that led up to this altercation in listening to
10 Mr. Derrick's version, driving on the interstate at
11 2:30 in the morning with his family in the car
12 talking about marriage and suddenly four shots rip
13 into the side of his car, then he decides to chase
14 the truck down the interstate, shot at again and
15 continues to chase the truck, that really doesn't
16 make too much sense.

17 Kerwyn's version, that argument going back and
18 forth, the flashing of lights, cars swerving at the
19 truck, that makes a little bit more sense. And if
20 you're talking about an interstate 2:30 in the
21 morning, two o'clock in the morning, there's
22 probably only two cars on the road and you've got a
23 Buick coming up from behind you going 70, 80 miles
24 per hour and swerves at you, that could be a scary
25 situation.

1 I don't know if you'll even get to talking
2 about these issues, voluntary manslaughter and
3 self-defense, but if you do, I would ask you to
4 think about the situation.

5 Now, lastly, I want to end with two points and
6 I think they're important because they're the two
7 pieces of evidence that don't depend on the
8 credibility of witnesses. And right here they're
9 tangible and you're going to get to look at them
10 when you're back in the jury room.

11 One is this tailgate right here. I said I was
12 going to get to it and I'm getting to it. We'll
13 make sure somebody carries it back there for you
14 because I want you to get down and really look at
15 it, look at the hole that's made. You can see it.
16 It doesn't take an expert to tell us which way a
17 bullet came from that hit that spot when you look at
18 it closely.

19 They were talk -- Mr. David Collins was up here
20 talking about, well it could have been a ricochet or
21 something of that nature. If it had been a
22 ricochet, don't you think they would have brought
23 something in here from where it ricocheted off of?
24 They didn't see that.

25 When you look at it, you can see it's coming

1 down at an angle like this (indicating) which would
2 draw a line right out to the passenger leaning out
3 shooting back at a car behind him exactly how
4 Mr. Derrick said in his original statement. So I do
5 like that. We want you to look at that.

6 Secondly, is bullet hole number three. You
7 heard Mr. Strickler, David Collins talk about it at
8 great length. This is the one bullet hole in the
9 side of the car where it had two points of
10 reference, through the outside and through the
11 inside part of the door. That gives you two points
12 you can get where the bullet came from, pretty good
13 representation of the angle of the shot.

14 Here's the picture, the bottom one. I want you
15 to look at this picture when you get back there.
16 Think about it, it's a pretty low trajectory. Is
17 that more consistent with the passenger leaning out
18 and shooting at a car?

19 Or, if you don't want to say it's the right arm
20 with his shoulder up against the window and the
21 door, because they're saying that he put his
22 shoulder up against the window, ladies and
23 gentlemen, the window has to be down, but if the
24 shoulder's up against the door pointing at a car, is
25 it more consistent with that or is it more

1 consistent with a driver driving 80 miles per hour
2 with a .45 caliber hand cannon right in front of the
3 passenger shooting out with the shell casings
4 shooting in the face of the passenger from a high
5 range? Which one's more consistent? It's common
6 sense. And this is the best representation you
7 have.

8 When you get in this case, they said they want
9 to hold somebody responsible. They didn't say
10 responsible for what or for who. But throughout
11 this case, they've been picking bits and pieces of
12 what they want to pick out of it and put their own
13 spin on it, just like the phone call from the jail,
14 his girlfriend. They introduced this C.D. track
15 three, didn't introduce this C.D. Investigator
16 Barnes testified there were over 20 phone calls.
17 They don't want you to know the context of the
18 conversation. They want to pick their own bits and
19 pieces and give their own meaning to it and say
20 they're doing their job.

21 Ladies and gentlemen, is that justice
22 prosecuting one person because you can't prosecute
23 the right person? We ask you to deliberate, come
24 back with a just verdict. A just verdict is not
25 guilty.

1 **THE COURT:** Thank you, Mr. Collins.

2 All right. Ladies and gentlemen, I'm going to
3 send you into the jury room for a short break once
4 again, then I'll bring you out and tell you the law
5 that applies to the case. Don't discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** All right. Ladies and gentlemen,
8 this is going to be a short break. And I want you
9 all to understand something, when I start charging
10 the jury, those doors back there are going to be
11 locked. All this going in and coming out is not
12 going to take place.

13 Now, if you get sick or there's some emergency
14 and you've got to go, go, but absent an emergency,
15 you better stay still, you better stay quiet and you
16 better not be distracting this jury. It's going to
17 be hard enough for them to concentrate on me talking
18 for 45 minutes without having to worry about what
19 somebody else is doing moving about in the
20 courtroom, that includes taking coats off and
21 putting coats on and all that, so decide before I
22 start whether you're hot or cold. We're at ease.

23 **MR. MEADORS:** Judge, can I -- very briefly.

24 **THE COURT:** Yes.

25 **MR. MEADORS:** Mr. Collins referred to that tape

1 which wasn't in evidence, I didn't want to object,
2 he didn't object to me, but I think that was
3 improper. But, Your Honor, is in this charge that
4 they can only consider evidence that was presented?

5 **THE COURT:** I tell them in my standard charge
6 that they are to consider the competent evidence
7 before them, the testimony of the witnesses and any
8 exhibits admitted in the trial.

9 **MR. MEADORS:** Okay. Thank you.

10 **THE COURT:** All right. We're at ease.

11 (Brief recess.)

12 **THE COURT:** Bring the jury in.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Members of the jury, all of the
15 evidence has been presented, you've heard the
16 arguments of counsel and now it's time for me to
17 instruct you on the law. Please continue to pay
18 close attention during this next stage of the trial.

19 Now, first, you need to understand some basic
20 ground rules. You, the jury members, are the sole
21 judges of the facts. You decide all of the issues
22 of fact. You alone determine the truth of the
23 evidence, its effect, its value and its weight. You
24 alone judge the credibility of the witnesses, in
25 other words, whether or not a witness' testimony is

1 believable.

2 In evaluating the testimony of the witnesses
3 including any expert witnesses, you may believe all
4 that a witness said or none of it. You may believe
5 part of what a witness said and not believe the
6 balance. You may believe one witness against many
7 or many against one. You may consider any interest,
8 bias or prejudice that you feel that a witness has
9 in the case. You may consider the demeanor and the
10 appearance of the witness and the opportunity for
11 knowledge that the witness had. You may consider
12 the lack of evidence presented by the State. You
13 may consider whether a witness has been consistent
14 or inconsistent.

15 But you're not to exercise these considerations
16 arbitrarily. What I want you to do is use your
17 common sense, use your sense of logic and reason and
18 your good judgment.

19 It's not proper for me to give you a charge on
20 the facts of the case. I can't discuss the facts
21 with you. I'm not permitted to convey to you an
22 impression as to what, if any, personal opinions I
23 may develop about the facts of a case as it goes
24 along. So if, during any stage of this trial, you
25 have developed an impression that I've got a

1 personal opinion about the facts, you must remove
2 that totally from your mind. You're the sole judges
3 of the facts.

4 Now, I am the judge of the law that applies to
5 the case and under your oath, you must accept and
6 apply the law as I give it to you. That means if
7 you've got conflicting ideas about what the law is
8 or what it should be, you have to abandon those
9 things. I give you the law, you apply it to the
10 facts as you determine them to be and in that way,
11 you reach your verdicts.

12 It's also my job to decide what evidence is
13 admissible. If I've ruled something inadmissible or
14 told you to disregard something, you're not to
15 consider those things in arriving at your verdicts.
16 Base your verdicts on the competent evidence before
17 you, consider the testimony of the witnesses and the
18 exhibits that have been admitted in the trial.

19 Now, the rules of evidence allow for opinion
20 testimony to be given under certain circumstances.
21 And one area where that's allowed is where someone
22 by virtue of education, training and experience is
23 permitted to testify as an expert witness. Now, the
24 mere fact that someone is allowed to render opinions
25 under our rules as an expert witness does not mean

1 that you have to accept the opinions given if you
2 choose not to do so. You may accept or reject the
3 opinions of an expert witness just as you may any
4 other witness in whole or in part.

5 I remind you, ladies and gentlemen, of an
6 instruction I gave you during the trial and that is
7 that the fact that the defendant in this case
8 elected not to testify is not a factor to be
9 considered by you in any way in your deliberations
10 and in your consideration on the question of whether
11 he is guilty or not guilty. His decision not to
12 testify must not be considered in any manner
13 whatsoever against Mr. Moore. An accused has a
14 constitutional right to remain silent and the
15 assertion of that right cannot and must not be
16 considered by you in any manner whatsoever against
17 him.

18 So in your deliberations and under the oath
19 you've taken, you are to reach no inference and you
20 are to draw no conclusion whatsoever from the fact
21 that the defendant in this case elected not to
22 testify. His decision not to testify should not be
23 discussed among you in the jury room. It should not
24 enter your mind in making your decision on whether
25 he is guilty or not guilty.

1 The State has the entire burden of proof and
2 the State has to prove the defendant guilty beyond a
3 reasonable doubt. An accused has no obligation to
4 prove anything at all.

5 The defendant in this case is presumed to be
6 innocent. Now, this is no mere legal theory. It is
7 a fundamental and substantial right to which
8 everyone is entitled. It's been described as being
9 like a robe of righteousness placed around an
10 accused and it remains with him through every stage
11 of the trial. It continues to exist after you go
12 back to your jury room to deliberate so that he is
13 presumed to be innocent unless and until you, the
14 jury, determine that the State has proven him guilty
15 beyond a reasonable doubt.

16 A defendant is not required to prove his
17 innocence. He's not required to prove anything at
18 all. The burden is on the State to prove the guilt
19 of the defendant beyond a reasonable doubt and they
20 have to prove that as to every essential element of
21 an offense charged.

22 The State is not required to prove the guilt of
23 the defendant beyond all doubt or beyond every
24 doubt. The appropriate standard is proof beyond a
25 reasonable doubt.

1 So I'm going to explain that concept to you.
2 Some of you might have served as jurors in civil
3 court and if you have, you know that the burden of
4 proof in civil court requires establishing that
5 something is probable, that it's more likely than
6 not, and that's called the greater weight or
7 preponderance of the evidence. But in criminal
8 court such as we're in now, the standard is much
9 higher and the proof must be much stronger than is
10 required in civil court. The burden of proof in a
11 criminal case such as this case is proof beyond a
12 reasonable doubt.

13 So what do I mean by that? Proof beyond a
14 reasonable doubt is proof that leaves you firmly
15 convinced of the defendant's guilt. There are few
16 things in the world that we know with absolute
17 certainty and in criminal cases the law does not
18 require proof that overcomes every possible doubt.
19 If, based on your consideration of the evidence, you
20 are firmly convinced that the defendant is guilty of
21 a crime charged, then you must find him guilty of
22 that crime. If, on the other hand, you think there
23 is a real possibility that he is not guilty, you
24 have to give him the benefit of the doubt and find
25 him not guilty on that charge.

1 Now, there's no obligation on the part of the
2 defendant to raise any other doubt or any other
3 possibility or raise any doubt at all. He's
4 presumed to be innocent and the State has the entire
5 burden of proof and has to prove to you that the
6 defendant is guilty to the exclusion of any other
7 real possibility.

8 I need to explain to you that there are two
9 types of evidence that are generally presented
10 during a trial. There's direct evidence and there's
11 circumstantial evidence. Direct evidence is
12 evidence of direct perception, including the
13 testimony of a person who asserts or claims to have
14 actual knowledge of a fact such as an eyewitness.

15 Now, circumstantial evidence is proof of a
16 chain. It's proof of a chain of facts and
17 circumstances indicating the existence of a fact.

18 The law makes absolutely no distinction between
19 the weight or value to be given to either direct or
20 circumstantial evidence, nor is a greater degree of
21 certainty required of circumstantial evidence than
22 of direct evidence. What you need to do is to weigh
23 all of the evidence in the case. And after weighing
24 all of the evidence, if you're not convinced of the
25 guilt of the defendant beyond a reasonable doubt,

1 then you must find him not guilty.

2 Now, folks, I have to explain to you some
3 things about statements allegedly made by this
4 defendant. There's been some testimony in evidence
5 about statements allegedly made by this defendant
6 and in evaluating such statements, you need to look
7 at whether the statement was made during police
8 interrogation or not, okay. So in evaluating
9 statements, you have to first look to see was this
10 statement the product of police interrogation or was
11 it not during police interrogation.

12 With either type of statement, you first have
13 to determine whether the State has proven that the
14 defendant made the statement. If not, then you
15 disregard it.

16 But you need to understand that there are
17 additional evaluations that you have to make if the
18 statement was made in response to police
19 interrogation. When police or law enforcement
20 officials are questioning a defendant, the law has
21 certain protections that are afforded and are put in
22 place. So before the police can question a
23 defendant who is under arrest for a crime, the State
24 has to prove to you that the defendant was first
25 warned properly of his constitutional rights prior

1 to the questioning and giving of the statement.

2 When an individual is taken into custody or had
3 his freedom of movement deprived by a law
4 enforcement officer in any significant way, he has
5 to first be warned of his constitutional rights
6 before there can be custodial interrogation or
7 custodial questioning and these rights are commonly
8 called the Miranda warnings. And they are that he
9 has the right to remain silent, that any statement
10 he makes can and will be used against him in court,
11 that he has the right to an attorney and if he
12 doesn't have the resources to hire a lawyer, the
13 Court will appoint one for him at no expense, that
14 he has the right to consult with an attorney before
15 answering any questions or making any statement,
16 that he has a right to have the attorney present
17 with him at all times during all interviews and
18 interrogations and that he may stop answering the
19 questions at any time.

20 Now, these Miranda warnings, it's not required
21 that those exact words be used, but the substantial
22 equivalent of those warnings has to be given. If
23 the State proves to you that it gave Miranda
24 warnings prior to interrogating the defendant, the
25 State then has to prove that the defendant knowingly

1 and intelligently waived his constitutional rights
2 and answered police questions and made a statement
3 to the police.

4 The final requirement is that the statement in
5 question has to have been given voluntarily. The
6 State has to prove to you beyond a reasonable doubt
7 that the statement was the expression of the
8 defendant's own free will and it was not improperly
9 induced by compulsion, duress, force, fear or by the
10 promise of some reward or hope of reward. Unless a
11 statement given in response to police questioning is
12 given freely and voluntarily, then you are not to
13 consider it.

14 Now, with regard to the alleged statement of
15 the defendant, Mr. Moore, that was allegedly given
16 to a law enforcement officer in response to that
17 officer's questions, I instruct you that the State
18 has to prove every requirement about which I've just
19 instructed you and that proof must be beyond a
20 reasonable doubt before you may consider the alleged
21 statement against the defendant.

22 All right, folks, I've decided what I'm going
23 to do now is I'm going to go through the section of
24 the charge where I recap the indictments, which I
25 read to you in full at the beginning of the trial,

1 and then I'm going to take that short break because
2 we're about halfway through the charge, okay, and
3 just let you step out, stretch your legs. It will
4 be a very short break and I'll bring you back in.
5 But before you go, I'm going to recap the
6 indictments. We're going to turn to the specific
7 charges in this case.

8 In separate indictments, John Moore is charged
9 with crimes of murder, unlawful possession of a
10 pistol by a person under the age of 21 years and use
11 of a firearm during the commission of a violent
12 crime. Each indictment is separate and distinct and
13 has to be evaluated on its own merit or lack of
14 merit. All the indictments allege that the offenses
15 occurred in Richland County on or about October the
16 17th, 2004.

17 The murder indictment alleges that John Moore
18 did with malice aforethought, kill Stephanie Dover
19 by shooting her and that she died as a proximate
20 result, a direct result thereof on the same date.

21 The indictment for possession of a firearm
22 during the commission of a violent crime alleges
23 that Mr. Moore possessed or visibly displayed what
24 appeared to be a firearm during -- I should restate
25 that. It alleges that Mr. Moore possessed or

1 visibly displayed a firearm during the commission or
2 attempted commission of a violent crime, which is
3 specifically alleged to be murder.

4 And the final indictment charges Mr. Moore with
5 unlawful possession of a pistol by a person under
6 the age of 21. And that law is pretty simple. It
7 alleges that he knowingly possessed a pistol while
8 under the age of 21 years.

9 I read those indictments to you in full at the
10 beginning of the trial. I caution you once again
11 that an indictment is not evidence. It is merely
12 the formal means by which someone is charged and
13 brought to trial.

14 Folks, we'll take a very brief recess now,
15 three to five minutes. You cannot discuss the case.
16 Just stretch your legs and I'll get you back in.
17 Thank you.

18 (The jury retires to the jury room.)

19 **THE COURT:** We'll be at ease just a couple of
20 minutes. If you leave, I suggest you don't go far.

21 (Brief Recess.)

22 **THE COURT:** You can bring the jury in.

23 (The jury returns to the courtroom.)

24 **THE COURT:** All right. At this point, I'm
25 going to explain to you the offense of murder.

1 Murder is the unlawful killing of another person
2 with malice aforethought either expressed or
3 inferred. So to convict Mr. Moore of murder, the
4 State has to prove beyond a reasonable doubt that at
5 the date, time and place alleged in the indictment,
6 the defendant unlawfully killed Stephanie Dover and
7 that the killing was done with malice aforethought.

8 Now, what do we mean by the term malice?
9 Malice imports wickedness. It excludes any just
10 cause or legal excuse. It's something that springs
11 from depravity, from a depraved spirit, from a heart
12 devoid of social duty and fatally bent on mischief.
13 Malice may be expressed or inferred. It is
14 something that springs from wickedness. The element
15 of malice may be shown by direct evidence or by
16 inference.

17 Now, examples of direct evidence of malice
18 would be where there was a threat of vengeance made
19 or where ill will was directly expressed or where
20 the killing was planned. And, obviously, there are
21 other ways that expressed malice could be shown.

22 Malice may also be inferred from facts and
23 circumstances that are proven by the State. Malice
24 may be inferred from the use of a deadly weapon.
25 These inferences are evidentiary only and may be

1 considered by you alone with all of the other
2 evidence in the case and given such weight, if any,
3 that you decide the inference should receive. You
4 are free to accept or reject permissive inferences
5 depending upon your view of the evidence.

6 Now, if facts are proven by the State beyond a
7 reasonable doubt to be sufficient to raise an
8 inference of malice, you may accept or reject that
9 permissive inference of malice as I've just told
10 you. If the conduct of the defendant directly
11 results in the death of another and was so culpable
12 and inexcusable, so aggravated and so grossly
13 reckless as to show an active, intentional disregard
14 of the consequences to human life thus denoting a
15 malignant spirit, a heart devoid of social duty and
16 fatally bent on mischief, an inference of malice may
17 arise.

18 To infer malice, however, requires more than
19 carelessness, more than recklessness, it's more than
20 a passive indifference for the safety of others.
21 There has to be a deliberate and intentional design
22 to use or employ or handle a deadly weapon so as to
23 endanger the life of another without just cause or
24 legal excuse.

25 Now, you may infer malice if you determine that

1 the alleged conduct on the part of the defendant in
2 using a deadly weapon demonstrated such an
3 intentional disregard for human life, but malice is
4 an essential element of the crime of murder and has
5 to be proven by the State beyond a reasonable doubt.

6 So I've given you some explanations about
7 malice and I need to explain to you now the word
8 aforethought. Whether the malice is expressed or
9 inferred, the malice has to be aforethought. And I
10 spell that usually for juries, it's
11 A-F-O-R-E-T-H-O-U-G-H-T. It's not required that the
12 malice exists for any particular amount of time, but
13 it has to exist in the mind of the accused just
14 before and at the time of the commission of the act.
15 There has to be a combination of this previous evil
16 intent and the act producing the fatal result.

17 I told you that murder involves an unlawful
18 killing. So to constitute murder, the killing must
19 be unlawful, meaning that the killing was not
20 justified under the law.

21 I'm going to explain to you further in the
22 charge that you may evaluate whether the act was in
23 self-defense, if the defendant acted in
24 self-defense. Acts done in self-defense are
25 justified under the law; therefore, a killing that's

1 done in self-defense is not murder, it's not
2 unlawful.

3 So let me go back through and recap for you
4 about murder. Murder is the unlawful killing of
5 another person with malice aforethought expressed or
6 inferred. The law recognizes that certain crimes
7 include within them lesser crimes and these things
8 are called lesser included offenses. Murder
9 contains a lesser included offense of voluntary
10 manslaughter. Murder requires malice. Malice is
11 not an essential element of the crime of
12 manslaughter. It may be present in voluntary
13 manslaughter, but it's not required to be proven by
14 the State, that is, malice is not required to be
15 proven by the State to prove voluntary manslaughter.

16 Voluntary manslaughter is the unlawful killing
17 of another person in sudden heat of passion upon a
18 sufficient legal provocation. The law recognizes
19 that a person who is sufficiently provoked by
20 someone and acts in sudden heat of passion to kill
21 the person is not guilty of murder but of a lesser
22 offense of voluntary manslaughter. So if you have a
23 reasonable doubt as to whether the State has proven
24 that the defendant committed murder, you may
25 consider the offense of voluntary manslaughter.

1 To prove voluntary manslaughter, the State has
2 to prove beyond a reasonable doubt that the
3 defendant took the life of Stephanie Dover in sudden
4 heat of passion based on sufficient legal
5 provocation. Both the sudden heat of passion and
6 the sufficient legal provocation have to be present
7 at the time of the killing to constitute voluntary
8 manslaughter. Sudden heat of passion may for a time
9 affect a person's self control and temporarily
10 disturb a person's reason. The sudden heat of
11 passion must be the type that would make an ordinary
12 person unable to coolly reflect on his actions and
13 produce an uncontrollable impulse to do violence.

14 To constitute sudden heat of passion, it is not
15 necessary that reason be entirely dethroned, but it
16 has to be such as to disturb and sway the reason of
17 an ordinary prudent person and to shut out the power
18 of cool reflection and create in the mind an
19 uncontrolled impulse to do injury to another. Now,
20 that's sudden heat of passion.

21 Sufficient legal provocation must be the type
22 that would make a person of ordinary reason and
23 caution become enraged and lose control temporarily.
24 The provocation needed for a voluntary manslaughter
25 has to come from some act of or some act related to

1 the purported victim.

2 Words or insulting communications no matter how
3 insulting the words or the communications are, those
4 things are not sufficient to constitute sufficient
5 legal provocation. Where death is caused by the use
6 of a deadly weapon, the words or insulting
7 communications have to be accompanied by some overt,
8 threatening act that could have produced the heat of
9 passion.

10 If the heat of passion had cooled or if there
11 was enough time between the provocation and the
12 killing for the passion of a reasonable person to
13 cool, the killing would not be voluntary
14 manslaughter. In deciding whether a reasonable
15 person would have had enough time to cool off, you
16 consider all the circumstances surrounding the
17 killing, you may consider the nature of the
18 provocation, if any, the defendant's mental state
19 and physical state and the circumstances and
20 relationships between the parties.

21 If the State has proven beyond a reasonable
22 doubt that the defendant killed the decedent in
23 sudden heat of passion upon a sufficient legal
24 provocation, you may convict the defendant of
25 voluntary manslaughter even though that charge is

1 not specifically written on the face of the
2 indictment because murder includes within it
3 voluntary manslaughter.

4 Now, if after reviewing the facts of the case,
5 you have a reasonable doubt as to whether the State
6 has proven that the defendant was the person who
7 actually fired the weapon and killed Ms. Dover,
8 Mr. Moore may nonetheless be found guilty under the
9 theory of accomplice liability, which is sometimes
10 called the hand of one is the hand of all if
11 accomplice liability has been proven by the State,
12 all right.

13 Now, accomplice liability or the hand of one is
14 the hand of all is a recognition that if two or more
15 people acting in concert are present and they're
16 aiding, abetting and assisting each other in the
17 commission of a crime, it doesn't matter who
18 actually did a particular act within the commission
19 of the crime, all of the accomplices are guilty.

20 An accomplice is a person who was present at
21 the scene of the crime and intentionally or through
22 some common plan aided, abetted and assisted in the
23 commission of that crime through some overt act with
24 the other person.

25 To be held guilty as an accomplice, the

1 defendant must have knowledge of the principal's
2 criminal conduct because merely being present at the
3 scene of the crime is not sufficient to establish
4 guilt as an accomplice. Mere presence at the scene
5 of the crime is not a crime.

6 Now, intentionally means willfully intending
7 the result that actually occurs, not something done
8 by accident or involuntarily. If the State proves
9 to you that the defendant was present and
10 intentionally through some overt act on his part
11 aided, abetted and assisted another person in the
12 commission of a homicide against Ms. Dover as
13 alleged in the indictment and if you find that the
14 State has proven that Mr. Moore knew that the person
15 was engaged in that criminal conduct when he
16 provided the assistance in that criminal act, then
17 the defendant may be found guilty of that crime even
18 if the defendant did not pull the trigger.

19 Now, I need to go over with you self-defense.
20 In reviewing this case, you may consider
21 self-defense. Self-defense is a complete defense
22 which means that if a defendant acted in
23 self-defense, he is not guilty of murder or
24 manslaughter. The law recognizes the right of every
25 person to defend himself from death or serious

1 bodily injury. To do so, a defendant may use such
2 force as is reasonably necessary or apparently so
3 even to the extent of taking the life of an
4 assailant.

5 Now, generally the elements of self-defense
6 include the following things: First, the defendant
7 had to have been without fault in bringing on the
8 difficulty. If Mr. Moore was at fault or jointly at
9 fault in bringing on the difficulty, he is not
10 protected by self-defense even though the initial
11 disagreement escalated beyond what may have been
12 originally envisioned.

13 The only way that someone who is at fault in
14 bringing on the difficulty can be restored to the
15 protections of self-defense is where before the
16 shooting occurred, he had withdrawn from the
17 conflict and tried in good faith to avoid further
18 conflict and by his actions had made known to the
19 other party that he was discontinuing and
20 withdrawing from the dispute, okay.

21 So the first thing on self-defense that you
22 have to evaluate is whether the defendant was
23 without fault in bringing on the difficulty. And,
24 again, the only -- if he was, the only way he can be
25 restored to a claim of self-defense, if at all, is

1 if he had withdrawn as I explained to you.

2 Now, the second thing is if the defendant was
3 without fault in bringing on the difficulty or had
4 withdrawn from the conflict and communicated that to
5 the other parties, the next requirement for
6 self-defense is that the defendant must have
7 actually believed that he was in imminent danger of
8 losing his life or sustaining serious bodily injury,
9 or the defendant must have actually been in such
10 imminent danger of death or serious bodily harm.

11 The third thing relates to the situation of
12 where a person is in imminent danger. If a person
13 is in such imminent danger, the circumstances facing
14 the defendant must have been such that would warrant
15 a person of ordinary prudence and firmness and
16 courage to strike back in the manner that the
17 defendant did. So if there was an actual imminent
18 danger of death or serious bodily harm to the
19 defendant, the circumstances facing the defendant
20 must have been such to warrant him -- I'm sorry --
21 to warrant a person of ordinary prudence, firmness
22 and courage to strike back in the manner that the
23 defendant allegedly did.

24 If the claim of self-defense is based on a
25 belief that a person is in imminent danger of death

1 or serious bodily harm, then the circumstances must
2 have been such that a reasonably prudent person of
3 ordinary firmness and courage would have entertained
4 the belief that he was actually in imminent danger
5 or the circumstances were such that would warrant a
6 person of ordinary firmness, courage and prudence to
7 use deadly force in order to save himself from
8 serious bodily harm or loss of life.

9 And the fourth element in self-defense is that
10 the defendant must have had no other probable means
11 of avoiding the danger of death or serious bodily
12 harm except to act as he did.

13 If the defendant acted in self-defense, you
14 must find him not guilty on the charge of murder and
15 you cannot find him guilty on the charge of
16 manslaughter.

17 The State has the burden of disproving
18 self-defense, which means the State has to disprove
19 self-defense beyond a reasonable doubt. If you have
20 a reasonable doubt of the defendant's guilt after
21 considering all of the evidence including the
22 evidence of self-defense, then you are to find the
23 defendant not guilty on the charge of murder. And,
24 again, you can't find him guilty of murder or
25 manslaughter if the act was in self-defense because

1 it's a lawful act.

2 On the other hand, if you have no reasonable
3 doubt of the defendant's guilt after considering all
4 of the evidence including evidence of self-defense,
5 then you are to find the defendant guilty.

6 In assessing the issue of self-defense, you
7 look at all of the facts and circumstances. In
8 evaluating the defendant's perception of danger, a
9 defendant may act on appearances and it is not
10 required that a defendant actually have been in
11 danger. It is enough if the defendant believed he
12 was in imminent danger and a reasonably prudent
13 person of ordinary firmness and courage would have
14 had the same belief. The defendant has the right to
15 act on appearances even though the defendant's
16 beliefs may have been mistaken.

17 Now, generally a person acting in self-defense
18 has a duty to retreat to avoid the danger. If the
19 defendant has a means of escape, he is generally
20 required to use it. He must leave if he has a means
21 of escaping the danger unless by doing so the danger
22 of being killed or suffering serious bodily injury
23 would increase. Also, one who is attacked by the
24 use of a deadly weapon has no obligation to retreat.

25 A defendant acting in self-defense has the

1 right to use the amount of force apparently
2 necessary to avoid death or serious bodily harm.
3 The force does not have to be limited to the degree
4 or amount of force used by the assailant. The
5 defendant has a right to use so much force as
6 appeared to be necessary for complete protection and
7 for which a person of ordinary reason and firmness
8 would have believed to be needed to prevent death or
9 serious bodily harm. Once a defendant is justified
10 in acting in self-defense to defend himself, he is
11 justified in continuing using force until it is
12 apparent that the danger of death or serious bodily
13 injury has completely ended.

14 Where a defendant is operating under a
15 reasonable belief of his impending death or serious
16 bodily injury, he is not required to wait until the
17 perceived assailant gets the drop on him before
18 acting in self-defense.

19 So to wrap this up about self-defense, if a
20 defendant acts in self-defense, as I've explained
21 all of those concepts to you, he is not guilty of
22 murder or manslaughter. In very broad terms,
23 self-defense involves lack of fault in bringing on
24 the difficulty, being in imminent danger of losing
25 life or sustaining serious bodily injury or having

1 an actual belief of being in such imminent danger;
2 if the imminent danger in fact existed, the
3 circumstances would warrant a person of ordinary
4 prudence, firmness and courage to strike back in the
5 manner the defendant did; if the defense relates to
6 a belief of imminent danger, the circumstances must
7 have been such that a reasonably prudent person of
8 ordinary firmness and courage would have entertained
9 the same belief; and the fourth necessary thing on
10 self-defense is there was no other probable means of
11 avoiding the danger of serious bodily injury or
12 death except to act as the defendant did.

13 Another charge made against Mr. Moore is for
14 possessing a firearm during the commission of a
15 violent crime. It is a separate criminal offense to
16 have in one's possession a firearm during the
17 commission of a violent crime. I charge you that a
18 pistol is a firearm under the law and that the
19 offenses of murder and voluntary manslaughter are
20 defined as violent crimes in South Carolina.

21 To convict Mr. Moore of this offense, you have
22 to determine that the State has proven him guilty of
23 either murder or the lesser included offense of
24 voluntary manslaughter because the possession of the
25 firearm during the commission of the violent crime

1 requires that there be a violent crime. You must
2 then determine that the State has proven beyond a
3 reasonable doubt that Mr. Moore possessed a firearm
4 during the commission of that violent crime as
5 alleged in the indictment.

6 The last charge against Mr. Moore is for
7 possession of a pistol by a person under 21. It's
8 unlawful in this state for a person under the age of
9 21 years to possess a handgun except in limited
10 circumstances such as weapons issued as part of
11 military service or while temporarily using a
12 handgun for training while under the immediate
13 supervision of a parent or an adult instructor.

14 To prove the defendant guilty of this charge,
15 the State has to prove that on the date and at the
16 time and place alleged in the indictment, John Moore
17 knowingly possessed a handgun in violation of the
18 law, in other words, that he knowingly possessed a
19 handgun and that he was under the age of 21 and he
20 didn't fall under any of those exceptions.

21 The final thing I have to tell you on the law,
22 ladies and gentlemen, is that the defendant is
23 entitled to every reasonable doubt arising in the
24 whole case or in any defenses. If, upon any issue
25 of fact essential to a conviction, you have a

1 reasonable doubt as to how that issue should be
2 resolved, you have to resolve that doubt in favor of
3 the defendant. If, upon reviewing the entire case,
4 you have a reasonable doubt of the guilt of the
5 defendant on a particular charge, he is entitled to
6 that doubt and a verdict of not guilty on that
7 charge.

8 On the other hand, if upon reviewing an entire
9 case, you find that the State has proven every
10 essential element of that charge against the
11 defendant beyond a reasonable doubt, it's equally
12 your duty to find the defendant guilty of that
13 charge.

14 If you find the defendant guilty but you have a
15 reasonable doubt as to whether he is guilty of a
16 greater crime charged or a lesser included offense,
17 you have to resolve that doubt in favor of the
18 defendant and write a verdict of guilty only as to
19 the lesser charge, but you cannot find the defendant
20 guilty of any crime greater or lesser until you're
21 satisfied that the State has proven all of the
22 essential elements of that offense beyond a
23 reasonable doubt. That's the law.

24 When you go back to the jury room to decide the
25 case -- cases, you're going to have with you all of

1 the exhibits that have been admitted in the trial
2 and you're going to have these verdict forms. You
3 see that there are three verdict forms. There's one
4 for each charge, one for murder, one for possession
5 of a firearm during commission of a violent crime
6 and one for unlawful possession of a pistol by a
7 person under the age of 21. There's a little
8 heading under each caption to tell you which charge
9 the form goes with.

10 Now, ladies and gentlemen, I now have to tell
11 you the possible forms of verdict. And I'm supposed
12 to tell you at this point that you're not to infer
13 from the order in which I say these things that I'm
14 trying to suggest one over the other. I've got to
15 say one first, one second and so on.

16 The truth is that I did these forms at a
17 computer school at the National Judicial College a
18 bunch of years ago and all I do now is change names
19 and case numbers. So long before I ever saw any of
20 these folks, these forms were done except for the
21 names and the case number.

22 This one on top reads, As to the charge of
23 murder. And it reads, We, the jury, unanimously
24 find the defendant, and you have three options. You
25 may find him not guilty, you may find him guilty of

1 the lesser included offense of voluntary
2 manslaughter or you may find him guilty of murder.

3 On the other two, you'll see that the charge is
4 at the top. This one reads, As to the charge of use
5 of a firearm during the commission of a violent
6 crime, we, the jury, unanimously find the defendant,
7 you have two options. You may find him not guilty
8 or you may find him guilty of use of a firearm
9 during the commission of a violent crime.

10 And the next one is to the charge of possession
11 of a firearm by a person under the age of 21. I
12 said firearm, I should have said pistol. Possession
13 of a pistol by a person under the age of 21, we, the
14 jury, unanimously find the defendant, you have two
15 options. You may find him not guilty or you may
16 find him guilty of possessing a firearm by a person
17 under the age of 21.

18 Folks, how you go about your deliberations and
19 how you go about taking your votes, all of that is
20 entirely in your discretion except is subject to
21 this requirement, the verdicts have to be unanimous,
22 all 12 of you have to agree. When you come back out
23 and your verdicts are read, you can be asked
24 individually if that was your verdict and if it's
25 still your verdict. So please understand that you

1 cannot do anything to change the requirement of a
2 unanimous verdict, all 12 must agree in order for
3 your foreman to record the verdict, which gets me to
4 that.

5 Mr. Foreman, part of your job is fill out these
6 forms for me. I think you'll find them
7 self-explanatory. Just check the responses chosen
8 by the jury on each charge and then there's a
9 signature line on each page, you need to sign your
10 name on that signature line.

11 One last thing before I get into my truly final
12 comments and that is I gave you an instruction about
13 notes at the beginning of the trial if you wanted to
14 take notes. When you leave the courtroom this time,
15 you can take your notes with you, but remember you
16 cannot physically show them to another juror. And
17 at the end of the trial, you have to give them to
18 the bailiff so that they're destroyed. We don't
19 read your notes.

20 All right. The final thing, I've told you
21 dozens of times now not to discuss the case until I
22 tell you to. Well, it's not time yet. The law says
23 that I have to go over with the attorneys what I
24 just told you before you start deciding the case and
25 that's just common sense. We don't want you back

1 there deciding these cases using the wrong law. So
2 if I said something wrong, they have to be given a
3 chance to point it out to me before you start.

4 Now, we stayed here yesterday until about four
5 o'clock. I went home, e-mailed this stuff to them
6 last night about nine o'clock. We met this morning
7 at 8:45 and we went over all of this. It shouldn't
8 take us long to do this next part, okay, because
9 we've already done it. That's why I told you you'd
10 either be waiting on us back there or you'd be on
11 your own.

12 If I need to bring you back out here and
13 clarify something, I will, but if I'm satisfied with
14 what I told you, this is the signal you need to look
15 for. When the bailiff brings the exhibits in the
16 courtroom and leaves and you've got the exhibits and
17 the verdict form in the courtroom and it's just the
18 12 of you, you start talking about the case, you
19 don't have to wait another second, but don't talk
20 about it until then.

21 They should send in there to you something to
22 play these C.D.'s with. If, for some reason, you
23 get in there and you don't have something that you
24 need to display, that's fine.

25 And, folks, I don't know if this is going to

1 come up or not, I just thought about it and it might
2 save some question once you get back there. There
3 were a whole bunch of things marked in the course of
4 the trial, what the lawyers do to speed things up is
5 they will mark a whole bunch of things some of which
6 are not going to ever come into the trial, all
7 right. They mark them for identification purposes,
8 you heard them use that term. If it's an exhibit,
9 it goes back there with you in the jury room. So if
10 there's a gap between the numbers, don't worry about
11 that, all right.

12 When you've reached your verdicts, knock on the
13 door, the bailiff will respond to your knock.

14 Thank you very much for your attention. You
15 paid very close attention to me and I really
16 appreciate it. And you paid very close attention
17 during the trial. If you'll retire to your jury
18 room. I'll have them bring back the verdict form
19 and the exhibits. Thank you.

20 (The jury retires to the jury room.)

21 **THE COURT:** State, for the record, any
22 exceptions, additions, objections to the
23 instructions?

24 **MR. MEADORS:** Just very briefly. I heard Your
25 Honor say as to the first element, you must be

1 without fault, if you don't find that, you can't go
2 forward. I didn't hear Your Honor say, maybe you
3 don't have to, so if I'm wrong, I'm wrong, that if
4 you didn't get the other second or fourth element or
5 however you say it, second, third or fourth, that
6 all four would have to be shown for self-defense to
7 be considered. I don't know if you said that. If
8 not, I'd ask you to do it. If not, I'll say no
9 more.

10 **THE COURT:** I didn't say precisely that, but I
11 hope I said the substantial equivalent of it. You
12 want to preserve the objections you raised during
13 the charge conference, right?

14 **MR. MEADORS:** Yes, Your Honor.

15 **THE COURT:** All right. The objections that
16 were raised this morning during the charge
17 conference, those are preserved.

18 Anything else from the defense, exceptions,
19 additions, objections?

20 **MR. STRICKLER:** No, sir, nothing additional.
21 Just to make sure the record's clear, I approached
22 right before the -- or in the middle of the closing
23 and raised the concern regarding inference of malice
24 and I actually found the references to it that Your
25 Honor already had present, so I withdraw any request

1 on my part in that regards.

2 **THE COURT:** Well, I did add a sentence to the
3 charge, but I had it in there twice, you're right.

4 **MR. STRICKLER:** Yes, sir.

5 **THE COURT:** Okay. Well, folks, you obviously
6 worked very, very hard on the case as attorneys and
7 investigators or paralegals or whatever role you
8 played. I want to commend you for that. I want to
9 thank everybody for the respect they've shown the
10 Court. I appreciate that very much. You've done
11 your jobs, we'll put it in the jury's hands. Check
12 the verdict forms and the exhibits.

13 And while -- the verdict form, I generally
14 don't break out and give two separate ones where
15 there's a lesser included offense, I just list them
16 like that. Is there any objection to the way I did
17 that?

18 **MR. STRICKLER:** No. I've reviewed the verdict
19 forms. I have no objection to the forms of verdict.

20 **MR. MEADORS:** Nothing from the State.

21 **THE COURT:** Okay. Well, check the exhibits and
22 the verdict forms, give those to the bailiff. Do
23 y'all have something they can play those C.D.'s on?

24 **MS. MCDUFFIE:** Yes, Your Honor.

25 **THE COURT:** We have no alternates, so we'll be

1 at ease pending a verdict.

2 For the audience, what I usually do is wait to
3 see if there's some sort of quick question or
4 something and then the food's supposed to be here
5 around 12:30 for the jury. At some point, if you
6 need to go to lunch, I'll let you go to lunch. If
7 you want to be advised if we're going to be
8 reconvening, you need to leave a cell phone number
9 with somebody who's going to be here, but don't
10 leave right now, give it a few minutes to be sure
11 there's no quick questions.

12 (The jury commences its deliberations at
13 12:25 p.m.)

14 (A recess transpired.)

15 (Court's Exhibit Number 6, jury note, was
16 marked for identification purposes.)

17 (The following occurred during jury
18 deliberations.)

19 **MR. MEADORS:** Your Honor, for the record, I'm
20 okay if you just want to say there are no
21 transcripts and not go into other -- I'm okay either
22 way. Just for the record as far as the State,
23 whatever -- if Your Honor goes beyond that, we'd
24 just ask that you'd say, you know, it's here if you
25 want something.

1 **MR. COLLINS:** The defense would agree with
2 that.

3 **THE COURT:** I'll try to do what I think you're
4 saying.

5 Bring the jury in.

6 (The jury returns to the courtroom at 1:07
7 p.m.)

8 **THE COURT:** Mr. Foreman, I got a note from the
9 jury that reads, We don't see a written statement of
10 Mr. Phillips or Mr. Derrick. Clarification, were
11 these entered into evidence?

12 My understanding is that one of those was
13 entered into evidence, the other was not and that
14 you have -- after checking, you have found the one
15 that was entered into evidence.

16 The second request is for transcripts of the
17 sworn testimony of Mr. Phillips and Mr. Derrick.
18 There is no transcript of the trial yet. Without
19 going into great detail, the only thing that I can
20 tell you is that if you have some request to hear
21 testimony again, we can play the backup tapes. The
22 backup tapes are just like cassette tapes that run
23 all the time. There are some issues with that that
24 if you ask, I'll explain to you maybe so you will
25 know. And I'm not trying to encourage you or

1 discourage you. I'm just trying to answer your
2 question.

3 There is no transcript. It has not been
4 prepared yet. It takes hours to prepare transcripts
5 and the only thing that we can do is play the backup
6 tapes, which we'd be happy to do if y'all want to
7 hear some testimony. If you do, you have to send me
8 a note and depending upon the note, I'll tell you
9 what, if any, problems there may be with that
10 process, but I encourage you to do it if you need to
11 do it, okay. Thank you.

12 (The jury retires to the jury room to
13 continue its deliberations at 1:10 p.m.)

14 **THE COURT:** Please state for the record
15 exceptions, additions or objections regarding these
16 instructions?

17 **MR. MEADORS:** None whatsoever.

18 **THE COURT:** Defense?

19 **MR. COLLINS:** None from the defense.

20 **THE COURT:** We're at ease pending a verdict.
21 Thank you.

22 (A recess transpired.)

23 (The following occurred during jury
24 deliberations.)

25 **THE COURT:** All right. I received a note from

1 the jury indicating that they wanted to hear the
2 testimony of Investigator Collins replayed and we're
3 set up to do that. While we were in the midst of
4 trying to make the transition, and I've got my court
5 reporter doing triple duty today, one of the jurors
6 had indicated that they needed a smoke break. I
7 told them just to hold off on that. Then we got
8 word that, apparently, there's a gentleman here who
9 has some papers that one of the jurors needs to sign
10 on a closing of some type and I certainly don't want
11 to stand in the way of that.

12 So here's what I'm going to do. I'm going to
13 bring the jury out. I'm going to tell them that
14 those of them that want to smoke, can go smoke. I'm
15 going to tell the lady, I think it's a lady who
16 needs to sign the papers, that she can go with a
17 bailiff into the other jury room back here, there
18 will be a bailiff with them all the time, and sign
19 whatever papers need to be signed. And then I'm
20 going to tell all of them that they can't talk about
21 the case until all 12 of them are back in that room
22 together. And whenever we get finished with those
23 things, we'll bring them out and replay Collins'
24 testimony. If anybody objects to that, speak.

25 **MR. MEADORS:** No, sir.

1 **THE COURT:** Bring them in.

2 (The jury returns to the courtroom at 3:53
3 p.m.)

4 **THE COURT:** Mr. Foreman, I understand the jury
5 wants to hear the testimony of Investigator Collins
6 replayed; is that right?

7 **FOREMAN:** Yes, sir, that's correct.

8 **THE COURT:** We're set up to do that, but I've
9 got a couple of matters that have been brought to my
10 attention. One is apparently some of y'all
11 indicated you wanted a smoke break. And, secondly,
12 I understand that one of you were scheduled to have
13 a closing today and your husband is here to get the
14 papers signed.

15 Stand up, sir.

16 One of y'all claim this gentleman?

17 **JUROR:** I claim him, but I gave him power of
18 attorney.

19 **THE COURT:** Well, it's no problem whatsoever
20 because what we're going to do is this. We're going
21 to take a recess, not long because we're set up
22 ready to go, and I'm going to have a bailiff go with
23 the juror who needs to sign the papers and go into
24 the other office and do whatever you need to do.
25 And I'll have a bailiff escort anybody that wants to

1 smoke down to the area where they smoke.

2 But here's the reason I had to bring you in
3 here. You can't talk about this case until all 12
4 of you are together in that room. So those of you
5 who will be separated, those of you who will still
6 be staying together, you can't talk about the case
7 until all 12 of you are reconvened in that room.

8 Now, as soon as all 12 of you get reconvened in
9 that room, unless you tell me differently, I'm going
10 to bring you out and play that tape. So that's what
11 we're going to do, all right. If you'll step in the
12 jury room, the bailiffs will take care of you.

13 (The jury retires to the jury room at 3:56
14 p.m.)

15 **THE COURT:** All right. We're at ease.

16 (Brief Recess.)

17 (Court's Exhibit Number 7, jury note, was
18 marked for identification purposes.)

19 **THE COURT:** Bring the jury in, please.

20 (The jury returns to the courtroom at 4:13
21 p.m.)

22 (Whereupon, portions of the testimony of
23 David Collins was played for the jury.)

24 **FOREMAN:** I believe we've heard enough.

25 **THE COURT:** Okay. Mr. Foreman, are you sure?

1 **FOREMAN:** Yes.

2 **THE COURT:** Anybody else over there want to
3 hear anymore? Raise your hand if you do.

4 No hands are raised. Thank you very much.

5 (The jury retires to the jury room to
6 continue its deliberations at 5:01 p.m.)

7 **THE COURT:** We're at ease pending a verdict.

8 (A recess transpired.)

9 **THE COURT:** All right. Ladies and gentlemen,
10 I've been informed the jury has reached a verdict in
11 the cases. I have no way of knowing what the jury
12 has decided. I say this in every single case so
13 please don't think I'm singling anyone out. The
14 jury has the most difficult job in the courthouse.
15 When this verdict is displayed or presented, I do
16 not want any display of emotion. I expect you to
17 stay still and stay quiet, don't show any sign of
18 approval or disapproval with the verdict, don't
19 shake your head in agreement or disagreement, don't
20 make any sounds, just stay still and stay quiet and
21 we'll get through this just fine.

22 Now, I really appreciate the way everybody's
23 conducted themselves so far and I expect you will do
24 exactly as you have been doing which has been
25 exemplary. I appreciate it. But please don't put

1 me in a situation of having to decide whether to put
2 you in prison for up to six months for contempt of
3 court. I don't want to have to deal with that nor
4 do you.

5 Bring the jury in.

6 (The jury returns to open court to report
7 its verdict at 5:50 p.m.)

8 **THE COURT:** Mr. Clerk.

9 **THE CLERK:** Yes, Your Honor.

10 Mr. Foreman, if you have reached a verdict,
11 would you hand them to me, please. Thank you.

12 (The clerk hands the verdicts to the Judge.)

13 **THE COURT:** All right. Mr. Clerk, would you
14 please publish these verdicts?

15 **THE CLERK:** Yes, Your Honor.

16 In the State of South Carolina in the County of
17 Richland in the Court of General Sessions, the State
18 of South Carolina versus John Moore, defendant, on
19 indictment number 2006-GS-40-2203 as to the charge
20 of murder, the verdict is guilty of the lesser
21 included offense of voluntary manslaughter, signed
22 by the foreperson Steven Carter on this 1st day of
23 February 2008.

24 Indictment number 2006-GS-40-11739, State of
25 South Carolina versus John Moore, defendant, as to

1 the charge of use of firearm during the commission
2 of a violent crime, the verdict is guilty of the use
3 of a firearm during the commission of a violent
4 crime, signed Steven Carter on this 1st day of
5 February 2008.

6 Indictment number 2006-GS-40-11738, the State
7 of South Carolina versus John Moore, defendant, as
8 to the charge of possession of a firearm by a person
9 under the age of 21, the verdict is guilty of
10 possession of a firearm by a person under the age of
11 21, signed Steven Carter on this 1st day of February
12 2008.

13 Mr. Foreman, are these your verdicts and the
14 verdicts of the entire jury?

15 **FOREMAN:** Yes, sir.

16 **THE CLERK:** Thank you, sir.

17 **THE COURT:** Ladies and gentlemen, if the clerk
18 accurately stated your verdicts, those being guilty
19 of voluntary manslaughter and guilty of possession
20 of a firearm during commission of a violent crime
21 and guilty of possession of a pistol by a person
22 under the age of 21 years, please signify by raising
23 your right hands.

24 All hands are raised.

25 Are there any matters to take up prior to the

1 jury being discharged from the State?

2 MR. MEADORS: Nothing from the State, Your
3 Honor.

4 THE COURT: From the defense?

5 MR. COLLINS: We can poll the jury, Your Honor.

6 THE COURT: As to each verdict? Just
7 collectively?

8 MR. COLLINS: Just collectively.

9 THE COURT: Ladies and gentlemen, the clerk is
10 going to call the roll. And as the clerk calls your
11 name, I need you to raise your hand so he knows
12 where to look, okay. And he is going to ask you
13 basically these two questions, were these your
14 verdicts and are they still your verdicts. Just
15 answer them truthfully please.

16 All right. Mr. Clerk.

17 THE CLERK: Yes, Your Honor.

18 Steven Carter, were these your verdicts?

19 FOREMAN: Yes, sir.

20 THE CLERK: Are they still your verdicts?

21 FOREMAN: Yes, sir.

22 THE CLERK: Michael Weeks, sir, were these your
23 verdicts?

24 JUROR: Yes, sir.

25 THE CLERK: Are they still your verdicts?

1 **JUROR:** Yes, sir.

2 **THE CLERK:** Norma Overstreet, madame, were
3 these your verdicts?

4 **JUROR:** Yes.

5 **THE CLERK:** Are they still your verdicts?

6 **JUROR:** Yes.

7 **THE CLERK:** Missy Kelly, madame, were these
8 your verdicts?

9 **JUROR:** Yes.

10 **THE CLERK:** Are they still your verdicts?

11 **JUROR:** Yes.

12 **THE CLERK:** Faye Gordon, madame, were these
13 your verdicts?

14 **JUROR:** Yes.

15 **THE CLERK:** Are they still your verdicts?

16 **JUROR:** Yes.

17 **THE CLERK:** Lavern Evans, madame, were these
18 your verdicts?

19 **JUROR:** Yes.

20 **THE CLERK:** Are they still your verdicts?

21 **JUROR:** Yes.

22 **THE CLERK:** James Hamner, sir, were these your
23 verdicts?

24 **JUROR:** Yes, sir.

25 **THE CLERK:** Are they still your verdicts?

1 JUROR: Yes, sir.

2 THE CLERK: James Harrington, sir, were these
3 your verdicts?

4 JUROR: Yes.

5 THE CLERK: Are they still your verdicts?

6 JUROR: They are.

7 THE CLERK: Rashaad Egister, sir, were these
8 your verdicts?

9 JUROR: Yes.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes.

12 THE CLERK: Sandra Smith, madame, were these
13 your verdicts?

14 JUROR: Yes.

15 THE CLERK: Are they still your verdicts?

16 JUROR: Yes.

17 THE CLERK: Cheryl Worrell, were these your
18 verdicts?

19 JUROR: Yes.

20 THE CLERK: Are they still your verdicts?

21 JUROR: Yes.

22 THE CLERK: Suzanne Turner, madame, were these
23 your verdicts?

24 JUROR: Yes.

25 THE CLERK: Are they still your verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** Thank you.

3 The jury has been polled, Your Honor.

4 **THE COURT:** Anything further prior to the jury
5 being discharged from the defense?

6 **MR. COLLINS:** Nothing further, Your Honor.

7 **THE COURT:** Thank you very much.

8 All right. Ladies and gentlemen, that's going
9 to conclude your jury service. I truly want to
10 express to you my thanks. I'm as sincere as I can
11 possibly be. You have been an exemplary jury.
12 You've paid attention throughout. It's been a
13 pleasure having you folks in court this week. I
14 hope that you feel like it's been educational if
15 nothing else. And I am extremely grateful for the
16 way you've conducted yourselves. I don't remember a
17 case this long where everybody was always on time
18 and I just appreciate that.

19 So if you want to talk to me about anything,
20 you can wait back in the jury room and I'll take off
21 the robe and you can have at me with any questions
22 or comments or criticisms or complaints.

23 You have an exemption from jury service through
24 2008, 2009 and 2010. You do not have to serve on a
25 state court jury through 2010. That won't help you

1 in federal court. It won't help you in magistrates
2 court or city court, but you don't have to serve
3 through 2010. Since you actually sat on a trial
4 jury, you're disqualified for one year, so just try
5 to remember when you served.

6 They will mail you a little check. It won't be
7 much. I call it Happy Meal money and that's about
8 all you're going to get out of it.

9 If you need a slip for work -- what do y'all
10 do, Jim, about that?

11 **THE CLERK:** I have one prepared, Your Honor.

12 **THE COURT:** If you'll just wait back there, the
13 clerk will bring you your slip for work if you need
14 that, okay. Again, if you want to wait on me to
15 talk to me, that's fine, but I have to deal with the
16 lawyers about some things outside your presence.

17 I need you to step back in the jury room. If
18 you want to leave, you can go, just turn in your
19 badges or whatever the bailiffs require you to do.
20 Thank you.

21 (The jury was excused.)

22 **THE COURT:** Motions?

23 **MR. COLLINS:** Your Honor, at this time, we'd
24 renew all previous motions and objections
25 specifically relating to the introduction of the

1 phone call from jail between John Moore and Delia
2 Nix. It's still our contention that the phone call
3 was not properly authenticated, especially when it
4 was referenced in closing arguments by the
5 Solicitors as far as the content of the
6 conversation. With regard to that, we would move
7 for a new trial on those grounds. And that'd be
8 all, Your Honor.

9 **THE COURT:** All right. Motions for a new trial
10 are respectfully denied.

11 Does the State have anything related to
12 sentencing?

13 **MR. MEADORS:** Yes, sir, if you'll just give us
14 a few moments.

15 **THE COURT:** Sure.

16 (Pause.)

17 **MR. MEADORS:** Your Honor, I think for time
18 purposes, if you allow me, I think there's only
19 going to be one person that would like to speak, if
20 I could just read out some names briefly, I think
21 that'll -- if that's okay with the Court.

22 **THE COURT:** Sure.

23 **MR. MEADORS:** Betty Derrick and Grover Derrick,
24 Senior, Gene's mom and dad, are here, Grover
25 Derrick, Junior, Kimberly Brewer, Joel Brewer,

1 Melissa Mitchel, Heather Dover, Michelle Simpson,
2 Andy Simpson, Christy Dover, David Ferguson, Scott
3 Baker, Kerri Baker and Denis Gundersun, all friends
4 and family that are sitting up here, have been
5 through this whole trial. I want to thank them for
6 being here and they're support.

7 After that, Judge, I want to thank the
8 Sheriff's Department, Investigator Barnes,
9 Investigator Faust and the rest of them for the job
10 they did, of course the office here and our support
11 stuff, and Natoki, Ace and everybody else.

12 And, finally, Judge, I think Gene's here, Jacky
13 Lee Dover and mom is here. And, Your Honor, she
14 would like to just briefly address the Court.

15 **THE COURT:** What's your name, ma'am?

16 **MR. MEADORS:** Marilyn Dover. I apologize.

17 **THE COURT:** Yes, ma'am.

18 **MS. DOVER:** Your Honor, first of all, I just
19 want to say thank you to the State of South Carolina
20 for all the help, the investigation, support of
21 finding this man who murdered my daughter. This has
22 been a great, great, great tragedy in our life. I
23 never in a million years thought that we would ever
24 go through anything like this in our lives. It's a
25 nightmare to wake up in the middle of the night and

1 get a phone call to say that your child has been
2 murdered and your grandson has been hurt.

3 Stephanie was such a sweet girl. She never,
4 ever deserved any of this. But I have laid in my
5 bed many a nights and asked God to help me find
6 forgiveness in my heart for the man that done this
7 to Stephanie and that's a hard thing to do.

8 But I know you're in this life, you know, we
9 have to be punished for things that we do in this
10 life, you know, but the great God in Heaven is the
11 one that's really our judge.

12 Stephanie, we miss her all so much and we love
13 her so much. And her babies, they have to go
14 through this life without their mommy. And I know
15 every time they see a picture of their mommy, they
16 talk about her. They seen her on the news and they
17 said -- I went to see them last night and they said,
18 Maw-maw, you been watching the news? I say, Yeah,
19 baby. They said, Did you see our mommy on T.V.? I
20 said, Yeah, baby.

21 You know, we just try to comfort them and let
22 them know, you know, that Stephanie is in a better
23 place. That's all.

24 **MR. MEADORS:** Judge, obviously the family
25 misses her, loves her and wishes she was still here.

1 I also want to thank Ms. Weiss and Ms.
2 McDuffie. And I think I have a few final comments
3 after that, but I think one of them has the prior
4 record.

5 **THE COURT:** Thank you very much, ma'am.

6 **MS. MCDUFFIE:** Your Honor, as we discussed
7 prior, his prior record was a possession of a stolen
8 motor vehicle over \$5,000, possession of a pistol
9 under 21 and an unlawful carrying charge.

10 **MR. MEADORS:** Your Honor's heard the facts,
11 this was a cold case that was solved thanks to the
12 sheriff's department. And we just want to thank the
13 jury for their verdict.

14 **THE COURT:** Does the defense -- you can stay
15 there, that's fine with me. Does the defense have
16 anything related to sentencing?

17 **MR. COLLINS:** Your Honor, just to -- briefly,
18 this is obviously a very unfortunate -- for everyone
19 involved in this case, it's a tragedy.

20 I would like to tell you a little bit more
21 about Mr. Moore. He's 22 years old. He's got a
22 really good head on his shoulders. He's a smart
23 guy. Obviously some of his actions have led to
24 where he is here today are not the best decisions.

25 I've gotten to know him for over a year now.

1 He has grown up a lot. He has the ability to be a
2 very productive member of society in the future. We
3 realize he's going to get some time here today. He
4 does have the love and support of his family and
5 friends who have been here throughout the trial.
6 His father, John Moore, Senior, has been very
7 involved and influential. I believe that his father
8 is extremely influential and is a prominent member
9 of the community.

10 Again, this is very unfortunate. However, we
11 do have a young man who I feel can be rehabilitated
12 and can become a productive member of society. With
13 that in mind, Your Honor, we would just ask for the
14 Court's mercy in something under the maximum penalty
15 of voluntary manslaughter.

16 **THE COURT:** Thank you, sir.

17 Mr. Moore, if you wish to say anything, I'd be
18 happy to hear you. If -- you may want to confer
19 with your attorneys.

20 (Pause.)

21 **DEFENDANT MOORE:** I'd like to just apologize
22 for the whole incident that happened. I mean, like
23 Mr. Collins said, it's a tragedy on both ends
24 because my family is losing a loved one, their
25 family lost one that can't come back. And I just

1 ask for the Court's mercy, but -- I mean, I just
2 apologize for the whole situation.

3 **THE COURT:** All right. Mr. Moore, you
4 understand that if you wish to file any appeal from
5 this proceeding, you have to do so in writing. It
6 has to be done promptly because there's a narrow
7 time limit. So you need to instruct your attorneys
8 to file an appeal on your behalf. Do you understand
9 that?

10 **DEFENDANT MOORE:** Yes, sir.

11 **THE COURT:** Thank you.

12 If there's nothing further, the sentence of the
13 Court on voluntary manslaughter is that you be
14 committed to the South Carolina Department of
15 Corrections for 30 years plus costs and assessments.
16 You're given credit for jail time under section
17 24-13-40, that's to be calculated and applied by the
18 department of corrections. Pay your court costs at
19 a rate set by probation, parole and pardon services
20 while on community supervision.

21 On possession of a firearm by a person under
22 21, the sentence is that you be committed to the
23 South Carolina Department of Corrections for a
24 period of five years plus costs and assessments
25 consecutive to indictment 2203. Conditions are the

1 same as on 2203.

2 And on possession of a firearm during the
3 commission of a violent crime, the sentence is five
4 years plus costs and assessments concurrent, credit
5 jail time under 24-13-40 to be calculated and
6 applied by the department of corrections. The
7 conditions are the same as on 2203. Thank you.

8

9

END OF PROCEEDINGS

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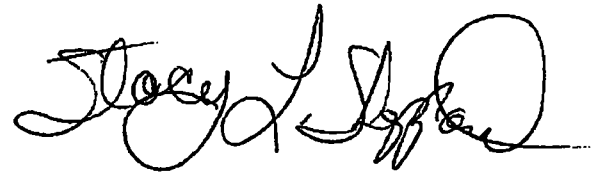
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 28th of January, 2008.

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

August 2, 2008

A handwritten signature in black ink, appearing to read 'Stacy L. Sheppard', with a large, stylized loop at the end.

Stacy L. Sheppard
Circuit Court Reporter

576890

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland)

2011C P4000190

John J. Moore, Jr. #326455)

Full name and prison number, if any, of applicant)

v.)

State of South)

Name of Respondent)

Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

DEANETTE W. HOGKINS
C.L.P. & C.S.

2011 JAN 13 AM 10:38

RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Boardriver Correctional Institution

2. Name and location of Court which imposed sentence Richland County Judicial Center; 1701 Main Street; Columbia, S.C. 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2006-GS-40-02203

(b) 2006-GS-40-11739

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence: February 1st, 2008, 35 years, County Jail Credit

(a) February 1st, 2008, 35 years, County Jail Credit

(b) _____

(c) _____

ATTORNEY GENERAL'S OFFICE

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Reversed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. September 11th 2010
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Rule 215, SCACB
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) _____
 (c) _____

9. 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) Prosecutorial Misconduct
 (c) Ineffective Assistance of Appellate Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attachment

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

S.C. Court of Appeal

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal on gun charge. 116-

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeal, 1015 Sumter St; P.O. Box 11629; Columbia, SC 29211

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Reversed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. September 16th, 2010
- ii. _____
- iii. _____
- iv. _____

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

- i. Rule 215, SCACB
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NIA
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) NIA
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Greg Collins, Richland County Public Defenders Office, P.O. Box 192, Columbia, SC 29202
- ii. Joseph L. Savitz, III; Division of Appellate Defense; P.O. Box 11589, Columbia, SC 29211-1589
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Reverse and remand, new trial

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

No

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

VERIFICATION

I, John J. Moore Jr., 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.

John J. Moore Jr.

Sworn to and subscribed before me

This 6TH day of December, 2010

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires _____ My Commission Expires
August 25, 2015

2011 JAN 13 AM 10:38
JEANNETTE W. MORRIS
C.C.P. & C.S.

FILED
RICHLAND COUNTY

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John J. Moore Jr., 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 proceeding or give security therefor.

John J. Moore Jr.
Applicant

Sworn to and subscribed before me

This 6TH day of December, 2010

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires: _____ My Commission Expires
August 25, 2015

Continuation of question 10.

pg. 1

a) Ineffective Assistance of Trial Counsel

Trial counsel provided ineffective assistance by unreasonably:

- 1) Failing to object and properly preserve trial courts egregious Accomplice Liability Charge for direct review
- 2) Failing to object and properly preserve improper malice charge for direct review.
- 3) Failing to object and properly preserve prosecutor's improper instructions to the jury during the closing arguments, misstating the law of Self-Defense, for direct review.
- 4) Failing to object and properly preserve trial courts confusing and burden shifting self-Defense charge for direct review.
- 5) Failing to investigate, develop and present all available, relevant and admissible mitigating evidence, which could have affected juror's evaluation of truthfulness of Grover Eugene Derrick.
See Statements

- 6) Failing to object and properly preserve prosecutor misstating the facts and evidence, which are not supported by the record, during the closing arguments concerning the recording between Applicant and Kerwyn Phillips, for direct review.
- 7) Failing to hire audio expert and have taped conversation between Applicant and Kerwyn Phillips transcribed and presented to the jury.
- 8) Failing to raise the motion to suppress the recording between Applicant and Kerwyn Phillips due to the bad quality of the recording.
- 9) Failing to request that trial judge include in jury instructions, that a vehicle can be considered and used as a deadly weapon.
- 10) Failing to effectively cross-examine State's witness, Kerwyn Phillips.
- 11) Failing to object and properly preserve prosecutor's improper instructions to the jury during the closing arguments, on the charge of malice, for direct review.

pg. 3

- 12). Failing to object and properly preserve trial court's Voluntary manslaughter charge.
- 13). Failing to make any closing argument concerning evidence of self-defense and the hostile acts of the alleged victim's boyfriend, Eugene Derrick Grover.
- 14). Failing to object and properly preserve the Solicitor commenting on the lack of remorse of Applicant, during the closing arguments, for direct review.
- 15). Failing to object and properly preserve the Solicitor's bolstering the State's witness, Herwyn Phillips, for direct review.

b) Prosecutorial misconduct

- 1) Prosecutor provided misconduct by failing to turn over exculpatory evidence under Rule 6 and Brady. Generally, see statements of Brett Alger, Mike Lankford and Beth Lankford, also Crime Stoppers tip, and the States internet article.

c) Ineffective Assistance of Appellate Counsel

pg. 5

- i) Appellate Counsel provided ineffective assistance by failing to appeal the principle conviction, voluntary manslaughter, where mistrial issue was preserved and Applicant's indictment was constructively amended.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MOORE John J -
00326455,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4000190

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 13, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Greg Collins, Esquire. On February 1, 2008, the Applicant pled guilty and was sentenced by The Honorable William P. Keesley. Following a jury trial, the Applicant had been indicted and/or convicted of the following: Murder, Use of Firearm During Commission of a Violent Crime - (06-GS-40-2203;11739).

1

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4000190&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2011CP4000190) – Applicant: MOORE John J

Page 1 of 13

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Voluntary Manslaughter
<u>Sentence Start Date</u>	11/03/2005
<u>Sentence Length</u>	30 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	02/04/2008
<u>Committing County</u>	Richland
<u>Location</u>	Broad River
<u>Projected Release Date</u>	04/28/2031
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated October 5, 2010.

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00326455&youth=N&type=F>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

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.

John Joseph Moore,

Appellant.

Appeal From Richland County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2010-UP-409
Submitted September 1, 2010 – Filed September 16, 2010

REVERSED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

Senior Assistant Attorney General Norman Mark Rapoport, and Solicitor Warren B. Giese, all of Columbia, for Respondent.

PER CURIAM: John Joseph Moore was convicted of voluntary manslaughter, possession of a pistol by a person under the age of twenty-one, and use of a firearm during commission of a violent crime. On appeal, Moore argues the trial court erred in declining to dismiss the charge of possession of a pistol by a person under the age of twenty-one because section 16-23-30(A)(3) of the South Carolina Code (2007) was found unconstitutional. We reverse¹ Moore's possession of a pistol conviction pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Bolin, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008) (finding section 16-23-30(A)(3) unconstitutional because it violates the plain language of article XVII, section 14, of the South Carolina Constitution).

REVERSED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The application for post conviction relief (PCR) was filed January 13, 2011"

9. 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) Prosecutorial Misconduct
- (c) Ineffective Assistance of Appellate Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) See attachment

Continuation of Question 10:

pg. 1

a) Ineffective Assistance of Trial Counsel

Trial counsel provided ineffective assistance by unreasonably:

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- 4) Failing to object and properly preserve trial courts confusing and burden shifting Self-Defense Charge for direct review.
- 5) Failing to investigate, develop and present all available, relevant and admissible mitigating evidence, which could have affected jurors' evaluation of truthfulness of Grover Eugene Derrick.
See Statements

pg. 2

- 6) Failing to object and properly preserve prosecutor misstating the facts and evidence, which are not supported by the record, during the closing arguments concerning the recording between Applicant and Herwyn Phillips, for direct review.
- 7) Failing to hire audio expert and have taped conversation between Applicant and Herwyn Phillips transcribed and presented to the jury.
- 8) Failing to raise the motion to suppress the recording between Applicant and Herwyn Phillips due to the bad quality of the recording.
- 9) Failing to request that trial judge include in jury instructions, that a vehicle can be considered and used as a deadly weapon.
- 10) Failing to effectively cross-examine state's witness Herwyn Phillips.
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pg. 3

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pg 4

- i) Prosecutor provided misconduct by failing to turn over exculpatory evidence under Rule 5 and Brady. Generally, see statements of Rhettt Alger, Mike Lankford and Beth Lankford, also Crime Stoppers tip, and the states internet article.

c) Ineffective Assistance of Appellate Counsel

pg 5

- i) Appellate Counsel provided ineffective assistance by failing to appeal the principle conviction, voluntary manslaughter, where mistrial issue was preserved and Applicant's indictment was constructively amended.

18. State clearly the relief you seek in filing this application.

- Reverse and remand, new trial

III.

While there are some issues other than ineffective assistance of counsel, there is nothing specific, therefore, for the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 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).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis

that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Kevin K. Bell, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

February 15, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MOORE John J -
00326455,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4000190

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kevin K. Bell
Post Office Box 944
Columbia, SC 29202

DATED February 15, 2011.


 Jean R. Indriago
 Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
John J. Moore, Jr., # 326455,)
Applicant,)
vs.)
The State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-0190

**SUPPLEMENTAL APPLICATION
FOR POST-CONVICTION RELIEF**

2012-07-06 PM 1:57
J. H. & G. S.

Applicant, pursuant to S.C. Code §17-27-10 *et seq.*, would respectfully show:

STATEMENT OF FACTS

1. That Applicant is currently incarcerated at the Broad River Correctional Institution in the County of Richland, State of South Carolina, and is an indigent applicant.
2. That Applicant was indicted for the following offenses:
 - a. Indictment # 2006-GS-40-2203 for murder;
 - b. Indictment # 2006-GS-40-11738 for unlawful possession of a pistol by person under 21 years of age; and
 - c. Indictment # 2006-GS-40-11739 for use of a firearm during commission of violent crime.
3. That Applicant was appointed a public defender for Applicant's defense, and an appellate defender for Applicant's appeal.
4. That Applicant was represented by Greg Collins, Esq., with the Richland County Public Defender's Office, and Joseph L. Savitz, III, with the Division of Appellate Defense.
5. That Applicant was convicted after a plea of not guilty and a criminal trial, and a judgment was entered against Applicant of thirty years for the offense of voluntary manslaughter, five years consecutive for the offense of possession of a firearm during the

commission of a violent crime, and five years for possession of a firearm by a person under the age of 21, on or about February 1, 2008, in the Court of General Sessions, Fifth Judicial Circuit.

6. That Court of Appeals reversed Applicant's conviction as to possession of a firearm by a person under the age of 21 on or about September 16, 2010, and remitted to the lower court on October 5, 2010.

7. That Applicant timely filed a first application for post-conviction relief on January 13, 2011.

8. That Applicant has not filed any prior petition with any Court, State or Federal, under South Carolina law, for habeas corpus or conviction relief, for writ of certiorari, or any other petitions.

9. That Applicant has not set forth any ground for relief to this or any other Court, State or Federal, in any motion, petition, or application, other than the initial application for post conviction relief for this action pending in the Court of Common Pleas.

10. That Applicant incorporates by reference his first application, files this first supplemental application, and seeks post-conviction relief for the reasons set forth herein.

GROUND FOR RELIEF

11. Paragraphs 1 through 10 of this Application are incorporated herein by reference.

12. That public defender's performance as counsel for Applicant was deficient under the United States Constitution and the South Carolina Constitution in the following particulars:

- a. That public defender failed to convey to Applicant one or more plea offers prior to the verdict.
- b. That public defender failed to adequately investigate the case before trial, and, as a consequence, failed to develop and present all available, relevant,

impeachable, and mitigating evidence that would have challenged the credibility and veracity of witnesses for the prosecution.

- c. That public defender did not properly object or renew the motion for a mistrial given the exposure of four jurors to a mug-shot photograph of the Applicant.
- d. That public defender never objected or moved for a mistrial given the prosecution's failure to provide exculpatory evidence under Rule 5, especially including, but not limited to, statements of witnesses Rhett Alger, Mike Lankford, Beth Lankford, Crime Stoppers, and an article from "The State" newspaper.
- e. That public defender failed to properly object to and/or move for a mistrial regarding juror(s) who were sleeping during trial.
- f. That public defender did not ensure Applicant's right under the Constitution to confront the witnesses against Applicant.
- g. That public defender failed to object to and properly preserve for appeal the prosecution's bolstering the witness Kerwyn Phillips.
- h. That public defender failed to effectively cross-examine the witness Kerwyn Phillips.
- i. That public defender never objected to or moved to exclude the evidence of the recording between the Applicant and witness Delia Nix, who was the common law spouse of Applicant and thus entitled to common law spousal immunity.
- j. That public defender failed to properly object to thereby preserve for appeal the prosecution's misrepresentation of the facts and evidence, unsupported by

the record, during closing arguments, especially regarding, but not limited to, the recording between Applicant and witness Kerwyn Phillips.

- k. That public defender failed to object and properly preserve for appeal the prosecution's improper closing argument regarding malice.
- l. That public defender failed to object to and properly preserve for appeal the prosecution's improper comment on the Applicant's lack of remorse during closing argument.
- m. That public defender failed to request that the Court include in the jury charge that a vehicle can be considered a deadly weapon.
- n. That public defender failed to request a jury charge regarding the intoxication of Eugene Derrick, in which the condition was relevant to the nature of the threat and the need of force.
- o. That public defender for Applicant failed to object to and properly preserve for appeal the closing argument and jury charge regarding accomplice liability.
- p. That public defender for Applicant failed to properly object to and properly preserve for appeal the jury charge regarding malice.
- q. That public defender for Applicant failed to properly object to and properly preserve for appeal the burden-shifting jury charge regarding self-defense.
- r. That public defender failed to object to and properly preserve for appeal the Court's voluntary manslaughter jury charge.
- s. That public defender failed to properly take exception to the Court's comments on the facts of the case.

t. Any other particulars that may be demonstrated at trial.

13. That appellate defender's performance as counsel for Applicant was deficient under the United States Constitution and the South Carolina Constitution in the following particulars:

- a. That appellate defender failed to appeal the principal conviction of voluntary manslaughter, where mistrial issue was preserved and Applicant's indictment was constructively amended.
- b. That appellate defender did not properly review the record to determine all issues meriting appeal.
- c. Any other particulars that may be demonstrated at trial.

14. That public and appellate defender's performance as counsel for the Applicant, as stated herein, was so deficient that the Applicant was prejudiced such that there is a reasonable probability that, but for public and appellate defender's professional errors, the result of the criminal trial and/or conviction and/or appeal would have been different.

15. That public and appellate defender's conduct so undermined the proper functioning of the adversarial process that the criminal trial cannot be relied upon as having produced a just result.

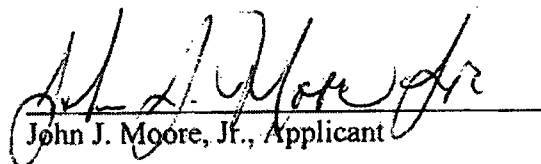
RELIEF DESIRED

16. That the Court enter judgment granting Applicant's application for post-conviction relief, and remanding the criminal case for a new trial.

(VERIFICATION AND SIGNATURE OF COUNSEL PAGE TO FOLLOW.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) VERIFICATION

I, John J. Moore, Jr., 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.


 John J. Moore, Jr., Applicant
January 3, 2011

Sworn to and subscribed before me on January 3, 2011.


 Notary Public for South Carolina

My commission expires ____/____/____.

Respectfully submitted,



Rowland P. Alston III
 The Law Office of Rowland P. Alston III, LLC
 1314 Lincoln Street
 Suite 214
 Columbia, South Carolina 29201
 (803) 708-0460
 Attorney for the Indigent Applicant

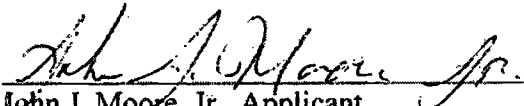
January 6, 2011

(APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS PAGE TO FOLLOW.)

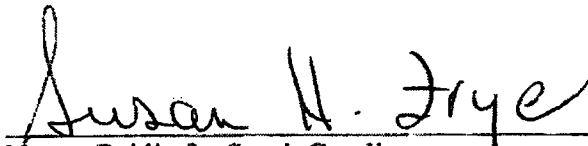
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John J. Moore, Jr., hereby continue to apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my supplemental 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.


John J. Moore, Jr., Applicant
January 3, 2011

Sworn to and subscribed before me on January 3, 2011.


Notary Public for South Carolina

My commission expires / / .

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A No.: 2011-CP-40-0190

John J. Moore, Jr., # 326455,

Applicant,

vs.

The State of South Carolina,

Respondent

CERTIFICATE OF SERVICE

2012 JAN -6 PM 1:5
C.C.P. & A.S.

I, the undersigned, do hereby certify that I have served the SUPPLEMENTAL APPLICATION FOR POST CONVICTION RELIEF in the above-captioned case, by causing a copy of the same to be hand delivered or personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to attorney(s) of record as indicated below:

Brian T. Petrano, Esq.
Office Of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Rowland P. Alston III

January 6, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No.: 2011-CP-40-0190
	)	
John J. Moore, Jr., # 326455	)	
	)	
Applicant,	)	MEMORANDUM IN SUPPORT OF
	)	APPLICATION FOR
vs.	)	POST-CONVICTION RELIEF
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

STATEMENT OF FACTS

The Applicant, John J. Moore, Jr. ("Applicant"), an indigent criminal defendant, was indicted and tried for murder, possession of a firearm by a person under the age of 21, and possession of a firearm during the commission of a violent crime in the Richland County Court of General Sessions. On or about February 1, 2008, Applicant was convicted and sentenced to thirty years for voluntary manslaughter, five years consecutive for possession of a firearm during the commission of a violent crime, and five years concurrent for possession of a firearm by a person under the age of 21 by the Hon. William P. Keesley (the "Court"). The State was represented by John P. Meadors ("Meadors"). The Applicant was represented by Richland County public defenders Douglas Strickler and Gregory Collins (collectively "Counsel").

The Applicant appealed his conviction. Applicant's counsel for the appeal was Joseph Savitz ("Appellate Counsel"). Appellate Counsel only appealed the conviction as to possession of a firearm by a person under the age of 21. *See 07/27/09 Final Brief of Appellant.* This conviction was reversed on or about September 16, 2010, and was remitted to the lower court on October 5, 2010.

On January 13, 2011, the Applicant timely filed an Application for Post-Conviction Relief.

On January 6, 2012, the Applicant filed a First Supplemental Application for Post-Conviction Relief.

In his applications, the Applicant states as grounds for relief, *inter alia*, that Counsel did not properly object to and/or move for a mistrial regarding jurors who were sleeping during trial, that Counsel did not properly prepare for trial, that Counsel did not properly investigate the case, that Counsel did not ensure a ruling on a mistrial motion, that Counsel did not assert the right of the Applicant to confront witnesses against him, that Counsel did not object to improper jury charges, and that appellate counsel did not properly appeal the convictions. *See 01/06/12 Supplemental Application, pp. 3, 4, 5.*

The Applicant argues that Counsel and Appellate Counsel's performance was so deficient that it constitutionally deprived him of effective assistance of counsel for the reasons set forth herein, and asks for a new trial.

DISCUSSION/ARGUMENT

- I. Counsel's failure to object, demand an inquiry, and/or move for a mistrial in regards to jurors who may have been sleeping or somnolent during trial was deficient performance and prejudicial.

Upon review of the Transcript of Record for the trial ("Record"), there were at least three incidents where a juror may have been sleeping or somnolent during the trial of the case.

In the first incident, a juror's apparent inattention in turn commanded the attention of the Court to the extent the Court was monitoring the juror's behavior rather than the testimony.

THE COURT: ...I had one juror over there who kept shutting her eyes and I kept watching rather intently because I had to stop if she was going asleep. She never did. She eventually opened

her eyes up completely and that's why I'm afraid I might have missed something. I'm looking back through here.

MR. MEADORS: I noticed that juror on the second row far left and it seemed like some of the jurors were noticing her, too. And I was trying to watch to see if she was sleeping, but I did not see her doze off.

See Record, pp. 325-26, lines 20-25, 1-6.

Second, the Court determined that a juror was apparently in such a condition that a glass of water was necessary for her to properly pay attention to the testimony.

THE COURT: Mr. Bailiff, get that juror some water for me please. Do you need a break, ma'am?

JUROR: No.

THE COURT: Just let me know if you need to stop, okay?

JUROR: Okay.

THE COURT: I'm sorry, Mr. Meadors. Go ahead.

MR. MEADORS: Thank you.

See Record, p. 374; lines 8-16.

Third, the Court noted that, during closing arguments, another juror was fighting sleep.

THE COURT: All right. We've got to stop. Ladies and gentlemen, step in the jury room. Don't discuss the case. If you need a drink of a Coca-Cola or Pepsi or something, get it.

(The jury retires to the jury room.)

THE COURT: All right. I've got one juror fighting sleep. He hasn't gone to sleep, but he's fighting it pretty bad. So let's give them a break. We're at ease.

THE COURT: All right. Bring the jury in, please. And while we're waiting, one of the jurors sent out a note, I assume it was the same young man. He was just explaining he has a sinus infection and his face is swollen and it may cause his eyes to appear to be closed at times. He said he's fine to serve. And I've had that shown to the

attorneys. I don't think that's an issue. We'll mark it as a Court's Exhibit. [Emphasis added.]

MR. MEADORS: It certainly makes me feel better, too.

MR. STRICKLER: My apologies, Your Honor. I do have something nagging at me relating to the charge...

See Record, pp. 692-93; lines 13-25, 1-14.

In *State v. Hurd*, 325 S.C. 384, 480 S.E.2d 94 (Ct. App. 1996), Hurd was convicted of criminal conspiracy to commit burglary. During the trial, Hurd's counsel brought to the Court's attention that one of the jurors appeared to be sleeping during most of the Court's charge, and asked that the Court remove and replace the juror, or, in the alternative, question the juror. The Court refused the request. *Id.*, at 97.

On appeal, the Court of Appeals held that:

'it is incumbent upon the trial court to conduct a probing and tactful inquiry to determine whether a sworn juror is unqualified,' and 'the court must not speculate...but must ascertain the juror's state of mind and must place its reasons for excusing or retaining the juror on the record.'

Id., quoting *People v. Valerio*, 141 A.D.2d 585, 529 N.Y.S.2d 350, 351 (1988).

The Court of Appeals then expounded on the present facts before them.

Just because a juror closed his eyes does not necessarily mean that he was asleep, but a trial judge should at least attempt to make this determination wherever a juror appears to be asleep. The trial judge committed reversible error by refusing defense counsel's request to question the juror as to whether he heard all of the charge.

Id.

Because the trial court in *Hurd* did not question the juror, the Court of Appeals reversed the conviction, and ordered a new trial.

Here, there were three instances where a juror may have sleeping or somnolent during the trial. In none of the instances did the Court conduct any inquiry as to whether or not the juror

was listening. In one instance the Court assumed that a note given explained the appearance of a sleeping juror, but nothing was done to confirm the assumption.

Of supreme importance to this action, at no time did Counsel request that the Court conduct any inquiry in any of these instances.

In criminal cases, the right of trial by jury is preserved inviolate. *See S.C. Const. Art. I, § 14.* Regardless of whether the Applicant's constitutional right to a twelve-member jury was violated, the record is replete with potential juror misconduct. Counsel, as a protector of the Applicant's constitutional rights and a right to a trial by all twelve jurors, had the paramount obligation to ensure that the jurors were fair to Applicant, and thus attentive during trial, and request an inquiry or move for a mistrial if he thought they were not. Counsel also had the obligation to demonstrate prejudice by a "sleeping" juror. *See State v. Smith*, 338 S.C. 66, 73, 525 S.E.2d 263, 267 (Ct. App. 1999). In accepting any finding of the Court and in failing to ask the Court conduct a *voir dire* of the jurors or further inquiry, Counsel also waived the issue on appeal. *Id.*, at 75, 268.

Both prongs of the ineffective assistance of counsel inquiry, deficient performance and prejudice, are manifest. Counsel's failure to request an inquiry of jurors who may have been sleeping or somnolent during trial was deficient performance and prejudicial.

II. Counsel's preparation for the trial of the case was inadequate, and was deficient performance and prejudicial.

The Applicant was tried for voluntary manslaughter. The Applicant asserts that Counsel met with the Applicant only two or three times prior to the trial of the case. That is an entirely inadequate amount of time to prepare for this felony criminal trial. This lack of preparation was deficient performance and was prejudicial to the Applicant. There is a reasonable probability that, but for this error of Counsel, the result would have been different.

III. Counsel's investigation of the case was inadequate, and was deficient performance and prejudicial.

Counsel had a duty to perform a reasonable investigation, which included interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. *See Lounds v. State*, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008). A "reasonable investigation" also includes discovery of "all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *See McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

The Applicant asserts that Counsel did not try to obtain any data as to the state of intoxication of the driver of the other car involved in the incident, or seek the opinion of a forensic toxicologist one that data had been obtained. This evidence would have been most relevant to the self-defense defense of the Applicant. The Applicant also asserts that Counsel did not make a reasonable investigation of potential witnesses, of the facts and circumstances of the case, of mitigating evidence, and evidence rebutting aggravating evidence of the State. The failure to perform a reasonable investigation was deficient performance and was prejudicial to the Applicant. There is a reasonable probability that, but for this error of Counsel, the result would have been different.

IV. Counsel failed to ensure a ruling on a mistrial motion regarding jurors who were exposed to a mug-shot of the Applicant, which was deficient performance and prejudicial.

At least three jurors came forward prior to opening statements regarding seeing a mug-shot photo of Applicant in the media. *See Record*, pp. 109-117. Counsel moved for a mistrial. *Id.*, p. 121, lines 17-19. However, the Court only excused one juror on a different basis and did not address the mistrial motion. *Id.*, pp. 123-124. Meadors himself was going to move for a mistrial, but declined because of double jeopardy issues. *Id.*, p. 128, lines 3-5. Counsel never

followed up to ensure a ruling on the motion ignored by the Court. The failure to ensure a ruling by the Court on such an important issue was deficient performance, and was prejudicial to the Applicant.

- V. Counsel failed to ensure that Applicant had the right to confront a witness against him at trial, which was deficient performance and prejudicial.

The prosecution offered into evidence a recorded conversation between Delia Nix, the Applicant's former girlfriend, and the Applicant. During an *in camera* hearing, the Court ruled that the conversation was admissible under *S.C.R.E. 901*. *See Record, p. 544*. Applicant contends that the conversation was testimonial in nature, as it was recorded by a government entity and the recording's purpose was for use at a future trial. Applicant did not have the opportunity to cross-examine Nix on the meaning and context of her statements.

In *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), the United States Supreme Court held that, under the 6th Amendment confrontation clause, admission of out-of-court testimonial evidence requires the unavailability of the witness and a prior opportunity for cross-examination. *Id.*, at 68, 1374. Further, the Supreme Court noted that "[w]here testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability'." *Id.*, at 61, 1370.

Here, the Court admitted the recording on the basis of reliability under the authentication provisions of *S.C.R.E. Rule 901*. *Crawford* had been the law of the land for almost four years at the time of trial, and Counsel made no objection under the 6th Amendment. The failure to object by Counsel on this fundamental basis was deficient performance, and was prejudicial to the Applicant.

- VI. Counsel failed to take exception to the propriety of the jury charges made by the Court, which was deficient performance and prejudicial.

The Court charged the jury on implied malice (See Record, pp. 742-44) and accomplice liability (See Record, pp. 748-49). Both were arguably improper, but Counsel made no exception to them for the record.

First, the Court charged that malice may be inferred from a deadly weapon. However, in State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009)¹, the Supreme Court held that where evidence is presented that would justify a homicide, juries will not be charged on malice inferred from the use of a deadly weapon. Since a self-defense claim/charge was made (See Record, pp. 749-55), the charge was improper.

Second, accomplice liability is premised upon “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” See Barber v. State, 393 S.C. 232, 236-37, 712 S.E.2d 436, 439 (2011). Applicant asserts that there was no evidence of conspiracy or common design/purpose, that the charge was thus not warranted, and that the charge only served to offer another theory of guilt for the Applicant, and was thus prejudicial.

The failure to object by Counsel to the jury charges made by the Court was deficient performance, and was prejudicial to the Applicant.

- VII. Appellate Counsel’s appeal of the case was inadequate, and was deficient performance and prejudicial.

A criminal defendant is entitled to effective assistance of appellate counsel just as trial counsel, and a court analyzes a claim of ineffective assistance of appellate counsel in the same manner. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009).

¹ The Supreme Court stated that the ruling “will not apply to convictions challenged on post-conviction relief.” Id., 613, 810. However, the Applicant contends that the Supreme Court intended that the ruling would only not apply to applications pending at the time the decision was rendered, rather than any applications.

Appellate counsel only appealed the conviction for possession of a firearm by a person under the age of 21. *See 07/27/09 Final Brief of Appellant.* There were numerous issues that could have been appealed, given the Applicant's conviction for voluntary manslaughter. One such issue was the admissibility under authentication of the recording of witness Delia Nix. Counsel did renew the exceptions made to the Court's rulings at the conclusion of the trial, and specifically as to the aforementioned recording. *See Record, pp. 778, lines 23-25, 779, lines 1-8.* Because these issues were not appealed, they were waived, and prevented any chance of Applicant from having his conviction for voluntary manslaughter reversed.

The failure to appeal the other convictions was deficient performance and was prejudicial to the Applicant. There is a reasonable probability that, but for this error of appellate counsel, the result would have been different.

CONCLUSION

Counsel committed a multitude of grievous errors before and during the criminal trial. These errors constituted deficient performance that was prejudicial to the Applicant. There is a reasonable probability that, but for these errors of Counsel, the result would have been different.

Appellate Counsel committed a multitude of grievous errors in handling the appeal. These errors constituted deficient performance that was prejudicial to the Applicant. There is a reasonable probability that, but for these errors of Appellate Counsel, the result would have been different.

For the foregoing reasons, the Applicant has established ineffective assistance of counsel. The Applicant's request for post conviction relief should be granted, and the matter should be remanded to the Court of General Sessions for a negotiation of a plea bargain, or, a new trial.

(SIGNATURE OF COUNSEL PAGE TO FOLLOW.)

Respectfully submitted,

s/Rowland P. Alston III
Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, South Carolina 29201
(803) 708-0460
Attorney for the Applicant

May 23, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 C/A No.: 2011-CP-40-0190

John J. Moore, Jr., #326455
 Applicant,
 vs.

AFFIDAVIT OF DR. ROBERT BENNETT

The State of South Carolina

Respondent

THE AFFIANT, AFTER BEING DULY SWORN, DEPOSES AND SAYS AS FOLLOWS:

1.) Affiant: I, Dr. Robert Bennett, am a Forensic Toxicologist providing forensic laboratory testing service and toxicology consultation in South Carolina as a full time profession. I possess a Ph.D. degree in drug science and also a Pharmacy degree, both from the Medical University of South Carolina. I provide DNA testing and testing for substances of abuse (illegal drugs and prescription drugs) and alcohol for Courts in South Carolina and have been qualified as an Expert Witness in drug and alcohol testing and Forensic Toxicology in South Carolina courts.

2.) Purpose: The purpose of this Affidavit is documentation of the known adverse behavior and cognitive reactions of alcohol, cocaine, and methamphetamine, alone and in combination.

3.) Establishment of Drug/Alcohol use by Grover Derrick: According to the sworn statement of Mike Lankford, on March 16, 2005, to a Richland County Sherriff's Officer, Grover Derrick and he left a cookout (sponsored by Mr. Lankford) and reports that on the way to the store, that "Grover and I smoked a small, sociable amount [of

methamphetamine]. "We pulled off of a side road and finished it off." In his sworn statement, Mr. Lankford was also questioned as to any other drugs that Grover has been using. Mr. Langford reported that, he "had a small amount of cocaine that Grover and Stephanie (victim) used with [him]; and that Grover was always involved in cocaine, even after Stephanie passed." When Mike was asked if Grover got the meth from him, he reported that "he got it from Kimberly (Mike's girlfriend). In the investigation, Beth Lankford, the wife of Mike Lankford, reported that the night of the incident (cookout) that "Grover was so drunk that he fell on Ian (her 12 year-old son), as he was trying to walk out of the door (to leave)." According to Ian, Grover could not have driven, he was too drunk, he could hardly walk." In his sworn statement, Mike said that Grover drove anyway because Stephanie had a headache. This testimony establishes that Grover Derrick was under the influence of methamphetamine, cocaine, and alcohol at the time of the incident.

4.) Effects of Cocaine: Cocaine is a powerfully addictive drug, with a high relapse rate. Cocaine causes intense changes in brain chemistry. Cocaine can cause bizarre and violent behavior such as anger, aggressiveness, delusions, and paranoia. (Prim Care Companion J Clin Psychiatry. 1999 Aug;1(4):109-113). Cocaine use produces a state of hyper alertness in which users are more likely to perceive the actions of other as hostile which can evoke a violent response. In rare cases, sudden death can occur on the first use of cocaine or unexpectedly thereafter. Cocaine effects can vary between individuals and can even vary within the same person at various times. (Source: National Institute on Drug Abuse). Research has shown even modest cocaine use may cause brain changes, that could contribute to or lead to addiction. (Journal of Neuroscience 20(18):7109-7115, 2000). There is no safe level of cocaine use.

5.) Effects of Methamphetamine: Methamphetamine is a powerfully addictive drug, with a high relapse rate. Methamphetamine causes intense changes in brain chemistry. (J Neurophysiol. 2012 May 16). Even in small amounts, psychological effects include aggressiveness, irritability, confusion, and anxiety. (Arch Gen Psychiatry. 2006 Jan;63(1):90-100). Substances with psychotomimetic properties such as cocaine and amphetamines [e.g. methamphetamine], are widespread, and their use or abuse can provoke psychotic reactions resembling a primary psychotic disease. (Curr Drug Abuse Rev 2011 Dec;4(4):228-40). Habitual use of methamphetamine may result in a toxic psychosis characterized by paranoia, delusions, hallucinations and bizarre violent behavior. (Am J Psychiatry, 158(3): 377-382, 2001). Commonly, the methamphetamine user feels invincible and indestructible, and thus engages in risky, potentially deadly, behavior and activities that normally would be avoided. (Drug Alcohol Rev. 2008 May;27(3):253-62). In rare cases, sudden death can occur on the first use of methamphetamine or unexpectedly thereafter. Methamphetamine effects can vary between individuals and can even vary within the same person at various times. Behavior is unpredictable. Methamphetamine can cause damage to the brain similar to that caused by Alzheimer's disease, stroke and epilepsy. (Eur J Pharmacol. 2004 Jun 28;494(2-5):183-9). Research has shown even modest methamphetamine use may cause brain changes that could contribute to or lead to a seemingly uncontrollable addiction. (Subst. Abus. 2008;29(3):31-49). There is no safe level of methamphetamine use.

6.) Effects of Alcohol: Alcohol is a depressant that is widely used and abused, often leading to alcohol dependence. The consumption of alcohol leads to a state of intoxication impairing brain function and motor skills. It causes clumsiness, delayed

reflexes, irritability, and impaired judgment. It affects the part of the brain responsible for controlling inhibition, which often leads to extreme behaviors such as violence and aggression. A study was conducted on the relationship between alcohol consumption and road rage. It provided evidence that the odds of a road-rage incident occurring are greatly increased when the perpetrator or victim had recently consumed alcohol. (J Stud Alcohol. 2004 Mar;65(2):161-8).

7.) Use in combination: The abuse of cocaine, alcohol, and methamphetamine have been shown to cause cognitive difficulties that impair judgment and decision making and each has been associated with the inability to inhibit hostile or dangerous impulses. Cocaine, alcohol, and methamphetamine each have their own mind-altering side effects; the combining of any of these drugs increases the likelihood of users engaging in risky or violent activities. One study (Biology Psychiatry. 1998 Aug 15;44(4):250-9) showed that cocaine concentrations were greater in persons following cocaine-alcohol administration. Alcohol actually increased the levels of cocaine in the body. Also, when taken together, cocaine and alcohol interact to produce a third drug called Cocaethylene, an active metabolite with a half-life three times that of cocaine. The combined use of the two substances results in a more intense effect on the brain. This interaction prolongs the effects of both cocaine and alcohol. Cocaine offsets the sedating effects of alcohol and the alcohol enhances the euphoric effects of cocaine. Cocaethylene itself has a profound effect on brain function. (Biology Psychiatry. 1998 Aug 15;44(4):250-9). The use of alcohol, drugs, and illicit substances causes suppression of psychomotor inhibition, which leads to major behavioral disorders. The behavioral disinhibition induced by either use or misuse can cause humans to behave inappropriately according to a given environmental situation. Affected persons tend to lose restraint over their social

behavior and exhibit increased aggression and violent behavior. People that have problems with substance misuse have an established role as a risk factor for violence and have been related to aggressive driving and violence on the road. (Butters, J. E., Smart, R. G., Mann, R. E. and Asbridge, M. 2005. Drug and Alcohol Dependence , 80: 169-175).

8.) Opinion: It is my opinion, to a reasonable degree of scientific and toxicological certainty, that each of these substances can cause profound mind-altering effects. These effects may not be dose-dependent or consistent, even within the same individual, especially with methamphetamine. Therefore, even a small dose of methamphetamine, in the right circumstances, can result in an unpredictable occurrence of violent behavior or aggression. It was noted in the Court transcripts that Mr. Derrick admitted to chasing after the pick-up truck after shots were fired at him. Mr. Derrick also admitted to not having access to any gun. So essentially, this creates a scenario where an unarmed man is chasing after a man with a gun, who is shooting at him. This is a classic example of behavior of a person under the effect of methamphetamine, exhibiting the well-known reaction of feeling invincible. It is my opinion that a typically, an unarmed person not under the influence of methamphetamine, would not chase after a person shooting at them, as this would most likely create a confrontation resulting in escalated violence, possibly requiring the original shooter to be forced to take a self-defensive action.

9.) Certification: I certify that the foregoing is true and accurate to the best of my knowledge and recollection and my opinions are to a reasonable degree of scientific and toxicological certainty.

FURTHER THE AFFIANT SAYETH NOT.



Robert Bennett, R.Ph., Ph.D.

Subscribed and sworn before me on this 21st day of May, 2012.



Eleanor G. Bennett, Notary Public, State of South Carolina

My Commission expires: October 31, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN JOSEPH MOORE,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred by refusing to dismiss the charge of possession of a firearm by a person under the age of twenty-one, as *S.C. Code Section 16-23-30* (which has since been amended) was found to violate *Article 17, Section 14* of the *South Carolina Constitution* in *State v. Bolin*, 378 S.C. 96, 662 S.E.2d 38 (2008).

STATEMENT OF FACTS

On January 28 through February 1, 2008, John Joseph Moore stood trial in Richland County, before Judge William P. Keesley and a jury, on indictments charging him with murder, possession of a firearm during the commission of a violent crime, and possession of a firearm by a person under the age of twenty-one. The State alleged that Moore had shot Stephanie Dover once in the head during an episode of road-rage between her fiancé, Gene Derrick, and Moore. Based on the testimony of Moore's passenger, Kerwyn Phillips, that Derrick had been the aggressor, the judge instructed the jury on voluntary manslaughter and self-defense, in addition to murder and the firearm charges. The jury found Moore guilty of voluntary manslaughter and the two firearm charges, and the judge sentenced him to thirty years for manslaughter, five years concurrent for possession of a firearm during the commission of a violent crime, and five years consecutive for possession of a firearm by a person under the age of twenty-one.

ARGUMENT

The trial judge erred by refusing to dismiss the charge of possession of a firearm by a person under the age of twenty-one, as S.C. Code Section 16-23-30 (which has since been amended) was found to violate Article 17, Section 14 of the South Carolina Constitution in State v. Bolin, 378 S.C. 96, 662 S.E.2d 38 (2008).

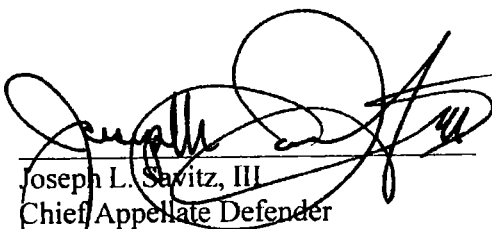
John Joseph Moore was born October 2, 1985. On the date of the incident, October 17, 2004, he was nineteen. ROA p. 1, line 16 – p. 2, line 20.

Moore was charged with having violated S.C. Code Section 16-23-30, which, prior to its amendment in 2004, prohibited persons under the age of twenty-one from possessing handguns. In *State v. Bolin*, 378 S.C. 96, 662 S.E.2d 38 (2008), the Supreme Court found that this statute violated Article 17, Section 14, of the South Carolina Constitution.

Defense counsel moved to dismiss the charge for precisely that reason. ROA p. 3, line 21 – p. 5, line 15. The judge denied the motion. ROA p. 5, line 16.

Since Moore's conviction for violating Section 16-23-30 is unconstitutional under *State v. Bolin*, the Court should vacate that conviction.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

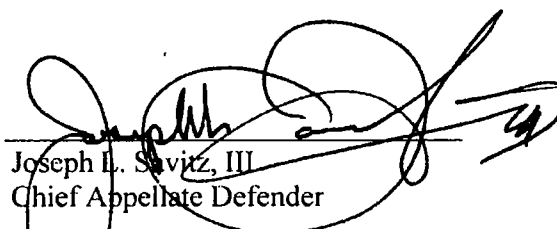
ATTORNEY FOR APPELLANT

This 27th day of July, 2009.

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."

July 27, 2009



Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

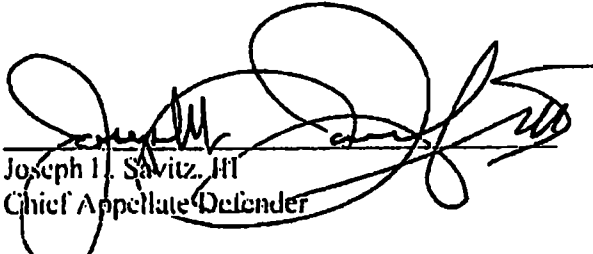
V.

JOHN JOSEPH MOORE,

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 Norman Mark Rapoport, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of July, 2009.



Joseph I. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2009.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 1, 2019.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2011-CP-40-190

John J. Moore, Jr.,)
Plaintiff/Applicant,)
vs.) TRANSCRIPT OF RECORD
The State of South Carolina,)
Defendant)

May 23, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

ROLAND P. ALSTON, III, ESQUIRE
Attorney for Plaintiff

ROBERT D. CORNEY, ESQUIRE
Attorney for the State

Crystal Holmes
Official Court Reporter

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Memorandum in Support of PCR		6
P-2	Trial Transcript		12
P-3	Affidavit of Dr. Robert Bennett		14
P-4	Statement		17
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P-6	Court of Appeals Brief		34
P-7	Letter Dated April 8, 2009		38
P-8	Letter Dated June 25, 2009		40

I N D E X

2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Greg Collins				
4	By Mr. Alston	8			
5	By Mr. Corney		22		
6	Joseph L. Savitz, III				
7	By Mr. Alston	34			
8	By Mr. Corney		41		
9	Joseph J. Moore, Jr.				
10	By Mr. Alston	44		61	
11	By Mr. Corney		57		
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1 Wednesday, May 23, 2012:

2 MR. CORNEY: Please the Court.

3 THE COURT: Yes, sir.

4 MR. CORNEY: Your Honor, the State would next
5 call the PCR of John J. Moore, Jr. That's docket number
6 2011-CP-40-0190. Mr. Moore was true bill indicted at the
7 April 2006 term of the Richland County Grand Jury for
8 murder, use of a firearm during the commission of a
9 violent crime and unlawful possession of a pistol by a
10 person under the age of 21.

11 He proceeded to a jury trial January 28th, 2008
12 before Judge Keesley. After a five day trial, Mr. Moore
13 was convicted of a lesser included voluntary manslaughter
14 ---

15 THE COURT: Hold on a minute. Ma'am, I assume
16 you're related to the victim or somebody?

17 LADY: Am I? Yes, sir ---

18 THE COURT: You're his daughter.

19 LADY: --- sister-in-law.

20 THE COURT: Are you okay?

21 LADY: Yes, sir.

22 THE COURT: All right. I'm sorry, when someone
23 is crying ---

24 LADY: I'm sorry.

25 THE COURT: --- you make an inquiry. It's

JAMES J. MOORE, JR. V. THE STATE

1 understandable. Go ahead, Mr. Corney.

2 MR. CORNEY: Yes, sir, Your Honor. He was
3 convicted by the jury of a lesser included voluntary
4 manslaughter and of the two weapons charges as indicted.
5 He was sentenced to 30 years on the voluntary
6 manslaughter charge, five years concurrent for the
7 possession of a weapon during the commission of a violent
8 crime and five years consecutive for the possession of a
9 weapon by a person under the age of 21 ---

10 THE COURT: And that was reversed by the Court
11 of Appeals?

12 MR. CORNEY: It was, Your Honor.

13 THE COURT: All right.

14 MR. CORNEY: That's right where I was going with
15 it, a Notice of Appeal was filed. Joey Savitz
16 represented him on the appeal. Mr. Savitz obviously
17 formerly of the South Carolina Office of Appellate
18 Defense. They challenged only the possession of a weapon
19 by a person under the age of 21 conviction. That was
20 reversed by the Court of Appeals. The remittitur was
21 issued on October 5th, 2010 and a timely PCR application
22 was filed January 13th, 2011.

23 Present in the courtroom today prepared to
24 testify are Applicant's former trial counsel Greg
25 Collins. He was represented also by Doug Strickler. We

JAMES J. MOORE, JR. V. THE STATE

1 don't have Mr. Strickler in the courtroom today. I think
2 we're prepared to go forward with Mr. Collins ---

3 THE COURT: All right.

4 MR. CORNEY: --- who should be able to provide
5 testimony on his PCR application. Also present -- and I
6 don't know that I've seen him in the courtroom but we
7 talked to him this morning and he is ready to testify, is
8 his appellate counsel Joey Savitz.

9 THE COURT: All right, sir.

10 MR. CORNEY: Mr. Moore is represented by Roland
11 Alston today on the application, Your Honor.

12 THE COURT: All right, Mr. Alston.

13 MR. ALSTON: Your Honor, may it please the
14 Court. I have prepared a Memorandum ---

15 THE COURT: All right.

16 MR. ALSTON: --- for the application that
17 outlines a lot of the issues that I think are important
18 and will make sure that I give you the original.

19 THE COURT: Has this been filed?

20 MR. ALSTON: It has not been filed but marked as
21 an exhibit, Your Honor.

22 THE COURT: Go ahead and have Crystal mark it.

23 (Whereupon, Plaintiff's Exhibit Number 1,
24 Memorandum in Support of PCR, was admitted into
25 evidence.)

1 MR. CORNEY: And, Your Honor, I'm assuming that
2 this is all just setting forth the allegations in the
3 application.

4 THE COURT: I don't see anything objectionable.
5 All right, Mr. Alston.

6 MR. ALSTON: Your Honor, my client in his
7 application -- I filed a supplemental application on his
8 behalf and he raised a host of issues that he wanted to
9 at least be on the record. I have as my obligation as
10 counsel told him that, you know, there are certain issues
11 that I think are important from my -- in my evaluation.
12 That's what I want to go forward to today. And if I may
13 have one moment to confer with my client?

14 THE COURT: Yes, sir, go ahead.
15 (Pause.)

16 MR. ALSTON: Your Honor, at this time I would
17 like to call Mr. Collins to the stand.

18 THE COURT: All right. Come around, Mr.
19 Collins. You've got to help me out a little bit. Just
20 place your left hand on the Bible, Mr. Collins, and raise
21 your right hand.

22 (GREG COLLINS, having first been duly sworn,
23 testified as follows:)

24 THE COURT: All right. Please take a seat, tell
25 us your full name and spell your last name for the

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 record.

2 THE WITNESS: My name is Greg Collins, C-o-l-l-
3 i-n-s.

4 DIRECT EXAMINATION

5 BY MR. ALSTON:

6 Q Good morning, Mr. Collins?

7 A Good morning.

8 Q Mr. Collins, where are you employed?

9 A With the Richland County Public Defender's Office.

10 Q And were you employed there when my client was being
11 tried for murder?

12 A Yes, I was.

13 Q Okay. And were you his trial counsel at that time?

14 A Yes.

15 Q Okay. And what was the verdict rendered in that
16 case?

17 A Guilty of voluntary manslaughter and then the two
18 gun charges.

19 Q During the course of the trial, was there a
20 recording played between my client and his common-
21 law spouse?

22 MR. CORNEY: Your Honor, I'm going to object to
23 that. I think that he's leading as to the common-law
24 spouse, that's the issue at hand, is whether she was the
25 common-law spouse. I'm going to object to leading on

JAMES J. MOORE, JR. V. THE STATE

GREG COLLINS -- DIRECT BY MR. ALSTON:

9

1 that.

2 THE COURT: Hold on. The question was -- say
3 the question again?

4 MR. ALSTON: Was there a tape recording or a
5 recording of a conversation played between my client and
6 his common-law ---

7 THE COURT: And what's your objection?

8 MR. CORNEY: My objection is that that's a very
9 -- the question at hand is whether she was his common-law
10 spouse or not. I think that he's inferring facts in the
11 record that aren't ---

12 THE COURT: You'll get a chance to cross-
13 examine. He's just -- it's just a characterization. I
14 don't know whether it is or not.

15 MR. CORNEY: Thank you, Judge.

16 THE COURT: Go ahead.

17 A There was a phone conversation recorded that was
18 played between Mr. Moore and whom I thought at the
19 time was his girlfriend and mother of his child.

20 Q Okay. At any point in time, did you inquire whether
21 or not it was his spouse or common-law spouse?

22 A I did not ask him that, no.

23 Q Okay. Are you aware of the law of spousal privilege
24 in South Carolina?

25 A Yes.

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 Q And what is that, spousal privilege immunity?

2 What's your understanding of that?

3 A My understanding of that is that it's inadmissible
4 if it's between two spouses.

5 Q Okay. Was that ever raised at the criminal trial
6 of my client?

7 A No, it was not.

8 Q Was the tape recording, pardon the phrase, damning
9 as to my client?

10 A It didn't help, that's for sure.

11 Q Would it be your obligation as his counsel to
12 inquire as to whether or not any privilege would
13 apply in those circumstances?

14 A I would have thought that maybe he would have told
15 me that.

16 Q During the trial, did you -- was there ever any
17 discussion about jurors who were sleeping or drowsy
18 or otherwise inattentive during the course of the
19 case?

20 A Yeah, there was one juror in particular that said he
21 had a cold and was kind of in and out of it
22 throughout and actually completely fell asleep
23 during the Solicitor's closing argument.

24 Q Did you ever ask the Court to conduct any voir dire,
25 any inquiry or any examination of a juror who

GREG COLLINS -- DIRECT BY MR. ALSTON:

11

1 appeared to be sleeping or drowsy during the trial?

2 A I didn't because he was awake when we were going
3 forward and was dozing during the prosecution.

4 Q You did?

5 A We didn't because he was not sleeping when we were
6 putting up -- when we were up. He was sleeping when
7 the prosecution was going.

8 Q Okay. So I just want to make sure that the record
9 is clear that's being transcribed. At no time
10 during this trial did you ever request Judge
11 Keesley, who was the Trial Judge as I understand it,
12 to conduct any sort of voir dire or any sort of
13 inquiry of a juror who appeared to be sleeping or
14 drowsy during the trial?

15 Q We didn't request it. I do -- I do believe the
16 Judge did address it and ask if he needed any
17 caffeine or things like that. But we didn't request
18 any voir dire.

19 MR. ALSTON: Your Honor, at this time I would
20 like to mark ---

21 THE COURT: Go ahead. I think Judge Keesley
22 inquired, gave him some water. There was another one
23 almost about to fall asleep and they gave them a break.
24 You can make that part of the record. I think it's a part
25 of the record but you can mark it.

JAMES J. MOORE, JR. V. THE STATE

GREG COLLINS -- DIRECT BY MR. ALSTON:

12

1 (Whereupon, Plaintiff's Exhibit Number 2,
2 Trial Transcript, was admitted into evidence.)

3 THE COURT: Was my characterization correct so
4 far, from what I read?

5 THE WITNESS: (Affirmative response.)

6 THE COURT: All right.

7 Q Do you recall an incident where jurors came forward
8 at the beginning of the trial and informed Judge
9 Keesley that they were exposed to mugshot
10 photographs of the Defendant before the case in
11 chief was presented?

12 A Yes.

13 Q Okay. And did you move for a mistrial on the basis?

14 A I don't believe so. I know we moved to have some
15 jurors removed because of it.

16 Q Okay. Why didn't you move for a mistrial?

17 A Honestly, I can't tell you that. I don't remember
18 exactly what was going through my head at that time.

19 THE COURT: You need to speak up, Mr. Collins?

20 A I don't remember exactly what was going through my
21 head at that time. I guess we didn't feel it was
22 appropriate to move for a mistrial at that time.

23 Q Was a self-defense claim ever made or charged?

24 A I believe we asked for it to be charged but it
25 wasn't charged.

JAMES J. MOORE, JR. V. THE STATE

1 Q Do you know why self-defense was asked for?

2 A Do I know why it was asked for?

3 Q Yes.

4 A Because that was one of the defenses we were going
5 to try to go forward with.

6 Q Okay. And why is that?

7 A Due to the fact that the other car on the interstate
8 was driving towards the truck swerving at the truck
9 Mr. Moore was allegedly in. And the fact that there
10 was testimony that the passenger of the car reached
11 under the seat, supposedly possibly for a gun.

12 Q Okay. Were you -- did you have any indication as to
13 whether or not the driver of the other car was under
14 the influence of drugs or intoxicating liquor?

15 A We had information that he was potentially a
16 methamphetamine user. The information came from
17 interviews with his family members and the victim's
18 family members. Those were the only people that we
19 got the information through.

20 Q Okay. Did you ever consult any forensic
21 toxicologist to examine this issue and to perhaps
22 testify at trial as to the state of the driver of
23 the car to substantiate and bolster your self-
24 defense argument?

25 A No, we didn't retain any experts for that.

GREG COLLINS -- DIRECT BY MR. ALSTON:

14

1 MR. ALSTON: Your Honor, I'm marking as Exhibit
2 3 an Affidavit that was submitted for the Court's
3 consideration by a forensic toxicologist that I think is
4 probative of this issue.

5 THE COURT: Well, that may be fine but where is
6 -- the State has a right to cross-examine this gentleman.

7 MR. CORNEY: Judge, that would be our objection
8 is that he's not here. I don't have an opportunity to
9 cross-examine him on this Affidavit or where this
10 information came from, what investigation he did, how he
11 even came up with these findings.

12 THE COURT: Your objection is noted. You may
13 proffer what you want to -- you can proffer this but
14 there's a valid objection. I sustain it but I'm going to
15 let you proceed. Go ahead, as a proffer.

16 MR. ALSTON: Yes, sir.

17 (Whereupon, Plaintiff's Exhibit Number 3,
18 Affidavit of Dr. Robert Bennett, was admitted
19 into evidence.)

20 Q Do you recall a charge being made on implied malice
21 by Judge Keesley?

22 A Yes.

23 THE COURT: I'm still a little bit confused. I
24 think you stated earlier, you asked Mr. Collins whether
25 or not Judge Keesley had charged self-defense but he

GREG COLLINS -- DIRECT BY MR. ALSTON:

15

1 couldn't recall. I think he did in fact charge self-
2 defense, if I read the record correctly?

3 MR. CORNEY: Yes, Judge, the record ---

4 THE COURT: So let's clear that up right now.
5 Self-defense was charged in this case.

6 Q Was self-defense charged in this case, your
7 understanding?

8 A I guess it was.

9 MR. ALSTON: My understanding it was, Your
10 Honor.

11 THE COURT: Okay. Okay, go ahead, go ahead. It
12 was somewhat confusing for me.

13 MR. ALSTON: All right.

14 THE COURT: But it was in fact charged.

15 MR. ALSTON: Yes, sir.

16 THE COURT: All right.

17 Q Did you do any research to determine whether or not
18 an implied malice charge was warranted under the
19 circumstances?

20 A We researched jury charges. I believe this was
21 before that case came out saying that the presence
22 of a weapon, that the charge with the presence of a
23 weapon can be implied malice. That came out I
24 believe after this case. Looking back, yeah, we
25 should have objected to that charge.

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 MR. ALSTON: The Court's indulgence, Your Honor.

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. ALSTON: Your Honor, I've marked as Exhibits
5 4 and 5 a statement from a Mike Langford (phonetic) taken
6 by, it appears to be, law enforcement. And also an
7 investigator report from Info, Inc. Investigations.

8 THE COURT: Any objection?

9 MR. ALSTON: Your Honor, if I could have just
10 one second to ---

11 THE COURT: All right. Take your time and look
12 at them.

13 (Pause.)

14 MR. ALSTON: Judge, just based on these two
15 documents, I first would object to them unless Mr.
16 Collins can identify these as part of this trial notebook
17 or something that came from his file.

18 Also, I don't think they can be brought to the
19 truth of the matter asserted if we don't have anyone to
20 testify that created these reports. I think to go to his
21 reasonableness on how he conducted his investigation
22 based on these things perhaps but not for the truth of
23 the matter asserted, they are hearsay.

24 THE COURT: Okay, all right. Objection is
25 noted, go ahead.

JAMES J. MOORE, JR. V. THE STATE

GREG COLLINS -- DIRECT BY MR. ALSTON:

17

1 (Whereupon, Plaintiff's Exhibit Number 4,
2 Statement, was admitted into evidence.)

3 (Whereupon, Plaintiff's Exhibit Number 5, Info,
4 Inc. Report, was admitted into evidence.)

5 Q Mr. Collins, do you ever recall seeing those two
6 documents?

7 A Yes.

8 Q Okay. And would these documents, at least one of
9 them, be probative of the ---

10 THE COURT: What are the documents, identify
11 them for me.

12 MR. ALSTON: Okay, these -- Your Honor, this is
13 a document by Mike Langford.

14 THE COURT: Uh-huh.

15 MR. ALSTON: Which attest to ---

16 THE COURT: Is it a statement?

17 MR. ALSTON: It is a statement, it is not --
18 it's signed, does not appear to be notarized.

19 THE COURT: All right.

20 MR. ALSTON: And it appears ---

21 THE COURT: Okay. Let Mr. Collins -- do you
22 recognize it, Mr. Collins?

23 THE WITNESS: Yes.

24 THE COURT: And what is it, sir?

25 THE WITNESS: One statement, as he said, is a

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 signed statement from Mike Langford and another is the
2 report from the investigator that we used on this case.
3 It's Info Investigations ---

4 THE COURT: And these are documents from your
5 file?

6 THE WITNESS: I believe, yes, Your Honor.

7 THE COURT: All right. Go ahead.

8 MR. ALSTON: And, Your Honor, my position is ---

9 THE COURT: I said, go ahead.

10 MR. ALSTON: Okay.

11 THE COURT: All right.

12 Q Would these support your -- any argument for self-
13 defense given the condition of the driver of the
14 other vehicle?

15 A It's relevant, yes.

16 Q Okay. Were they ever called to testify, the person
17 who signed this document?

18 A Mike Langford?

19 Q Yes.

20 A I don't believe so.

21 (Pause.)

22 Q Mr. Collins, do you feel that you met the
23 requirement of effective counsel during this trial?

24 A I believe so, yes.

25 Q Did you ever ensure what was appealed at the

1 conclusion of the trial?

2 A I filed a Notice of Appeal but I didn't have any
3 other control after filing the Notice of Appeal
4 because ---

5 Q Did the Notice of Appeal encompass all convictions?

6 A We filed -- the standard after a trial, we file the
7 Notice of Appeal within the 10 day requirement and
8 then it goes to the Office of Appellate Defense.

9 Q Going back to the statement that the -- or the
10 recording of Ms. Nix (phonetic). Okay, did you ever
11 do any research about whether or not my client's
12 right to confront a witness against him at trial was
13 being violated?

14 A Yes, that's what we objected to at trial. We -- the
15 Judge still allowed it in but that was the basis for
16 our objection to that recording coming in.

17 Q I recall an objection based on authentication. Are
18 you sure you made an objection on the record as to
19 his constitutional right to confront a witness?

20 A If it's not in the record, I guess I didn't. But
21 that's definitely what was considered.

22 MR. CORNEY: And, Your Honor, I think the record
23 would speak for itself in that regard.

24 THE COURT: All right.

25 MR. ALSTON: The Court's indulgence.

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Do you recall the prosecutor ever taking -- during
4 his closing argument, misrepresenting the testimony
5 or taking the -- anything out of context, especially
6 the recording of Ms. Nix that we just discussed?

7 A Mr. Meadors takes a lot of things out of context,
8 yes.

9 Q Okay. And why did you -- did you object to that?

10 A We did not object.

11 Q Why not?

12 A Didn't feel that it was that far out of context. In
13 fact, he used -- I used that in my closing. We
14 spoke about it in the opening as far as that they
15 will play on the emotions of the jury which is
16 exactly what he was trying to do by misrepresenting
17 the recording.

18 (Pause.)

19 Q What sort of investigation did you do before the
20 trial?

21 A We retained Lee Connelly with Info Investigations
22 and she produced numerous reports and interviewed
23 numerous people. I don't recall exactly how many.

24 Q Is that Info, Inc., is that the report that's been
25 marked as an exhibit, I believe it's Exhibit 3?

GREG COLLINS -- DIRECT BY MR. ALSTON:

21

1 A Yes.

2 Q Or 5 rather?

3 A That's Lee Connelly's company, yes.

4 Q And how many times did you meet with Mr. Moore
5 before the trial began?

6 A Numerous times, I don't -- I can't give you the
7 exact number without looking it up. I can look it
8 up on our computer data base but numerous, numerous
9 times.

10 Q Okay, you can give me a range of what that would be?

11 A I'd say at least 10 times.

12 (Pause.)

13 MR. ALSTON: Your Honor, that's all the
14 questions I have at this time.

15 THE COURT: All right, Mr. Corney?

16 MR. ALSTON: Oh, I'm sorry, Your Honor. I'm
17 sorry.

18 THE COURT: All right.

19 Q One more follow up, Mr. Collins. If these documents
20 were relevant to you, why were they not presented?

21 A At the time of the trial, we decided not to put
22 forth a case, we didn't feel like we had strong
23 enough witnesses to risk losing the last closing
24 argument. Looking back that very well could have
25 been a mistake but that was our decision at the time

GREG COLLINS -- DIRECT BY MR. ALSTON:

1 was to not put forth the case so that we could keep
2 the last closing argument.

3 Q What was the last closing argument for the record?

4 A So that we could have the last closing after the
5 Solicitor gets his closing argument, we have an
6 opportunity to have the last word with the jury.
7 Unfortunately in South Carolina, that's the law
8 here.

9 MR. ALSTON: Okay. No further questions, Your
10 Honor.

11 THE COURT: All right, Mr. Corney.

12 MR. CORNEY: May it please the Court, Your
13 Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. CORNEY:

17 Q Mr. Collins, thank you for being here with us today.
18 I just want to start, Doug Strickler was involved in
19 this case with you. Was he co-counsel, second
20 chair, how did that work?

21 A He was second chair. He kind of started on the case
22 the week before and basically he was just there to
23 kind of just aid me throughout the trial.

24 Q Okay.

25 A Due to the size of the case and the complexity of

1 the case and I think it was thousands of pages in
2 the discovery.

3 Q So any meetings with Mr. Moore, conversations with
4 him, discovery, you were privy to all that, you were
5 the lead counsel in this matter, correct?

6 A Yes. I got the case from somebody else in the
7 office but I represented him for a fair amount of
8 time before trial.

9 Q Okay. Do remember making your discovery motion in
10 this matter?

11 A I don't remember specifically. It could have been
12 somebody else in the office but we had numerous
13 motions, I believe, after the original Rule 5 was
14 filed.

15 Q Okay. But you recall that you did receive discovery
16 in this case?

17 A Oh, yes, I recall that.

18 Q And do you remember any noteworthy items that were
19 included in that discovery that might have stuck out
20 to you, something you wanted to look into and
21 investigate or speak with Mr. Moore about?

22 A There were a lot of things in there that were
23 noteworthy.

24 Q Okay. There were some witness statements as part of
25 that discovery file?

GREG COLLINS -- CROSS BY MR. CORNEY:

1 A Witness statements, yes.

2 Q A co-defendant's statement?

3 A Yes.

4 Q Mr. Moore himself gave a statement?

5 A Yes.

6 Q Based on your review of the discovery and your
7 discussions with Mr. Moore, were you able to start
8 formulating an opinion about the State's ability to
9 prove his guilt beyond a reasonable doubt at trial?

10 A I had my opinion on it, yes.

11 Q Okay and what was that opinion, just based on your
12 preliminary investigation of the case?

13 A We were always concerned with the theory of the hand
14 of one, hand of all. We were from the beginning
15 firmly convinced that Kerwyn Phillips is the one who
16 actually shot the victim. But we were concerned
17 with the hand of one, hand of all theory, if they
18 could place John with Kerwyn.

19 Q Okay. And you said you hired Lee Connelly as the
20 private investigator in the matter?

21 A Yes.

22 Q Okay. And was she able to look into some of the
23 potential witnesses that might be testifying at
24 trial and interview and investigate them?

25 A She interviewed numerous people, yes.

JAMES J. MOORE, JR. V. THE STATE

1 Q Did she have the opportunity to interview Mr.
2 Phillips, Kerwyn Phillips?

3 A I don't recall if -- if -- I don't believe Mr.
4 Phillips agreed to meet with her.

5 Q Based on your discovery, your review of the
6 discovery and the independent investigation done,
7 were you able to start developing some defenses to
8 be used at trial?

9 A Yes.

10 Q Okay. And just as a preliminary matter, what
11 defenses were you initially looking at? What did
12 you investigate and start to prepare for trial?

13 A I mean, the theory, the theme that we had for the
14 trial was to have the jury, convince the jury, that
15 Kerwyn Phillips is the -- is the killer. And we
16 were hoping that they -- the jury would be convinced
17 of that and not convict Mr. Moore for what Mr.
18 Phillips did.

19 Q And so kind of, you've got the wrong guy defense, if
20 you will?

21 A And that defense and basically placing Mr. Moore in
22 the situation where Mr. Phillips has a gun and just
23 shoots and kills somebody doesn't really put Mr.
24 Moore in a position to then call the cops or try to
25 stop him or else he would get shot too.

GREG COLLINS -- CROSS BY MR. CORNEY:

26

1 Q Okay, I want to start talking about the actual
2 trial. At the beginning of the trial, there was an
3 issue that came out about pictures shown of Mr.
4 Moore on the news after the jury was sworn, is that
5 correct?

6 A I believe so.

7 Q And I believe Mr. Alston had questioned you about
8 that and he characterized that as a mugshot of Mr.
9 Moore that was on the news. Do you recall during
10 the voir dire of those jurors whether any of them
11 ever mentioned it being a mugshot or ever mentioned
12 the word mugshot?

13 A It was a mugshot. I don't know if the juror
14 recognized it as a mugshot but it wasn't a glamour
15 photo or anything like that. It was definitely a
16 mugshot.

17 Q But you agree that the record would speak for itself
18 on whether a juror ever said he saw a mugshot of Mr.
19 Moore, right?

20 A I don't know if it was ever specifically asked of a
21 juror if it was a mugshot.

22 Q And there was an in-camera hearing held on that
23 particular issue where the jurors were brought out
24 one by one and questioned by the Judge about what
25 they had seen, right?

1 A I believe so, yes.

2 MR. CORNEY: I just direct the Court's attention
3 to page 109 of the trial transcript where that's held.

4 Q And Mr. Strickler actually made a motion to set
5 aside some of those trials -- some of those jurors
6 and actually did ask for a mistrial based on that,
7 didn't he?

8 A That was in the record, yes.

9 MR. CORNEY: And I direct the Court's attention
10 to page 121, lines 17 through 19 where that motion was
11 made.

12 Q Assuming -- I mean, the case did go forward and the
13 motion was denied for the mistrial?

14 A Yes.

15 Q Do you recall if any jurors were actually set aside?

16 A One was set aside. I believe the person said he had
17 a conversation with a friend of his at Columbia
18 Athletic Club about some news story or something of
19 that nature. He was set aside.

20 Q Okay.

21 A The Solicitor asked for a mistrial but quickly
22 withdrew that motion.

23 Q And that is all reflected in the record.

24 A Yes.

25 Q The jurors that saw this picture, none of them were

GREG COLLINS -- CROSS BY MR. CORNEY:

1 set aside, the ones that actually just saw the
2 picture, just based on that point?

3 A I believe it was just that one juror that was set
4 aside.

5 Q Now, as far as Mr. Gene Derrick's testimony at
6 trial, he was the husband and the driver of the car
7 in this incident. Would it be fair to say that part
8 of your strategy was to bring his credibility into
9 issue on cross-examination?

10 A It was a little complicated because certain parts of
11 his testimony, depending on when you talked to him,
12 we wanted the jury to believe other parts. His
13 testimony at trial obviously was completely
14 different than his early statements. So it was a
15 bit complicated. As I was looking back through the
16 transcript, I definitely should have played up the
17 drug use more than we did.

18 Q Okay. But there was plenty of testimony about the
19 fact he had been drinking that night?

20 A I believe the only testimony he admitted to was
21 three or four beers and smoked an entire pack of
22 cigarettes.

23 Q Okay. During his testimony you were also able to
24 get Mr. Derrick to even testify that he believed
25 that the passenger and not Mr. Moore was the shooter

1 in this case, right?

2 A That's what was in his original sworn statement. He
3 just changed his testimony at trial.

4 Q And you brought that out on cross-examination, you
5 had him admit that that's what he said originally?

6 A Yes.

7 Q About these jurors sleeping, I think you said that
8 you -- during the closing you didn't make a motion
9 for mistrial or any objections to that because it
10 was during the Solicitor's closing argument and not
11 yours?

12 A As far as the juror actually falling asleep, yes, it
13 was during the Solicitor's closing argument.

14 Q And that would have been your strategy not to object
15 to that, based on the fact that he wasn't missing
16 anything you were presenting, he was missing
17 something that was by admission of the State, their
18 arguments?

19 A We felt good about that juror, yes.

20 Q Throughout the rest of the trial with these jurors
21 falling asleep, I think that they're noted by the
22 Judge each time it happens on the record and they're
23 addressed on the record, is that your recollection?

24 A As far as I recall, yes.

25 Q Okay. And regarding the phone call tape between Mr.

GREG COLLINS -- CROSS BY MR. CORNEY:

1 Moore and his girlfriend, Delia (phonetic) Nix, he
2 said he never asked him whether it was his common-
3 law spouse or if it was girlfriend, you never asked
4 him about that specifically?

5 A I didn't think of it, I probably should have.

6 Q Okay. And during the course of your representation,
7 did you have a chance to speak to Ms. Nix?

8 A Yes.

9 Q Okay. And how did she characterize their
10 relationship to you when you met with her?

11 A I didn't go down that line, all I knew was she was
12 the mother of his child and they were close and had
13 a relationship.

14 Q Okay. Kerwyn Phillips did, the co-defendant, did
15 testify at trial, right?

16 A Yes.

17 Q And he was a long time friend of Mr. Moore's?

18 A That was the State's theory, yes.

19 Q Okay. Do you recall at any point in time when Mr.
20 Phillips referred to Ms. Nix as his spouse or wife
21 or anything along those lines?

22 A I don't recall, no.

23 Q Okay. And if -- you would agree that if the record
24 reflected such, that he only referred to her as his
25 girlfriend the entire time during his testimony?

1 A Yes.

2 Q That's what the record reflects?

3 A (Affirmative response.)

4 Q Spousal immunity, would it be fair to characterize
5 spousal immunity as having to be a confidential
6 conversation between spouses that is not subject to
7 brought in at trial?

8 A I would argue that any conversation would be
9 confidential. I don't know which way the Judge
10 would rule but ---

11 Q Okay.

12 A --- I would argue that anyway.

13 Q A statement or a conversation taped on a jailhouse
14 phone that they know they're being recorded, you
15 would characterize that as a spousal communication
16 that could be held out at trial?

17 MR. ALSTON: Objection, Your Honor, I don't know
18 if it's been established that it was the source of the
19 recording.

20 MR. ALSTON: Judge, it's all in the record that
21 it's a jailhouse phone call.

22 THE COURT: You're objecting because you're not
23 sure?

24 MR. ALSTON: I objected because I don't think
25 he's laid a proper foundation.

GREG COLLINS -- CROSS BY MR. CORNEY:

1 THE COURT: Overruled, go ahead.

2 Q If it was a jailhouse phone call that they knew --
3 that was alleged that they knew they were being
4 recorded, would you characterize that as a
5 confidential conversation between spouses?

6 A I mean, I don't believe confidential is the correct
7 term. My answer would be we would try to keep it
8 out, I just don't know what the success rate we
9 would have with that.

10 Q Okay. That would have been -- that would have been
11 something you brought up at trial, okay. But you
12 did make an objection to the tape based on those
13 grounds?

14 A Yes.

15 Q Okay. The tape was ultimately admitted by the
16 Court?

17 A Yes.

18 Q Okay. You preserved those objections for appeal
19 after it was admitted?

20 A The best way I could, yes.

21 Q Okay.

22 MR. CORNEY: Beg the Court's indulgence for just
23 one minute, Your Honor.

24 THE COURT: Yes, sir.

25 (Pause.)

1 Q I believe you testified a minute ago that getting
2 closing argument was a pretty important strategy of
3 yours on whether you want to present a defense for
4 Mr. Moore?

5 A I thought so at the time. I think differently now,
6 this was awhile back.

7 Q In hindsight maybe differently, but at that time you
8 thought you were doing the right thing?

9 A At the time, yes.

10 MR. CORNEY: Beg the Court's indulgence
11 just one moment, Your Honor, I'm sorry.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. CORNEY: I believe that's all the questions
15 I have, Your Honor.

16 THE COURT: Anything on technically redirect, I
17 guess?

18 MR. ALSTON: Yes, sir, the Court's indulgence.

19 (Pause.)

20 MR. ALSTON: Nothing further, Your Honor.

21 THE COURT: All right, you may step down, Mr.
22 Collins.

23 (The witness leaves the witness stand.)

24 THE COURT: Call your next witness.

25 MR. ALSTON: Your Honor, we call attorney Joey

JOSEPH L. SAVITZ, III -- DIRECT BY MR. ALSTON:

1 Savitz to the stand.

2 THE COURT: All right.

3 (JOSEPH L. SAVITZ, III, having first been duly
4 sworn, testified as follows:)

5 THE COURT: All right, please take a seat. Tell
6 us your full name and spell your last name for the
7 record.

8 THE WITNESS: Okay. My name is Joseph L.
9 Savitz, S-a-v-i-t-z, the third.

10 DIRECT EXAMINATION

11 BY MR. ALSTON:

12 Q Good morning, Mr. Savitz.

13 A Good morning, how are you?

14 A Good. Were you ever the attorney for my client, Mr.
15 John Moore?

16 A Yes, I was.

17 Q In what capacity?

18 A I was his appellate attorney.

19 Q Okay. For what convictions?

20 A I guess it was a manslaughter and a weapon's charge
21 on top of that.

22 MR. ALSTON: Your Honor, I have marked as the
23 next exhibit a final brief of Appellant.

24 THE COURT: All right, sir.

25 (Whereupon, Plaintiff's Exhibit Number 6, Court

JAMES J. MOORE, JR. V. THE STATE

1 of Appeals Brief, was admitted into evidence.)

2 Q Does this appear to be a copy of the final brief you
3 submitted for my client?

4 A Yes, it is.

5 Q And what issues were raised on appeal?

6 A Okay. The -- the issue that I raised on appeal
7 basic -- this case was, I believe, like a road rage
8 shooting. There were like fact bound -- I mean, a
9 lot depended on the facts. When I read it, the only
10 issue that I could see at the time dealt with the
11 gun charge, the weapon's offense. I raised that
12 issue and got that charge dropped which was kind of
13 a period of victory because it was five years
14 concurrent with the 30 he was doing for the
15 manslaughter, so in turn was a win but in terms of
16 its importance to him it wasn't that big a deal.

17 Q Did you ever review the record of the trial?

18 A Yes.

19 Q Okay. Did ever review this trial transcript?

20 A Yes. I have not reviewed it for today though. I
21 reviewed at the time I did the appeal but I have not
22 reviewed it for today.

23 A Okay. And after review of that trial transcript,
24 you saw no issues that you could raise in regards to
25 the voluntary manslaughter conviction?

JOSEPH L. SAVITZ, III -- DIRECT BY MR. ALSTON:

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1 A I didn't see -- I didn't see any issues at the time,
2 no.

3 Q Okay.

4 A I mean, it was like I say, it was fairly fact bound
5 and not a lot of legal issues were raised during the
6 trial. There just wasn't anything I could raise.

7 Q Okay.

8 A Which is not saying I'm perfect, okay, I could have
9 missed something, I might have. You might have
10 found something.

11 Q Okay. Well, in that regard, I -- my client argues
12 that there were arguable three instances where a
13 juror was not paying attention to the testimony from
14 being drowsy or asleep or whatever condition the
15 juror was in. Do you recall reading that in the
16 transcript?

17 A I don't remember reading that at the time. I don't
18 remember that being an issue at the time I read the
19 transcript. I've heard people talk about it here
20 today and I understand that it is, so.

21 Q A sleeping juror, would that be a good issue to
22 raise on appeal?

23 A You know, it depends on the context in which it
24 occurred. If jurors were sleeping during the trial,
25 generally yes, that's a real good issue to raise on

1 appeal.

2 MR. ALSTON: Your Honor, I'm having marked as
3 the next two exhibits, a letter of April 8, 2009 ---

4 THE COURT: Ask the witness if he can identify
5 it. Do you intend to get it in through Mr. Savitz?

6 MR. ALSTON: Yes, I do.

7 THE COURT: All right, go ahead.

8 Q I'm going to hand you a document dated April 8th,
9 2009, could you please identify that.

10 A Yes, this is -- it looks like a like a letter that I
11 sent him after the -- either I filed the brief or
12 the opinion came out, I'm not sure.

13 Q Okay. And does this letter represent you were not
14 able to find any issues to attack the voluntary
15 manslaughter conviction?

16 A No ---

17 Q Does this letter reflect that you were not able to
18 find any issues to attack the voluntary manslaughter
19 conviction?

20 A Yes.

21 MR. ALSTON: Your Honor, it's been marked as
22 Exhibit 7.

23 THE COURT: All right, any objection?

24 MR. CORNEY: Your Honor, I don't know which one
25 he's referring to, the one signed by Mr. Savitz ---

JOSEPH L. SAVITZ, III -- DIRECT BY MR. ALSTON:

1 MR. ALSTON: The one that's dated April 8th,
2 2009.

3 MR. CORNEY: No objection, Your Honor.
4 (Whereupon, Plaintiff's Exhibit Number 7,
5 Letter Dated April 8, 2009, was admitted into
6 evidence.)

7 Q I have also a document unsigned. Would you please
8 identify that for the record, it's dated June 25th,
9 2009?

10 A Okay. This -- yeah this looks like the letter that
11 one of the law clerks there at Appellate Defense or
12 Indigent Defense sent to Mr. Moore.

13 Q Okay. And who was your law clerk?

14 A I didn't have one. This -- this guy was not my law
15 clerk but he did work there.

16 Q Okay.

17 A I mean ---

18 Q He worked with ---

19 A It's legitimate, it's not a forgery or anything.

20 Q Okay. And this was dated June 25th after you sent
21 April the 8th?

22 A Yes.

23 Q Okay. But yet this record, this letter, reflects
24 that you had not yet reviewed the record. Do you
25 understand why that is the case?

JAMES J. MOORE, JR. V. THE STATE

1 A I mean, I can see that he has written a letter
2 saying I had not reviewed the record. I'm saying
3 that if the letter I wrote before that is dated
4 earlier, I had obviously reviewed the record. He
5 was mistaken when he wrote that.

6 MR. CORNEY: Your Honor, is he planning to
7 introduce that as part of the record?

8 MR. ALSTON: Yes, I ---

9 THE COURT: I don't know what he plans to do.

10 MR. CORNEY: Of course it's testified to and
11 put in the record. But I'd like to make an objection to
12 it.

13 THE COURT: Go ahead, object.

14 MR. CORNEY: I object to it on the grounds of
15 hearsay. Rusty Neely (phonetic) is not here. He's going
16 based on the truth of the matter asserted in that letter
17 that Mr. Savitz hasn't read in the record and it's all
18 hearsay so it can't be admitted as to the truth of the
19 matter asserted.

20 THE COURT: Thank you, sir. Mark it, proffer
21 it, go ahead. The problem is you don't have the law
22 clerk here. But go ahead anyway. And Mr. Savitz
23 testified, if he wrote the letter saying he reviewed it,
24 that's what happened ---

25 THE WITNESS: I'm sure -- that was a guy that

JOSEPH L. SAVITZ, III -- DIRECT BY MR. ALSTON:

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1 worked at Appellate Defense. I am sure he wrote that
2 letter about this case. I am not disputing that at all.
3 I am saying the letter is incorrect.

4 THE COURT: All right.

5 Q Do you recall, in your review of the transcript when
6 you were preparing for the appeal, any issues, any
7 evidentiary issues regarding whether or not the
8 recording should be introduced against my client?

9 A I don't remember but I haven't read the transcript
10 recently so.

11 (Pause.)

12 MR. ALSTON: Your Honor, that's all I have at
13 this time, thank you.

14 THE COURT: Mr. Alston, you need to have that
15 marked for the record, the second letter, I assume from
16 the law clerk.

17 MR. ALSTON: I believe it ---

18 COURT REPORTER: I haven't marked it yet, I just
19 need the letter.

20 (Whereupon, Plaintiff's Exhibit Number 8, Letter
21 Dated June 25, 2009, was admitted into
22 evidence.)

23 MR. ALSTON: Nothing further, Your Honor.

24 THE COURT: Thank you, sir. Mr. Corney.

25 MR. CORNEY: Your Honor, I'll be very brief.

JAMES J. MOORE, JR. V. THE STATE

CROSS-EXAMINATION

1
2 BY MR. CORNEY:

3 Q Mr. Savitz, how long did you serve in your capacity
4 as an attorney for the South Carolina Office of
5 Appellate Defense?

6 A I was there from January 5, 1985 to January 5, 2011.

7 THE COURT: Was it 15 years, how long were you
8 there?

9 THE WITNESS: 26.

10 THE COURT: 26 years?

11 THE WITNESS: Yeah.

12 THE COURT: Okay.

13 Q And ---

14 A Yes, sir.

15 Q Sorry, anyway for you to throw a just rough, you
16 know, estimate on how many appeals you might have
17 handled in your time there?

18 A I mean it was hundreds of them, thousands.

19 Q Okay. Now, when you received an appeal or a Notice
20 of Appeal was brought to your office, what was your
21 procedure for determining what the issues ---

22 A Well, this one was kind of different. I talked to
23 Mr. Moore's father first and the case was already in
24 the office. I specialized in murder cases. This
25 was voluntary manslaughter. And I talked to his

JOSEPH L. SAVITZ, III -- CROSS BY MR. CORNEY:

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1 daddy first and he asked me if I would take the case
2 and I said, yes, I would. And I handle them all the
3 same.

4 I read through the transcript and, you know,
5 tried to find something that would win. The only
6 thing I could find unfortunately was the weapon's
7 offense.

8 Q Okay. And based on your experience as an appellate
9 -- as an appellate defender, would it be uncommon
10 not to raise every preserved issue on appeal?

11 A Yeah, I mean, we just try to raise the ones that
12 stand a chance of winning. I wish I had had
13 something I could have raised that would have went
14 for the voluntary manslaughter. I just didn't see
15 anything, which is not to say that, you know, I mean
16 I could have missed something. If I missed
17 something we would have won, then I was ineffective.

18 Q Okay. So it's fair to characterize that testimony
19 is you pick the strongest issues and that's what you
20 raise?

21 A I picked the one that I thought would win and it did
22 win but unfortunately it's not that great an issue
23 in the overall scheme of his trial.

24 Q And I believe you said before the weapon's charge
25 was concurrent. Did you mean that it was

1 consecutive or was it ---

2 A I thought it was concurrent.

3 THE COURT: It was consecutive.

4 THE WITNESS: It was?

5 MR. CORNEY: I just wanted the Court to take
6 notice of that.

7 THE COURT: That's all right, it's a matter of
8 record, it was consecutive.

9 MR. CORNEY: And that's all the questions I
10 have.

11 THE COURT: All right. Anything further of this
12 witness?

13 MR. ALSTON: Nothing further, Your Honor.

14 THE COURT: One question, didn't you use to work
15 with a Tara Dawn Shurling?

16 THE WITNESS: Yes, I did.

17 THE COURT: Years ago?

18 THE WITNESS: For quite some time

19 THE COURT: Okay. Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: You may step down.

22 (The witness leaves the witness stand.)

23 THE COURT: Anything further of this witness?

24 MR. CORNEY: Nothing from the State, Your Honor.

25 THE COURT: Anybody want to keep him here?

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 MR. ALSTON: No, sir.

2 THE COURT: He's now retired.

3 MR. CORNEY: I think he's a busy man, I don't
4 think we'll be able to keep him here, Your Honor.

5 THE COURT: All right. Anything further?

6 MR. ALSTON: Yes, sir, Your Honor. I would like
7 the call my client John Moore to the stand.

8 THE COURT: Come around, Mr. Moore.

9 (JOHN J. MOORE, JR., having first been duly
10 sworn, testified as follows:)

11 THE COURT: All right, please take a seat, sir.
12 Tell us your full name and spell your last name for the
13 record.

14 THE WITNESS: John Joseph Moore, Jr., last name
15 M-o-o-r-e.

16 DIRECT EXAMINATION

17 BY MR. ALSTON:

18 Q Mr. Moore, did you file this post conviction relief
19 application?

20 A Yes, sir.

21 Q Okay. And did we meet on several occasions to
22 discuss your application?

23 A Yes, sir.

24 Q Okay. And were almost all, if not all, of the
25 issues you wanted raised in your application covered

JAMES J. MOORE, JR. V. THE STATE

1 in the supplemental application for post conviction
2 relief filed on January the 6th of this year?

3 A Basically, yes, sir.

4 Q Okay. Have you been listening to the testimony that
5 has been offered here today by the various
6 witnesses?

7 A Yes, sir.

8 Q Okay. This is your time, Mr. Moore, and you have
9 expressed to me you want the Court to hear your
10 complaints and your grounds for relief.

11 So to the extent there was anything you want the
12 Court to consider, you understand this is your time
13 to do it?

14 A Yes, sir.

15 Q Okay. What is the first issue you want to address
16 to the Court?

17 A The first issue I would like to address is the
18 issue, again, about the sleeping jurors. Y'all
19 excuse me for a minute, I'm kind of nervous, first
20 time.

21 THE COURT: Go ahead.

22 A Another factor that I want the Court to also
23 consider is that the failure for the jurors to be
24 able to follow instructions due to sleeping --
25 sleeping in the course of the trial. They failed to

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 be able to hear all of the presented evidence and
2 that showed their inability, whether intentional or
3 inadvertent, to follow the law, that requires a
4 reversal.

5 And the fact is, the fact that is a question,
6 that the jurors were able -- were not able to be
7 attentive or they missed certain evidence or not,
8 that is a question that they did, that establish
9 prejudice as well.

10 I -- as far as that issue, far as the issue of
11 sleeping jurors, that kind of concludes that.
12 That's something else I wanted the Court to consider
13 as well.

14 When it came to the second issue I need to be
15 addressed as far as the ---

16 THE COURT: Stop, stop. Who is this gentleman?

17 GENTLEMAN: I'm sorry, I was bringing the law
18 clerk with me.

19 THE COURT: Let her know what's going on. Just
20 don't walk -- come on around and sit down. We're in the
21 middle of a proceeding, sir. Just have a seat.

22 Go ahead.

23 A As far my counsel's preparation for trial being
24 inadequate, 10 times, trial counsel Collins said we
25 met at least 10 times. I wouldn't quite call it 10

JAMES J. MOORE, JR. V. THE STATE

1 times. I remember seeing him often but that was
2 more to say, okay, I was in the room in lockdown
3 trying to get out to speak with him. And most of
4 the time he would let me know he wasn't there to
5 speak to me, but I say more two or three times that
6 me and him actually sat down and what his visit was
7 based on coming to see me.

8 Q Let me just make sure that I understand what you're
9 saying. You're saying that you only visited with
10 him two or three times to prepare for trial?

11 A Yes.

12 Q Okay, go ahead, please.

13 A And most basically every time he came down it was
14 with a legal pad. He was never -- from my
15 recollection, he never came with any documents that
16 would help further our preparation for the trial.
17 It was basically a legal pad, the same thing I was
18 able to purchase off the canteen. And I believe
19 that this lack of preparation, you know, was
20 deficient performance and, you know, if we had a
21 better chance to prepare (phonetic), there's
22 reasonable probability that, you know, the outcome
23 of the trial would have been different.

24 Q Okay.

25 A As far as with the investigation, the inadequate

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

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1 investigation, as far as the statements concerned,
2 initially I thought that maybe he didn't have the
3 informa -- the statement of Mike Langford. But as
4 we see now, he did have the information. So it goes
5 towards Mike Langford and Beth (phonetic) Langford's
6 statement. I believe it prejudiced me because both
7 of them could have testified to the mind state of
8 Mr. Derrick upon leaving the Langford's residence.
9 As far as -- I mean, I don't know if it's
10 appropriate to speak on the crystal meth because --
11 I mean, effects of it due to not having the counsel
12 -- the doctor here to testify to the affidavit.

13 But, I mean, is it okay for me to testify to
14 some of the effects?

15 Q If you want to offer something to substantiate your
16 position, now's the time to do it.

17 A Well, some of the effects of crystal meth ---

18 MR. CORNEY: Your Honor, I would object to this
19 testimony right here. I don't think ---

20 THE COURT: Slow down a little lit.

21 MR. CORNEY: I'm sorry. I'm going to object. I
22 don't -- I don't think it's proper for him to offer his
23 opinion on crystal meth and how it might affect -- what
24 effects it might have on an individual. I don't think
25 he's qualified in any way or any -- we know that he can

JAMES J. MOORE, JR. V. THE STATE

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

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1 offer his opinion based on that.

2 THE COURT: All right. Go ahead, the objection
3 is noted.

4 Q Proceed, continue.

5 A I mean, can I still ---

6 THE COURT: Answer the question.

7 Q Go ahead.

8 A Okay. Crystal meth, I mean, some of the effects are
9 delusions, hallucinations, aggression and psychosis.
10 And I believe that had the jury been able to
11 consider these facts, there was a probability the
12 outcome would have been different versus the State's
13 theory. Because this would drastically change the
14 whole State's theory from a couple coming from a
15 party, just joyfully riding down the road, talking
16 about getting engaged, versus a guy that's out of
17 his mind on -- under the influence of alcohol,
18 cocaine or meth, being the aggressor which was never
19 brought out at trial.

20 And to Beth Langford's statement, she -- her and
21 I could have been brought forth to testify, you
22 know, due to mind state as well of Mr. Derrick and
23 it also would have showed who was the initial
24 driver. Now this never came out at trial that Ms.
25 Dover (phonetic) was the initial driver and it

JAMES J. MOORE, JR. V. THE STATE

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 wasn't until they pulled off near the golf course
2 that they swapped seats. This also would have
3 showed intent and that aggression -- that bring that
4 difficulty to their family, that unreasonableness.
5 And again, as I say, had that been brought forth,
6 this would have gave reasonable probability for the
7 outcome of my trial to be different.

8 And that would conclude that issue.

9 Just to address the issue about the right to
10 confront my witness about the conversation with Ms.
11 Delia Nix. Ms. Nix was present right outside the
12 courtroom and was never brought to testify to the
13 Court and this failure -- this failure to ensure my
14 Sixth Amendment right violating to be able to
15 confront -- to confront a witness and denied me a
16 fair trial.

17 Q And, Mr. Moore, you're aware that one of the claims
18 in this case is spousal privilege?

19 A Uh-huh.

20 Q Okay. Was she your common-law wife?

21 A Yes, sir. We had present agreement of marriage, we
22 lived together, cohabit together, and we had a
23 holding out to others as married. And, I mean, my
24 dad can confirm that.

25 Q Okay.

JAMES J. MOORE, JR. V. THE STATE

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

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1 A So that -- that was ---

2 THE COURT: This is the subject of the
3 conversation that he was in jail, she was outside, it was
4 recorded at the jail, is that right? This is what you're
5 talking ---

6 MR. ALSTON: Yes, sir yes.

7 THE COURT: Okay, go ahead.

8 A Okay. And that -- that being that I could not --
9 that I could not have that right protected is what
10 prejudiced me in the outcome of my trial because
11 again, as Mr. Collins said, this recording was not
12 in my favor. So had this been protected, the outcome
13 of the course of my trial and the outcome of my
14 trial is a reasonable probability that it would have
15 been different.

16 Joseph -- Mr. Joseph Savitz' failing to appeal
17 the conviction as he stated, there may have been
18 things that he missed or didn't see but there was
19 numerous issues for him to appeal that had merit.
20 And by him failing to -- to address these issues, he
21 waived my -- my ability to have any chance to have
22 my -- my voluntary manslaughter conviction reversed
23 on appeal.

24 I see that we couldn't -- since we didn't have
25 Rusty, the guy who typed up the paperwork to go into

JAMES J. MOORE, JR. V. THE STATE

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 detail with, I'm more than sure that he had the guy
2 to write the statement saying he didn't go over my
3 case but, however, he didn't properly research my
4 case in order for him to bring about more meritis
5 claims and this denied me a right to have a
6 effective direct appeal. And I believe if he would
7 have actually went over the case in its entirety,
8 then the outcome on direct appeal would have been
9 different.

10 THE WITNESS: All right. I would like to address
11 -- may I ask--- may I speak to my lawyer -- my attorney
12 for a second. I want to know about ---

13 THE COURT: Beg your pardon?

14 THE WITNESS: I wanted to speak to my attorney
15 for a second about the due process claim. I don't ---

16 THE COURT: Stop. Any objection?

17 MR. CORNEY: I don't have and objection to him

18 ---

19 THE COURT: All right. Let's take a short
20 break. Talk to your lawyer.

21 MR. CORNEY: Thank you.

22 (Whereupon, the Court was in recess.)

23 THE COURT: Are we all ready?

24 MR. ALSTON: Yes, Your Honor.

25 DIRECT EXAMINATION CONTINUES

1 BY MR. ALSTON:

2 Q All right, Mr. Moore. What other grounds do you

3 want to address to the Court for the record?

4 A I would like to briefly discuss the issue about the
5 juror -- the four jurors being exposed to the
6 mugshot of me. Actually, it was a mugshot of me
7 being incarcerated. We -- we referred to the trial
8 transcript page 114 -- 114, line 25 and 115, lines 1
9 through 4. Judge Keesly, you know, puts on the
10 record that it was a mugshot because he seen it
11 himself. This should've been objected to or asked
12 for a ruling so it could have been preserved for my
13 direct review which would have gave my attorney,
14 Joseph Savitz, more meritis issues to, you know,
15 brief. And especially because the jurors' exposure
16 to the improper identification and information
17 prejudiced me. I mean, that's -- that's basically
18 what the prejudice prong came in on that. I was not
19 able to have it briefed on direct review.

20 Okay, on -- on the issue with the self-defense
21 charge. In the trial, Judge Keesley instructed the
22 jury that the first prong of self-defense was you
23 have to be at fault or jointly at fault in bringing
24 on the difficulty and in no other self-defense
25 charge the base charge where the word jointly used.

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 And I looked at this as being kind of like confusing
2 to the jury because the word jointly is kind of
3 going towards, okay, if -- if they feel like I
4 jointly acted with the guy who was in the vehicle
5 with me, that's kind of giving a definition of
6 accomplice liability, you know, when two or more act
7 together.

8 So in addition I did have accomplice liability
9 jury instruction. So it's kind of giving the jury
10 another opportunity to look at me as acting in
11 concert with another, aiding, abetting or assisting
12 another and there's no evidence that -- there was no
13 evidence during the course of the trial that stated
14 that I -- that I acted together with anyone else,
15 throughout the course of the trial.

16 Q And your position is that your counsel should have
17 objected to that?

18 A Yes, sir, my counsel should have objected to the
19 self-defense issue, at least -- at least ask that it
20 be, you know, reinstructed, that instruction be, you
21 know, redone.

22 This misstatement of law, it amounted to an
23 error of constitutional matter too as presumed
24 prejudicial. It denied me a fair trial and
25 prejudiced me also by transferring the State's

JAMES J. MOORE, JR. V. THE STATE

1 burden of proof to -- from the State to the defense
2 to have to prove self-defense. I mean, I don't
3 think that he told when he gave the charge due to
4 the fact that there was evidence presented by the
5 State's key witness, Kerwyn Phillips, that there was
6 a withdrawal period but still yet it shifted the
7 burden when the burden is not, it's on the State,
8 remains on the State to disprove self-defense.

9 Again, I say my lawyer was ineffective for
10 failing to object to it and requesting a more proper
11 charge for that. And I'd like to address that as
12 well, my attorney failed to object and request --
13 failed to request the Trial Judge that a vehicle can
14 be used and consider it as a deadly weapon.

15 Q That a what?

16 A That a vehicle ---

17 Q Okay.

18 A --- may be used and considered as a deadly weapon
19 because that's testimony that was presented through
20 the course of the trial by again, a key witness,
21 Kerwyn Phillips, that Mr. Derrick used his car to
22 try to run us into the concrete barrier of the
23 interstate doing about 70, 80 miles an hour. And
24 this would have caused serious bodily harm or death.

25 Q And your position is that your attorney should have

JOHN J. MOORE, JR. -- DIRECT BY MR. ALSTON:

1 insisted that that charge be made?

2 A Yes.

3 Q This prejudiced me because this may have kept the
4 jury from considering the self-defense charge and
5 the fact that an automobile is indeed a deadly
6 weapon, as well as Mr. Derrick's attempt. And had
7 this charge been given, the jury would have been
8 able to consider this in the outcome of my trial and
9 there's a probability that the case, the trial could
10 have been different with them considering that fact.

11 One more issue I would like to address and this
12 is about the trial counsel should have objected to
13 the -- the improper malice charge. The inference of
14 malice by use of a deadly weapon was instructed by
15 the jury (sic) and if now, at least Mr. Collins said
16 he didn't know that, you know, that the case -- I
17 guess the case was pending or however, but now he
18 knew that if in a murder situation, in a murder
19 conviction, if there's evidence to reduce, excuse,
20 justify or mitigate a homicide, that the inference
21 of malice should not be instructed to the jury,
22 which it was in my case. This at least, this
23 failure to object caused the issue not to be
24 preserved. This would have put me at least in the
25 pipeline due to the issue, do to the fact that

JAMES J. MOORE, JR. V. THE STATE

1 during one of the cases I was following, my case, my
2 own direct appeal, was not yet final. So this
3 charge violated my common-law and constitutional
4 prohibitions against charging jurors a fact. And
5 again I say that had the charge been instructed or
6 objected to -- the charge that was instructed had
7 been objected to, there's reasonable probability
8 that the outcome of my appeal would have been
9 different.

10 I believe that's it. I'm going to rest on that
11 right there.

12 Q Okay. And you stand by all the grounds you've
13 raised in your applications for post conviction
14 relief?

15 A Yes, sir.

16 Q Okay.

17 MR. ALSTON: Thank you, I have no further
18 questions.

19 THE COURT: All right, Mr. Corney.

20 MR. CORNEY: Very briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CORNEY:

23 Q Mr. Moore, Kerwyn Phillips was the passenger in the
24 car with you on the night of the shooting, is that
25 right?

JOHN J. MOORE, JR. -- CROSS BY MR. CORNEY:

1 A Correct.

2 Q And he testified at trial, right?

3 A Correct.

4 Q On the State's behalf?

5 A Yes.

6 Q Okay. I think in his testimony he testified that he
7 had known you pretty much his whole life and y'all
8 were pretty good friends?

9 A Yes.

10 Q And you would say that's a pretty fair
11 characterization?

12 A Yes.

13 Q Okay. So he must have known Delia Nix also as your

14 ---

15 A Yes.

16 Q --- significant other?

17 A Yes.

18 Q And he was aware of your relationship with her?

19 A Yes.

20 Q Okay. Never once in his testimony, the entire time
21 he's testifying, does he refer to her as your spouse
22 or wife, does he?

23 A No, not to my knowledge.

24 Q He says she's your girlfriend every time he refers
25 to her during his testimony, doesn't he?

1 A I believe so. If it's on the record, yes, that's
2 what he testified to.

3 Q Okay. So clearly you weren't telling people that, I
4 mean, you weren't holding yourself out as your
5 spouse? I mean, he's -- he's someone you've known
6 your whole life, you're good friends with and he
7 didn't even know you were married to this girl?

8 A But if you reflect back the record, when asked by my
9 attorney, Greg Collins, he stated that it had been
10 awhile that me and him contacted because he had no
11 -- no phone number to reach me at when he was trying
12 to set me up as far as the recording, get me
13 recorded on the conversation, he had -- me and him
14 had kind of fell out, stopped dealing, we didn't
15 have dealings around that time.

16 Q Okay. Investigator Barnes (phonetic) was the lead
17 investigator on the case and I think he spoke to Ms.
18 Nix in the course of his investigation as well?

19 A Yes.

20 Q Okay. And so he had an opportunity to speak with
21 her and in his testimony he never refers to her as
22 your -- anything but your girlfriend as well, right?

23 A To my knowledge, I suppose.

24 Q So she probably didn't tell him that she was married
25 to you and y'all were spouses?

JOHN J. MOORE, JR. -- CROSS BY MR. CORNEY:

1 A I guess not.

2 Q Okay. I think you pointed the Court's attention to
3 page 114 about the Judge, Judge Keesley, mentioning
4 a mugshot and he used the word mugshot. I don't
5 know if you've got a copy of the transcript there in
6 front of you, do you know whether that was done on
7 or off the record, in front of the jury?

8 A I believe it was done in front of the jury.

9 Q Okay.

10 MR. CORNEY: And I just point the Court's
11 attention to page 114, line 2, it says, the jury leaves
12 the courtroom, and all that takes -- on page 114 and 115,
13 takes place with the jury out of the courtroom.

14 Q So that mugshot comment was not made in front of the
15 judge (sic) at that point in time if that's what the
16 record reflects?

17 A I mean, the record may reflect that but that still
18 doesn't change the fact that that is what the Court
19 -- the jury seen. He's just confirming that, okay,
20 I seen exactly what they saw, it's a mugshot of me
21 being previously incarcerated.

22 Q Okay.

23 MR. CORNEY: I believe that's all I have, Your
24 Honor. I would just point the Court's direction to page
25 752 at the self-defense charge that's given and the

JOHN J. MOORE, JR. -- REDIRECT BY MR. ALSTON:

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1 burden being on the State. That's all I have.

2 THE COURT: All right, Mr. Alston.

3 REDIRECT EXAMINATION

4 BY MR. ALSTON:

5 Q Mr. Moore, do you have anything else you'd like to
6 address the Court at this time?

7 A No, sir.

8 Q Okay.

9 MR. ALSTON: That's all I have, Your Honor.

10 THE COURT: All right. Anything further from
11 anyone on this case?

12 MR. CORNEY: Nothing from the State and no
13 witnesses for the State.

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

15 THE COURT: All right, you may step down, sir.

16 (The witness leaves the witness stand.)

17 THE COURT: Now, I assume that we have family of
18 Mr. Brown up here? Are y'all Mr. Brown -- y'all with Mr.
19 Brown? Anybody? I'm sorry, Mr. Moore? Are y'all Mr.
20 Moore's family?

21 (Affirmative response.)

22 THE COURT: And these are the victim's family
23 there?

24 (Affirmative response.)

25 THE COURT: Y'all don't need to leave at the

JAMES J. MOORE, JR. V. THE STATE

1 same time, make sure they leave separately. Where's my --
2 where's my deputy?

3 This matter is concluded. One of y'all -- I don't
4 want y'all leaving the courthouse at the same time so
5 something else would happen. I don't care who leaves
6 first. Let me invite the victim's family to leave first,
7 y'all leave now. Let me give y'all a chance to get out.
8 Don't want any more trouble, that's all. These people --
9 feelings are high and this is what I'm doing, so.

10 ----- END OF TRANSCRIPT OF RECORD -----

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5

6 I, Crystal Holmes, Official Court Reporter for
7 the Fifth Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a
9 true, accurate and Complete Transcript of Record of
10 the proceedings had and evidence introduced in the
11 hearing of the captioned case, relative to appeal, in
12 the Court of Common Pleas for Richland County, South
13 Carolina, on the 23rd day of May, 2012.

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

16

17

July 18, 2014

18

19

20

Crystal Holmes, Court Reporter

21

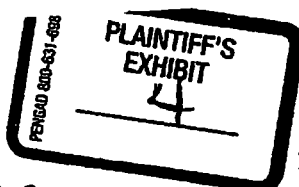
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JAMES J. MOORE, JR. V. THE STATE



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) S.S.

DATE: 3-16-05
TIME: 1216

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above-named county and state aforesaid, comes one MIKE LANKFORD W/M 4-19-57

(Phone Day) (Phone Night)

Who makes the following statement under oath to wit:

Q Was Barry and Stephanie at your house by your request on Oct 18, 2004?

A Yes. I asked them over for a cook out. My son was there. Kimberly wouldn't come over unless I had friends over. Most of the time it was Barry or Stephanie. They arrived shortly before dark. Barry and I went down to the store and got some charcoal. That's where I did the last of the meth I had with him.

Q Both of you smoked some?

A We smoked (Both Barry and I) a small, socially amount. We pulled off of a side road and finished it off.

This statement was made in the presence of E.K. Barnes of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS ____ DAY OF ____ 19__.

SIGNED: Mike Lankford

WITNESS: [Signature]

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____.

WITNESS STATEMENT

Mike Lankford
(CONTINUED)

DATE: 3-16-05TIME: 1216

Q Did Stephanie do any work?

A. I didn't see her do any. I wouldn't be surprised if she had. I've seen her do it before.

Q How late did the party go?

A. That's the question. Kimberly and her children left about 30 minutes prior to Garvin and Stephanie. ~~the~~ I thought it had been around 12:30 - 1 am, but after talking with my son it could very well have been closer to 11:30pm. It may have been earlier - I was drunk. I also cleaned up afterward and I could be recalling the time after I finished cleaning.

Q Do you know of any other drugs that Garvin has been using?

A. I had a small amount of cocaine that Garvin and Stephanie used with me. Garvin was always involved in cocaine. He had a line on some cocaine just about all

This statement was made in the presence of E.K. Barnes
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____ 19__.

SIGNED: Mike Lankford

WITNESS: _____

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____.

WITNESS STATEMENT

Mike Lockard
(CONTINUED)

DATE: 3.16.85 TIME: 1216

the time. Garver still had cocaine connections after
Stephanie passed.

Q Who were they?

A I don't know

Q Do you recall anyone ever ripping Garver off on
drugs or visa versa.

A Not as I recall.

Q Did Kimberly have meth that night?

A yes

Q Did Garver get the meth from you?

A No I think he got it from Kimberly. It was in
a plastic bag - maybe a gram. Not a large quantity.
A personal use size sack.

Q Did you have any involvement in the murder of Stephanie
Dove?

A No I did not

This statement was made in the presence of G.K. Barnes
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without
reward or intimidation. All of the above is the truth, the whole truth, and
nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS DAY OF 19 .

SIGNED

WITNESS:

WITNESS:

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES .

WITNESS STATEMENT

M. L. Lankford
(CONTINUED)

DATE: 3-16-05 TIME: 1216

Q Do you know who killed Strycharuk

A. No I do not.

Q Do you know anyone who has a .45 handgun?

A. Kim's friend Doug had a .45 Colt (off brand)

He was going to sell it right before this incident and move to Alaska. I don't know if he sold it. It was a semi auto .45 handgun. I never saw the gun. I think it was a Llama. It has an ejection pin on the side of the barrel.

Q Do you know if Gene ever made any drug deals off of I-20?

A. Not that I know of.

Q Did Gene ever buy any pistols that you know of?

A. I don't know if he did. I know Doug tried to sell it to him just like he's tried to sell it to a lot of people.

This statement was made in the presence of G. K. Barnes
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____ 19____.

SIGNED: M. L. Lankford

WITNESS: [Signature]

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____.

WITNESS STATEMENT

Mike Conkard
(CONTINUED)

DATE: 3-16-05 TIME: 1216

Q Anything else?

A They chased the Tom cat out of their car, picked up the kids and left.

Q When was the first time you heard something was wrong?

A It was maybe 5:30 am. The Richland County Sheriff's Dept as Columbia police called and said someone had shot Stephanie. They called me at my house and woke me up.

Q Who was driving when they left your house?

A Grover. Stephanie had a head ache and Grover decided he would drive. Then the Tom cat jumped out of the driver's seat and scared Grover.

Q What strip clubs would Grover hang out at?

A Platinum Plus is the only Columbia club that I remember. What struck me odd was his friends from where he grew up (maybe his brother) took him to the titty bar right after this happened. Grover used to say that he and Stephanie would go to bars together and pick up strippers.

This statement was made in the presence of E.K. Barnes
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____ 19____.

SIGNED: Mike Conkard

WITNESS: [Signature]

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____.

WITNESS STATEMENT

Mike Conkard
(CONTINUED)

DATE: 3.16.05 TIME: 1210

Q Anything else?

A No sir not as I can think of.

Q Has Kimberly mentioned anything like a possible drug deal involving Graver in which Graver might be selling a package for her on Eric Conner that night?

A No she is a very secretive person.

Q Anything else?

A I never sold large amounts of meth to anyone. It was just to casual friends Mike

This statement was made in the presence of E.K. Brown
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

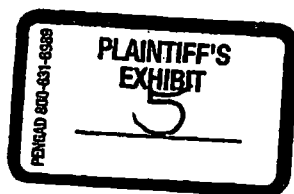
SWORN TO AND SUBSCRIBED BEFORE ME
THIS ____ DAY OF _____ 19__.

SIGNED: Mike Conkard

WITNESS: [Signature]

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____.



INFO, INC. Investigations

**Post Office Box 5415
Columbia, SC 29250
phone (803) 331-1968
fax (803) 781-8597**

John Joseph Moore Report

January 24, 2008

Beth Lankford

This morning, I conducted a telephone interview with Beth Lankford, wife of Mike Lankford who is currently serving time in North Carolina. Beth informed me that she had never met Stephanie Dover, but did know Grover Derrick as he worked with Mike at Gregory Electric. When asked how Grover felt about Stephanie, Beth indicated that he would sometimes call her (Stephanie) his wife and other times his girlfriend. He mentioned that they had 2 boys. It was Beth's impression from the way Grover talked that Stephanie was much younger and that Grover was pretty much the boss of what went on in their lives and that Stephanie was more interested in getting married than Grover was. But, Beth had only known Grover for a few months before she discovered that Mike was heavily involved in the drugs business—found a bag of cocaine on the night stand and left him around April 14, 2004.

After Mike and Beth split up, Beth tried to see Mike as little as possible, but because they have a 12 year old son, Ian, (he has special needs) they did see each other. On the Sunday morning of the incident, it was about 6:30 A.M., and Mike began banging on Beth's door. Mike had brought Ian home from his visitation (Ian had been at Mike's house for the weekend) and was extremely upset. Mike asked Beth if she had heard the news and when she asked what, Mike said "Someone at my house last night got killed." Mike went on to say that the victim had been Grover's girlfriend, Stephanie. According to Mike, Grover called him (Mike) and said, "Stephanie is dead."

Later on that day, Beth spoke with Ian about the weekend and asked what had happened. Ian said that Mike had gotten a phone call early, early that morning and that he (Mike) had been upset ever since.

Still later that day, Beth was watching the news and Ian turned to her saying that the news reports were not true. When Beth asked what was not true, Ian said a "bunch" of it. Ian told Beth that Grover, Stephanie and the kids had left Mike's house at 11:00 P.M., not the time the news was saying. Ian indicated that he knew the time because he was watching Futurama (Beth won't let him watch that at her house) on Mike's 1 tv on the couch. The program had just come on when Grover, Stephanie and the 2 kids were leaving. Grover was so drunk that he fell on Ian as he was trying to go out the door. According to Ian, Grover could not have driven, he was too drunk, he could hardly walk.

The more Beth thought about the situation and heard the conflicting stories that Grover was giving—about when he had first said that the shooter was in a dark colored car and that they had been shot at and he had followed the car off of the road, then that the shooter had been in a big dark pick-up truck (Mike owned a similar truck)—the more concerned she got.

Beth knew that Mike kept in touch with Grover because of comments that Mike would say. It seemed that Grover had recovered really well, even getting a new girlfriend about 2 months after the incident. According to Beth, Grover went right on living the way he had been.

Eventually, Beth contacted the authorities and told them about the inconsistencies in what Ian was saying and what Grover was saying. The police actually called her in and showed Beth a cd of the parking lot where Grover pulled in. It showed him running inside, yelling that "she's been shot." At the beginning of the tape, though, a dark colored truck was shown following a car similar to Grover's past the gas station going down a frontage road. About 8 minutes later, the same car came back to the gas station from the opposite direction and that was when Grover got out to tell of the shooting. Beth informed me that basically the police were saying that there was more to the story than Grover was telling. All Beth could say about the truck was "it's not Mike's." Mike drove a Chevy and the one on tape was like a big Dodge ram—it had a rounded front.

Because of the inconsistent times that Grover told the police, Beth suspects that perhaps he, Stephanie and the children made a drug stop after leaving Mike's and something went wrong causing the shooting.

Beth believes that whoever did kill Stephanie deserves the death penalty, but "it is extremely unlikely that they have the right person."

****Special Notes****

- ✓ 1. Mike was muling drugs for someone in North Carolina.
- ✓ 2. Mike's house was about 20 minutes from where the shooting occurred.
3. Neighbors of Mike's would call Beth asking if she could do something about the parties Mike was having.
- ✓ 4. At the time of the shooting, Mike dated a girl named Kim (does not know her last name). She was married to a guy who was doing time for drugs and her father was in jail for drugs, too. She also had a record. Kim and her kids (2 or 3) moved in with Mike after her house blew up in a fire (drugs).
- ✓ 5. The party at Mike's was an "adult party."
- ✓ 6. Everyone that Mike hung around with at the time was involved in drugs.
- ✓ 7. Of the party, Ian has said that everyone was drunk and that Mike let him taste a margarita. Ian was impressed with the margarita glasses that Mike had bought.
- ✓ 8. One of Mike's cats was also shot at the same party and then thrown into the swimming pool to drown. Mike said it was an accident.

9. After Mike was arrested, Beth went to the house. She found a microwave glass dish underneath the bed with cocaine already lined out. She found video tapes whose insides had been hollowed out to put inserts with needles. She found brown boxes in the closet full of vials. There were used syringes in the bathroom. There was not a single t-spoon in the whole house.
10. Mike warned Beth not to speak to the police about Grover.
11. Beth thinks she remembers RCSD telling her that Grover had called Mike's cell phone around the same time that Stephanie had been shot. Beth thinks that perhaps Grover was warning Mike that something might be going down.
12. Beth saw the news story of the 2nd anniversary of Stephanie's death and thinks that the news paper overstated Grover's involvement in his children's lives.

**SCCID**

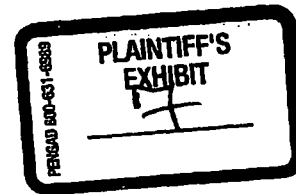
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 8, 2009



Mr. John Joseph Moore, #326455
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear John:

The most that we will be able to accomplish in this direct appeal is to have your conviction for unlawful possession of a firearm – and consecutive sentence of five years – vacated. As to the manslaughter conviction, you will need to file an application for post-conviction relief once the Court vacates this conviction. I regret that I was unable to find any issues upon which to attack the manslaughter conviction in this proceeding, but getting the consecutive sentence vacated is at least a start.

Sincerely,

Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kde

Enclosure



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 25, 2009

Mr. John Joseph Moore
#326455
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210



Dear Mr. Moore,

I am a law clerk with the Division of Appellate Defense. Mr. Savitz asked me to respond to your letter.

Mr. Savitz has not yet reviewed your record. When Mr. Savitz reviews your record he will do so with all potential issues in mind and will craft his final brief to include the issues which he believes to be the most meritorious and persuasive. Thank you for the time and effort spent on your suggestions as to what the issues should be.

Sincerely,

Ruston Neely

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

John J. Moore, Jr., #326455,

2011-CP-40-00190

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2014 JAN - 8 PM 2:58
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief filed January 13, 2011. The Respondent made its Return on February 15, 2011. An evidentiary hearing into the matter was convened on Wednesday, May 23, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Rowland P. Alston, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Greg Collins, Esquire ("counsel"), and Applicant's former appellate counsel, Joseph Savitz, III, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Richland County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections and the relevant documents from Applicant's direct appeal.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland

MOORE John J. #326455 – Order of Dismissal (2011-CP-40-00190)

1 of 21

SCANNED

County Clerk of Court. The Applicant was true bill indicted at the April 2006 term of the Richland County Grand Jury for Murder, Use of a Firearm During the Commission of a Violent Crime and Unlawful Possession of a Pistol by a Person Under 21 Years of Age (2006-GS-40-02203, -11738, -11739). Doug Strickler, Esquire, and Greg Collins, Esquire, represented him on the charges. On January 28, 2008, Applicant proceeded to a jury trial before the Honorable William P. Keesley. After a five day trial, Applicant was found guilty of the two weapon charges as indicted, as well as the lesser included Voluntary Manslaughter. Judge Keesely sentenced Applicant to thirty (30) years imprisonment for Voluntary Manslaughter, five (5) years imprisonment to run concurrently for Possession of a Weapon During the Commission of a Violent Crime, and five (5) years imprisonment to run consecutively for Possession of a Pistol by a Person under 21.

A notice of appeal was filed and an appeal was perfected. Applicant was represented by Joseph Savitz, III, Esquire, of the South Carolina Office of Appellate Defense. After briefing, the South Carolina Court of Appeals reversed Applicant's conviction for Possession of a Pistol by a Person under 21. State v. Moore, Op. No. 2010-UP-409 (S.C. Ct. App. filed September 16, 2010). The Remittitur was issued October 5, 2010.

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

- a. That public defender failed to convey to Applicant one or more plea offers prior to the verdict.
- b. That public defender failed to adequately investigate the case before trial, and, as a consequence, failed to develop and present all available, relevant,

impeachable, and mitigating evidence that would have challenged the credibility and veracity of witnesses for the prosecution.

- c. That public defender did not properly object or renew the motion for a mistrial given the exposure of four jurors to a mug-shot photograph of the Applicant.
- d. That public defender never objected or moved for a mistrial given the prosecution's failure to provide exculpatory evidence under Rule 5, especially including, but not limited to, statements of witnesses Rhett Alger, Mike Lankford, Beth Lankford, Crime Stoppers, and an article from "The State" newspaper.
- e. That public defender failed to properly object to and/or move for a mistrial regarding juror(s) who were sleeping during trial.
- f. That public defender did not ensure Applicant's right under the Constitution to confront the witnesses against Applicant.
- g. That public defender failed to object to and properly preserve for appeal the prosecution's bolstering the witness Kerwyn Phillips.
- h. That public defender failed to effectively cross-examine the witness Kerwyn Phillips.
- i. That public defender never objected to or moved to exclude the evidence of the recording between the Applicant and witness Delia Nix, who was the common law spouse of Applicant and thus entitled to common law spousal immunity.
- j. That public defender failed to properly object to thereby preserve for appeal the prosecution's misrepresentation of the facts and evidence, unsupported by

the record, during closing arguments, especially regarding, but not limited to, the recording between Applicant and witness Kerwyn Phillips.

- k. That public defender failed to object and properly preserve for appeal the prosecution's improper closing argument regarding malice.
- l. That public defender failed to object to and properly preserve for appeal the prosecution's improper comment on the Applicant's lack of remorse during closing argument.
- m. That public defender failed to request that the Court include in the jury charge that a vehicle can be considered a deadly weapon.
- n. That public defender failed to request a jury charge regarding the intoxication of Eugene Derrick, in which the condition was relevant to the nature of the threat and the need of force.
- o. That public defender for Applicant failed to object to and properly preserve for appeal the closing argument and jury charge regarding accomplice liability.
- p. That public defender for Applicant failed to properly object to and properly preserve for appeal the jury charge regarding malice.
- q. That public defender for Applicant failed to properly object to and properly preserve for appeal the burden-shifting jury charge regarding self-defense.
- r. That public defender failed to object to and properly preserve for appeal the Court's voluntary manslaughter jury charge.
- s. That public defender failed to properly take exception to the Court's comments on the facts of the case.

- a. That appellate defender failed to appeal the principal conviction of voluntary manslaughter, where mistrial issue was preserved and Applicant's indictment was constructively amended.
- b. That appellate defender did not properly review the record to determine all issues meriting appeal.
- c. Any other particulars that may be demonstrated at trial.

14. That public and appellate defender's performance as counsel for the Applicant, as stated herein, was so deficient that the Applicant was prejudiced such that there is a reasonable probability that, but for public and appellate defender's professional errors, the result of the criminal trial and/or conviction and/or appeal would have been different.

15. That public and appellate defender's conduct so undermined the proper functioning of the adversarial process that the criminal trial cannot be relied upon as having produced a just result.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Spousal Immunity

Applicant first alleges counsel was ineffective for failing to properly investigate Applicant's relationship with Delia Nix (hereafter "Nix"). Applicant contends he and Nix are common law married and, had counsel sufficiently investigated this relationship, he could have used a "spousal privilege" argument at trial to suppress the state's introduction of a taped

conversation between he and Nix recorded by the jail. Applicant noted Nix was directly outside of the courtroom the entire trial, but was never called as a witness.

Counsel testified he never asked Applicant whether he and Nix were married, as he believed Applicant would have disclosed that information during one of their many meetings if such were the case. For that reason, counsel said, he did not raise a challenge to the introduction of the audio tape on spousal privilege grounds at trial. Rather, counsel objected to its introduction on several other grounds including a violation of the Confrontation Clause as it presented impermissible testimony of an unavailable witness whom Applicant would not have the opportunity to confront and cross-examine at trial. Counsel readily admitted the audio tape was "damning" evidence, as Applicant essentially admitted to firing the fatal shots during the call, but said he was able to argue in closing that the state was entirely misrepresenting and misinterpreting Applicant's comments heard on the tape. Counsel also said in his conversations with Nix, she only categorized herself as the mother of Applicant's child and never made any reference to being Applicant's "wife". Further, counsel said, Applicant's codefendant (Kerwyn Phillips) referred to Nix repeatedly during his testimony as Applicant's "girlfriend" despite Phillips having been close friends with Applicant and known Applicant his entire life. Counsel also noted the conversation occurred from a jailhouse phone which clearly informs both parties involved the conversation is being monitored and recorded, so as to make any conversations between the two far from "confidential" in nature.

After reviewing the testimony presented and entirety of the record, this Court finds Applicant has failed to satisfy his burden in proving counsel was ineffective in this regard. As a preliminary note, this Court finds Applicant's testimony in this regard to be wholly not credible, while conversely finding counsel's testimony to be credible and persuasive. Counsel's failure to

investigate spousal privilege against forced testimony as a basis for challenging the jailhouse phone call was not objectively unreasonable based on his pretrial conversations with Applicant. See Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. at 2066 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements...[as] [c]ounsel's actions are usually based, quite properly, on...information supplied by the defendant. In particular what investigation decisions are reasonable depends critically on such information."). At no point during counsel's representation did Applicant ever indicate he and Nix were common law married. In fact, the trial record is replete with testimonial references to Nix as Applicant's "girlfriend", but at no point did Applicant ever bring this alleged mischaracterization to counsel's attention. In sum, this Court finds counsel's performance was not deficient in failing to conduct some further investigation into the alleged common law marital status of Applicant and Nix, as he had no reason to believe such was the case.

Further, this Court finds Applicant has failed to carry his burden in proving resulting prejudice, as Applicant has failed to produce any credible evidence supporting the allegation he and Nix were in fact common law married. "A common-law marriage is formed when two parties contract to be married." Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005). "No express contract is necessary; the agreement may be inferred from the circumstances." Id. "The fact finder is to look for mutual assent: the intent of each party to be married to the other and a mutual understanding of each party's intent." Id. Further, the "circumstantial evidence typically relied upon to establish a common-law marriage includes evidence establishing that the parties have lived together for an extended period of time and have publicly held themselves out as husband and wife." Barker v. Barker, 330 S.C. 361, 367, 499 S.E.2d 503, 507 (Ct. App. 1998). Applicant's self-serving and unsupported testimony in this regard is wholly **not** credible. Further,

Applicant did not produce any evidence or testimony to support the allegation that he and Nix lived as husband and wife, or otherwise publicly held themselves out to the community as husband and wife. Rather, the record before this Court conclusively refutes Applicant and Nix were common law spouses. Therefore, this Court finds no resulting prejudice.

Finally, this Court finds no reasonable probability that had a motion to suppress been presented on grounds of spousal privilege *and* been successful in suppressing the recorded phone call, the outcome at trial would have been any different. The record reflects substantial evidence presented by the state at trial to firmly convince the jury of Applicant's guilt beyond a reasonable doubt regardless of the introduction of the tape recorded phone call. Therefore, Applicant cannot satisfy the second prong of Strickland v. Washington.

Failure to Prepare/Investigate

Applicant also alleges counsel was ineffective for failing to properly investigate and prepare Applicant's case. Specifically, Applicant contends counsel should have more thoroughly investigated the victim's husband, Gene Derrick's ("Derrick"), alleged methamphetamine ("crystal meth") use and retained a private toxicology expert to help bolster the self-defense theory.

First, counsel was not ineffective for failing to properly investigate Derrick's methamphetamine use, nor in failing to retain an expert toxicologist to assist in the defense. Applicant alleges a toxicologist could have helped develop a background on the effects of crystal meth use for the jury, including potential side effects such as aggressiveness. Applicant alleges such testimony would have helped bolster the theory that his exercise of deadly force was reasonable based on Derrick's erratic and aggressive driving. Applicant testified counsel also

should have sought to introduce the statements of Mike and Beth Langford at trial to support the contention that Derrick was a known drug user.

Counsel testified he and Applicant were aware of Derrick's alleged history of methamphetamine use prior to trial because their private investigator was able to obtain statements from Mike and Beth Langford referencing such. Counsel said although he never retained an expert to help prepare for trial or to testify at trial as to methamphetamine use, he was able to elicit testimony throughout trial as to alcohol consumption just prior to the incident, including Derrick's own testimony admitting to having consumed several beers and a margarita prior to the shooting. Counsel went on to say with the benefit of hindsight, perhaps he should have "played up" Derrick's alleged drug use at trial, but thought he did an effective job of highlighting Derrick's potential intoxication throughout the course of the trial. He also noted he did not attempt to introduce the Langfords' statements or any other documents obtained by his private investigator at trial as he wanted to retain the right to last closing argument before the jury and did not believe the introduction of the statements would be more beneficial than having last closing argument.

This court finds counsel was not ineffective in this regard. Counsel had his private investigator conduct a reasonable and diligent investigation into Derrick's alleged drug use, from which he was able to obtain the statements of Mike and Beth Langford. Counsel was fully aware of those statements at the time of trial, but made the reasonable strategic choice to focus his cross-examination on Derrick's self-admitted alcohol consumption on the night in question, and the theory that Applicant was not the shooter. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed

ineffective assistance of counsel.”). Counsel was able to elicit testimony during trial from Officer Scott Faust that “there was some information brought up” in his investigation about Derrick’s “dealings with crystal meth”. Counsel sought to elicit testimony from Faust about Mike Langford’s reputation as a “meth dealer” as well, but was prohibited from doing so by the trial judge upon objection by the state. With the main theory of defense in mind (Applicant not being the shooter), it is clear counsel made a reasonable decision not to present the statements of the Langfords as doing so would have created inconsistencies in Applicant’s theory of defense and involvement in the case.

Further, this Court finds Applicant has failed to meet his burden in proving resulting prejudice. First, Applicant failed to produce a toxicology expert at the PCR hearing to present the alleged beneficial testimony he believes would have been given at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial). Additionally, he failed to produce any admissible evidence as to what benefit hiring such an expert to assist in pretrial preparations would have produced.¹ See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (Failure to conduct independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

¹ Applicant attempted to introduce an affidavit of Dr. Robert Bennett into the PCR record regarding the potential effects of Methamphetamine and Cocaine, and Dr. Bennett’s opinion in correlating those side effects to this case. Respondent posed a contemporaneous objection to the introduction of the affidavit, which this Court sustained finding the affidavit not admissible on grounds of hearsay, a violation of Respondent’s right to cross-examine the witness, and as impermissible opinion testimony by a witness neither presented, nor qualified, as an expert by this Court. Accordingly, the affidavit was proffered into the record, but not considered by this Court in its determination of the current allegation.

Sleeping Jurors

Applicant alleges counsel was ineffective for failing to object or otherwise move for a mistrial based on several jurors allegedly falling asleep during the course of the trial.

Counsel testified he did recall discussions on the record about jurors potentially having fallen asleep during some points of the trial, but noted one of the jurors never actually fell asleep and the issue was ultimately addressed by the trial judge. Specifically, after the testimony of Investigator Stanley Richards, Judge Keesley noted outside of the presence of the jury he had seen one juror "shutting her eyes" during Richards' testimony. Judge Keesley went on to say he "kept watching her rather intently" because he would have had to stop the trial if she was going to sleep, but explicitly noted the juror never actually fell asleep. The solicitor said he also saw the juror close her eyes, but agreed she never fell asleep.

At the end of the trial, upon completion of the state's closing argument, Judge Keesley took the opportunity to caution the jury about keeping their eyes open before sending them to the jury room for a short break. After the jury retired, Judge Keesley said he had "one juror fighting sleep" during the state's closing argument, but again noted "he [hadn't] gone to sleep". Prior to the jury reentering the court, the judge stated he had received a note from "the same young man" he had been referring to, in which the juror explained he was suffering from a sinus infection which caused his face to swell and eyes to appear closed, but that he was able to continue to serve as a juror. At the PCR hearing, counsel testified he did not see the juror ever actually fall asleep and believed the trial court effectively admonished the jury to cure the issue, but noted the alleged incident occurred during the state's closing argument which would not have been harmful to Applicant's case.

The record is clear in showing counsel was not ineffective in this record. The record of the trial is clear in showing no juror actually fell asleep during the course of the trial, and the trial judge effectively admonished the jury to ensure they were giving the trial their full attention. With this in mind, this Court finds counsel's failure to object or otherwise move for a mistrial to have been objectively reasonable. Further, Applicant has failed to prove resulting prejudice as he failed to establish that any juror actually ever fell asleep or missed any portion of the trial. Finally, as set forth by counsel, the juror alleged to have been sleeping was doing so during the *state's* closing argument in which the solicitor reviewed the entirety of the damaging evidence against Applicant and implored the jury to find Applicant guilty. The juror's alleged "absence" from that portion of the trial would have been beneficial, *not* damaging, to Applicant's case. Therefore, any alleged sleeping did not prejudice Applicant's case. Accordingly, this allegation is denied.

Failure to Object/Renew Motion for Mistrial Based on Exposure to Mugshot

Applicant alleges counsel was ineffective for failing to properly object to and renew his mistrial motion based on three jurors' exposure to an alleged "mugshot" picture of Applicant displayed on the local news after the first day of trial, and therefore the issue was not preserved for appeal.

The record before this Court and testimony presented at trial reflect counsel was not ineffective in this regard. At the start of the second day of trial, counsel brought to the trial court's attention the issue of potential juror exposure to media reports about the case. Upon inquiry of the jury, three jurors stated they had seen a photograph of Applicant on the news, but each noted they had turned their television off upon seeing the picture alone without any exposure to the associated commentary. Additionally, each stated seeing the picture would not

affect their ability to be a fair and impartial juror in the case. The court declined to question the jurors as to the nature of the picture they saw as requested by counsel. After having the opportunity to independently question each juror, counsel requested the trial judge exclude the jurors from participating in the trial, and additionally motioned the court for a mistrial. The court, finding "beyond a reasonable doubt that there [was] absolutely nothing about [the jurors'] exposure to that media coverage that would in any way affect their ability to be a fair and impartial juror", denied counsel's motions.²

At the PCR hearing, counsel credibly testified he did recall several jurors advising the court they had seen a picture of Applicant on the news, but stated the motions to exclude the three jurors and for mistrial were denied by the trial judge after each juror was independently questioned in-camera on the issue. At the close of the state's case, counsel renewed all previous motions and objections made throughout the course of the trial, which was promptly denied.

This Court would first note counsel *did* in fact pose a motion for mistrial based on a lack of qualified jurors due to pollution of the jury pool by exposure to pretrial publicity, i.e. Applicant's picture on the news. Therefore, his actions were not deficient in failing to present such a motion. Further, counsel timely posed the motion for mistrial and set forth the grounds for the motion specifically, after which the trial judge specifically referenced the mistrial motion after denying counsel's request to excuse the jurors on the same grounds. Accordingly, the motion was preserved for appeal. See State v. Sweet, 342 S.C. 342, 536 S.E.2d 91 (2000) (issue preserved for appeal where counsel makes timely objection, despite trial judge not ruling upon that motion immediately thereafter, where trial judge made clear on the record he understood the motion).

² There was, however, a fourth juror who had briefly discussed the case with friends at the gym who was excluded by the court. His exclusion was not based on the media outlet's display of Applicant's picture and, therefore, not relevant to this analysis.

Further, Applicant has failed to prove resulting prejudice from counsel's alleged failure to preserve the mistrial motion for direct appeal. Applicant has failed to prove he would have been successful in having the convictions overturned on appeal based on the court's denial of the mistrial motion. Mere exposure to pretrial publicity does not automatically disqualify a prospective juror. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). "When the trial judge bases his ruling upon an adequate voir dire examination of the jurors, his conclusion that the objectivity of the jury panel has not been polluted by outside influence will not be disturbed absent extraordinary circumstances." State v. Kelsey, 331 S.C. 50, 68, 502 S.E.2d 63, 71 - 72 (1998); see also State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). Further, "whether or not a mistrial should be granted is a matter resting within the trial court's sound discretion." State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980). This court finds no reasonable probability the issue would have been successful if raised on direct appeal and, therefore, Applicant cannot prove resulting prejudice.

Failure to Properly Request/Object to Jury Instructions

Applicant next alleges counsel was ineffective for failing to request the jury be charged with "use of a vehicle as a deadly weapon" in support of his self-defense theory, as well as in failing to object to the use of the words "at fault or jointly at fault in bringing on the difficulty" in the actual self-defense charge given.

This Court finds counsel was not ineffective in either instance. Counsel testified he requested the self-defense instruction on the basis that the victims' car was swerving at Applicant's truck, as well as on the basis that Applicant believed the driver of the car was pulling a gun out from under his seat at the time. No instruction on the use of a car as a deadly weapon was requested or given at trial, but counsel was able to present Applicant's position in closing

argument that any shots fired from his truck were in self-defense as a result of Victim's erratic and dangerous driving.

First, Applicant has failed to prove counsel was deficient in failing to request a jury charge on the "use of a vehicle" constituting a "deadly weapon" as he has failed to establish that any sanctioned jury charge exists for counsel to have requested. Further, Applicant has failed to establish the relevant case law upon which such a jury charge could be founded, or to support the legality of such a charge. Applicant produced no example of a hypothetical charge counsel could have drafted and submitted to the court in support of the request either. Therefore, he has failed to prove counsel how counsel was deficient in failing to pose such a request to the trial judge, or that such a charge would have in fact been given had it been requested. Additionally, this Court finds no reasonable probability the outcome at trial would have been different had such a charge been given as the jury was provided with a self-defense instruction, as well as the testimony and arguments about victim's alleged menacing driving, but opted not to find Applicant acted in self-defense.

Turning to the second portion of the charge complained of, this Court finds, when taken as a whole, the charge is a correct statement on the law of self-defense as it stood at the time of Applicant's trial. "The trial court is required to charge only the current and correct law of South Carolina." Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). Accordingly, this Court finds counsel was not objectively unreasonable in failing to pose an objection to the charge, nor was Applicant prejudiced by the alleged deficiency as the charge was proper.

Failure to Object to Improper Closing Argument and Jury Charge on Inferred Malice

Applicant alleges counsel was ineffective in failing to pose objections to the solicitor's improper commentary and the Court's erroneous charge on the permissible inference of malice from the use of a deadly weapon.

This Court finds counsel was not ineffective for failing to pose an objection to either reference as, at the time of Applicant's trial, such a permissible inference was proper. In 1981, the South Carolina Supreme Court in State v. Mattison, 276 S.C. 235, 277 S.E.2d 598 (1981), found "an appropriate instruction on implied malice would not deal with the evidentiary nature of the presumption and that the implication does not *require* the jury to infer malice but only *permits* it", in accordance with the United States Supreme Court's ruling in Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1979). Id. at 238, 277 S.E.2d at 600 (emphasis added). Two years later, in State v. Elmore, the South Carolina Supreme Court set forth the appropriate jury charge to be given on the inference of malice from the use of a deadly weapon, which the Court felt complied with the Due Process requirements that Sandstrom was concerned with. State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). The Elmore Court noted that "only slight deviations from [the] charge [set forth therein] [would] be tolerated." Id. at 421, 308 S.E.2d at 784. Such was the legal standard for the permissible inference of malice from the use of a deadly weapon in South Carolina until the October 12, 2009, decision of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

In Belcher, the Court held, "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." Id. at 612, 685 S.E.2d at 810. The Belcher Court held the new precedent would not apply retroactively, nor would it "apply to convictions challenged on post-conviction relief." Id.

The charge given at the time of Applicant's trial was the sanctioned charge on the law as it stood in South Carolina under State v. Elmore. Therefore, it was not objectionable and counsel was not ineffective for failing to object. Further, attorneys are not required "to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes v. State, 310 S.C. 306, 310, 426 S.E.2d 764, 765 (1993); see also Robinson v. State, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (finding counsel not ineffective for failing to assert defense not yet recognized by the Court). Therefore, counsel's failure to object was not unreasonable, and there is no reasonable probability that such an objection would have been successful if made.

Additionally, the solicitor's comments in closing argument as to the permissible inference of malice were not objectionable as they, too, were appropriate statements on the law as it stood at the time. Further, a successful objection to the solicitor's comments would not have reasonably affected the outcome of the trial. For those reasons, this Court finds the allegation as to plea counsel to be without merit.

Regarding appellate counsel's failure to raise the decision in Belcher on direct appeal, this Court finds the allegation to be equally without merit and improperly raised herein. In Belcher, the Court set forth because their "decision represents a clear break from modern precedent, [the] ruling is effective in this case and for all cases which are pending on direct review or not yet final *where the issue is preserved*." Id. at 612, 685 S.E.2d at 810. The legality of the charge given was not preserved for appeal at trial; further, Belcher expressly prohibits challenges based on its ruling through post-conviction relief, according to the Court's opinion. Therefore, these claims are hereby denied and dismissed.

Ineffective Assistance of Appellate Counsel

Applicant finally alleges appellate counsel was ineffective in his representation for failing to challenge the voluntary manslaughter conviction on direct appeal based on a constructively amended indictment and the trial court's denial of counsel's motion for mistrial.³

Appellate counsel testified he worked as an appellate defender for the South Carolina Commission on Indigent Defense, Office of Appellate Defense, for twenty-six (26) years, during which he served as appellate counsel on "thousands" of criminal appeals. He noted his work focused a great deal on murder appeals. Appellate counsel stated he spoke with Applicant's father during the course of the appeal. He said the case was "very fact intensive" and that there were not many legal issues to be raised on direct appeal because many of them were "fact bound". Appellate counsel testified he read through the entire record in deciding which issues to raise, and picked what he thought was the strongest issue for appeal. In doing so, he said, he decided to raise a challenge to only the "Possession of a Weapon By a Person Under the Age of 21" conviction as he believed that was the strongest and most meritorious issue he saw. Appellate counsel noted he did not see any specific, strong issues to be raised challenging the Voluntary Manslaughter conviction and, therefore, opted to focus on challenging the weapon charge. He stated he believed the appeal was a success in that Applicant's weapon charge, the sentence for which was set to run consecutively, was reversed by the Court of Appeals.

Based on the record and testimony, this Court finds appellate counsel was not ineffective in his representation of Applicant. Appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on direct appeal and there is no constitutional duty imposed on appellate counsel that every non-frivolous issue requested by a defendant be raised. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where

³ Of interesting note is Applicant's contention in the application that counsel's mistrial motion was properly preserved for direct appeal, where he previously alleged counsel was ineffective for failing to properly preserve the mistrial motion.

the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Appellate counsel, as a very experienced and skilled appellate attorney, conducted a thorough review of the record and ultimately made the reasonable strategic decision to raise the issue he did on appeal. Clearly the issue raised on direct appeal was a very strong issue, as the conviction was reversed, thereby eliminating a five year consecutive jail term from Applicant's sentence. Further, Applicant has failed to convince this Court appellate counsel overlooked any meritorious issue that would have been successful on appeal, thereby failing to meet the prejudice requirement. Accordingly, this Court finds appellate counsel was not ineffective.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address any other issues at the hearing indicates a voluntary and intentional

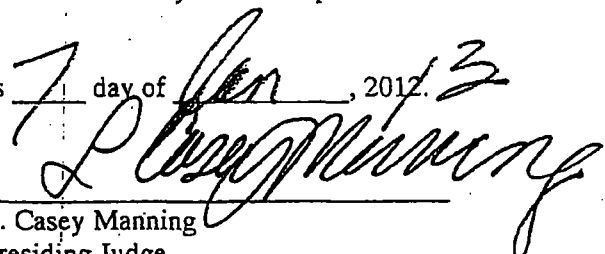
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of Jan, 2012.


L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John J. Moore, Jr., #326455,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-0190

**NOTICE OF MOTION
AND MOTION TO ALTER
OR AMEND A JUDGMENT**

FILED
2013 JAN 15
JEANETTE W. HARRIS
C.C.P. & J.S.

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Applicant's Motion to Alter or Amend a Judgment of the Order of Dismissal, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the within action. The Court entered an Order of Dismissal, filed on January 8, 2013, denying and dismissing with prejudice the Applicant's application for post-conviction relief. This Order was received by the undersigned on January 11, 2013 (less than ten (10) days from the filing of this motion).

The undersigned asks this Court to rule upon/reconsider the argument made at the hearing, and in supporting memorandum, that the applicant's public defender failed to request a specific inquiry by the Court of jurors who appeared to be sleeping or somnolent, pursuant to *State v. Hurd*, 325 S.C. 384, 480 S.E.2d 94 (Cl. App. 1996).

The undersigned asks this Court to rule upon/reconsider the following grounds, which were pled and not waived and, upon information and belief, not addressed in the order:

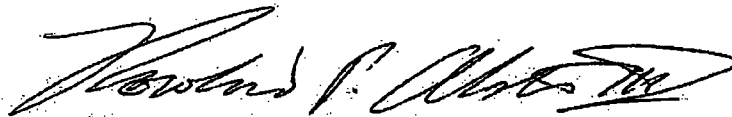
- a. That public defender never objected to or moved for a mistrial given the prosecution's failure to provide exculpatory evidence under Rule 5, especially including, but not limited to, statements of witnesses Rhett Alger, Mike Lankford, Beth Lankford, Crime Stoppers, and an article from "The State" newspaper;
- b. That public defender did not ensure Applicant's right under the Constitution to confront the witnesses against the Applicant;
- c. That public defender failed to object to and properly preserve for appeal the prosecution's bolstering the witness Kerwyn Phillips;
- d. That public defender failed to effectively cross-examine the witness Kerwyn Phillips;
- e. That public defender failed to request a jury charge regarding the intoxication of Eugene Derrick, the driver of the other vehicle, in which condition was relevant to the nature of the threat and the need of force;
- f. That public defender failed to object to and properly preserve for appeal the Court's voluntary manslaughter charge;

- g. That public defender failed to properly take exception to the Court's comments on the facts of the case; and
- h. Any other particulars demonstrated at the hearing.

The undersigned also asks this court to reconsider all rulings contained in the Order.

This motion is based upon the pleadings, any memorandum previously or subsequently submitted, the common and statutory laws of the State of South Carolina, and any other matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460

January 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John J. Moore, Jr., #326455,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

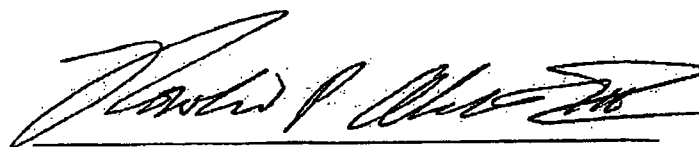
C/A No.: 2011-CP-40-0190

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND A JUDGMENT** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. L. Casey Manning
P.O. Box 192
Columbia, SC 29202

Robert Corney, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Rowland P. Alston III
Attorney for the Applicant

January 15, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John J. Moore, #326455,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-00190

**RETURN TO RULE 59(e), SCRCP,
MOTION TO ALTER OR AMEND**

This matter comes before the Court by way of Applicant's Rule 59(e), SCRCP, Motion to Alter or Amend Judgment filed January 15, 2013. An evidentiary hearing was convened before this Court on May 23, 2012, at the Richland County Courthouse, at which Applicant was present with counsel, Rowland P. Alston, III. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. By order filed January 8, 2013, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

Respondent respectfully requests this Court deny the current motion to alter or amend as the twenty-one (21) page order of dismissal entered by this Court on January 8, 2013, contains all of the relevant findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRCP. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Respondent submits the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRCP, motion to alter or amend should be denied, and the filed order should remain undisturbed.

WHEREFORE, having made its Return to the motion, the State requests the current motion be denied and said motion be dismissed.

Respectfully submitted,

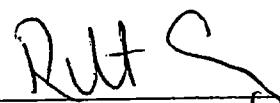
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Columbia, South Carolina
January 17, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2011-CP-400-0190

John J. Moore, 326455

Applicant,

vs

State of South Carolina,

Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Rowland P. Alston, III, LLC
1314 Lincoln Street
Columbia, South Carolina 29211

DATED this 22nd day of January, 2013.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

John J. Moore, #326455,)
 Applicant,)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2011-CP-40-0190

**ORDER DENYING APPLICANT'S
 MOTION TO ALTER OR AMEND
 JUDGMENT**

2011 APR -7 AM 10:56
 RICHLAND COUNTY
 FILED
 JEANETTE W. MCGRIDE
 C.C.P. & G.S.

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend Judgment", asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

An evidentiary hearing was convened before this Court on May 23, 2012, at the Richland County Courthouse, at which Applicant was present with counsel, Rowland P. Alston, III. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. By order filed January 8, 2013, this Court denied Applicant's request for relief with prejudice. On January 15, 2013, Applicant filed a motion to alter or amend, asking this Court to alter or amend, and reconsider its ruling. Respondent made a Return to this motion, asking that said motion be denied and dismissed.

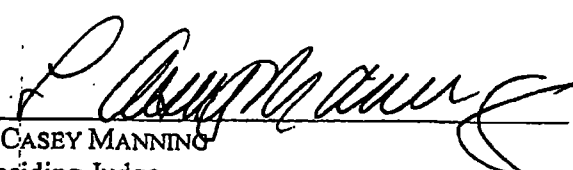
III.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 1 day of April, 2014


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia South Carolina

relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

WITNESSES

(S) *Eric Barnes*
ERIC BARNES - RCSD

ARREST WARRANT NUMBER

1915652

ACTION OF GRAND JURY

TRUE BILL
for K. R. G.

Foreperson of Grand Jury *for K. R. G.*
Date: APR 20 2006

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-40-02203

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2006

102

THE STATE
vs.

JOHN MOORE

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 CLERK H. A. W. M. G. S.
 C.C.C. P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

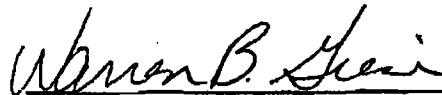
INDICTMENT

At a Court of General Sessions, convened on April 19, 2006, the Grand Jurors of Richland County present upon their oath:

MURDER

That John Moore did in Richland County on or about October 17, 2004, feloniously, willfully and with malice aforethought, kill one Stephanie Dover by means of shooting the victim with a firearm and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Glese, SOLICITOR

949

WITNESSES

W
(S) INV. ERIC BARNES - RCSD

ARREST WARRANT NUMBER

1974768

ACTION OF GRAND JURY

TRUE BILL

John R. L. [Signature]
Foreperson of Grand Jury
Date: APR 20 2006

VERDICT

Foreperson of Petit Jury
Date:

16

DOCKET NO. 2006-GS-40-11738

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2006

102

THE STATE

vs.

JOHN MOORE

Indictment for

**UNLAWFUL POSSESSION OF A
PISTOL BY PERSON UNDER 21 YEARS
OF AGE**

SC Code: 16-23-30(A)(1)

CDR Code: 2364

Class FEL-F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 19, 2006, the Grand Jurors of Richland County present upon their oath:

**UNLAWFUL POSSESSION OF A PISTOL BY PERSON UNDER 21 YEARS
OF AGE**

The John Moore did in Richland County, on or about October 17, 2004 unlawfully possess a pistol, in that the defendant was under the age of twenty-one (21), all in violation of Section 16-23-30, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

951

WITNESSES

INV ERIC BARNES - RCSD

ARREST WARRANT NUMBER

1974767

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 20 2006

VERDICT

Foreperson of Petit Jury

Date:

14

DOCKET NO. 2006-GS-40-11739

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2006

102

THE STATE
vs.

JOHN MOORE

Indictment for

USE OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

Class FELF

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 19, 2006, the Grand Jurors of Richland County present upon their oath:

USE OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That John Moore did in Richland County on or about October 17, 2004, possess or visibly display a firearm or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR