

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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DEC 11 2015

S.C. Supreme Court

SUPREME RAHAAM ACKBAR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001052

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2) IN THE COURT OF GENERAL SESSIONS
 2 COUNTY OF SPARTANBURG)

3
 4 The State,)
 4) TRANSCRIPT OF RECORD
 5 -vs-) 2009-GS-42-5943
 5)
 6 Supreme Ackbar,) January 27, 2011
 6) February 7 - 9, 2011
 7 Defendant.) Spartanburg, South Carolina

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 10
 11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury

13
 14
 15 A P P E A R A N C E S:

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 16 Attorney for the State

17 ROGER POOLE, ESQUIRE
 18 Attorney for the Defendant

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 21 Linda D. Moffitt
 22 Circuit Court Reporter

23
 24
 25

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1 (Proceedings January 27, 2011)

2 THE COURT: All right. What is this?

3 MR. POOLE: May it please the Court, Your Honor.

4 I'm Roger Poole. I represent Mr. Supreme Ackbar. At
5 this time and we're here on his motion to have me relieved
6 as counsel.

7 THE COURT: All right.

8 MR. BULSA: Your Honor, the case is scheduled for
9 trial February the 7th. He's charged with murder.

10 THE COURT: Have you got a copy of the warrant or
11 indictment or something?

12 MR. BULSA: No, sir. I don't have the indictment. I
13 can give you...

14 THE COURT: All right. You're Mr. Ackbar.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And right now Mr. Poole's representing
17 you.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you wish to relieve him from any
20 further obligation?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. What, what are you going to do
23 about representation? Do you have a plan for that?

24 THE DEFENDANT: I would like for the Court to appoint
25 me alternate, if possible, attorney.

1 THE COURT: Well, you know, I'm limited on that.

2 The public defender is your appointed lawyer. And if
3 you don't accept the appointed lawyer, then you have two
4 other choices. You can either retain somebody, hire
5 somebody, anybody you want to, or you can represent
6 yourself if you think you're capable of doing that.

7 THE DEFENDANT: Uh-huh. I really do got a problem
8 with Mr. Poole. I really do. I ain't -- I've not received
9 evidence that I was granted by Judge Couch, period.

10 THE COURT: Well, what do you mean by that?

11 THE DEFENDANT: On June 4, 2010, I was granted this
12 evidence, this additional evidence.

13 THE COURT: On June 4th of 2010 you came in front of
14 Judge Couch?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And what were you in front of Judge Couch
17 for?

18 THE DEFENDANT: To relief -- counsel.

19 THE COURT: Mr. Poole?

20 THE DEFENDANT: No, sir. Kathleen Hodges.

21 THE COURT: Oh, Ms. Hodges. You came before Judge
22 Couch to have her relieved?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And she was relieved and Mr. Poole was
25 appointed in her stead?

1 THE DEFENDANT: Yes, sir, yes, sir.

2 THE COURT: Okay. And now you're here trying to
3 relieve him?

4 THE DEFENDANT: I'm not -- I'm really having problems
5 with Mr. Poole.

6 THE COURT: Well, I understood that you had -- I
7 thought you meant Judge Couch had ordered the state to give
8 you some type of evidence. I thought that's what --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What's that?

11 THE DEFENDANT: I haven't received it.

12 THE COURT: Well, do you know what it is?

13 What is it, Mr. Poole?

14 MR. POOLE: Your Honor, may it please the Court.

15 Your Honor, I've given some of the evidence, and I
16 thought I had given it all, to him.

17 I went to see Mr. Ackbar -- was it -- Monday, I think.
18 And I was going to go over everything, all that I had in my
19 file, with Mr. Ackbar, but Mr. Ackbar said that he didn't
20 want to talk to me and that he wanted me to be relieved of
21 counsel. At that point the conversation simply stopped.

22 THE COURT: Okay. Well, I will say this, Mr. Ackbar.

23 You know, of course I've been doing this a long time.
24 And it used to be that, you know, the clients trusted the
25 lawyer to handle the case. And the clients didn't get

1 copies of everything like they do today. I'm not sure
2 about all of that. But, you know, now everybody gives the
3 client the copies of the file.

4 Well, you know that's what you have a lawyer for. If
5 you needed a copy of the file or anybody needed a copy of
6 the file they wouldn't need a lawyer. They could just
7 handle it themselves, which most of them aren't capable of
8 doing.

9 So do you think Mr. Poole is trying to hide something
10 from you?

11 THE DEFENDANT: I been, been describing to point out
12 several facts to Mr. Poole concerning the case.

13 Mr. Poole ain't, ain't even trying to hear what I'm
14 trying to say. It's like he tells you -- he doesn't state
15 what his action does imply, and he don't have to. You
16 know, I'm fighting capital offenses here, and I cannot get
17 Mr. Poole to do anything.

18 He just comes and pretends and misleads me and leads
19 me to believe that, okay, I'm going to do this, I'm going
20 to do it.

21 I'll speak with him, I do. But he actually does
22 nothing. I've been struggling to get this evidence since
23 June of last year.

24 THE COURT: Trying to get it from who?

25 THE DEFENDANT: Mr. Poole. He don't even have it.

1 THE COURT: Oh.

2 THE DEFENDANT: And he's, he's got nothing. He don't
3 even have it.

4 THE COURT: Well, Mr. Poole, have you gotten
5 everything that the state has that you're entitled to
6 receive?

7 MR. POOLE: As far as I know, yes, sir.

8 MR. BULSA: I'll be happy to review everything with
9 him, but I believe he should have it.

10 THE COURT: Okay. So, Mr. Ackbar, you just think
11 there's something that's out there that you and Mr. Poole
12 ought to have that you don't think he has?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And who do you think has it? I mean,
15 where do you think it should be?

16 THE DEFENDANT: He said -- he informed me that the
17 state has it and he got to get it from the state.

18 THE COURT: Right.

19 THE DEFENDANT: And this man told me on several
20 occasions but yet never had it.

21 MR. BULSA: Your Honor, he's talking about some phone
22 records of some phone numbers the police had.

23 THE COURT: All right.

24 MR. BULSA: We gave them all the phone records that we
25 recovered.

1 THE DEFENDANT: I'm talking about the transcripts of
2 the Pay Tel communication phone conversations dated
3 9/21 ending 9/23 of '09.

4 MR. BULSA: There are no transcripts of any
5 recordings.

6 THE DEFENDANT: You say you have recordings on, in the
7 discovery. We have Ackbar on transcript saying such and
8 such.

9 MR. BULSA: Yes, sir. There's a --

10 THE DEFENDANT: That's what I was --

11 MR. BULSA: -- recording from the jail of him talking
12 to another individual. He's got that before.

13 THE COURT: Okay. You're talking about -- you're
14 talking about recordings of conversations that you had with
15 somebody.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Well, those are available.

18 MR. BULSA: Yes, sir.

19 THE DEFENDANT: I don't have them.

20 THE COURT: You don't?

21 MR. POOLE: I received the C.D. May it please the
22 Court. I received the C.D. It was fairly recently. And
23 before I went to speak with Mr. Ackbar I was going to share
24 what I had heard on that, but our conversation ended.

25 THE COURT: Okay. Well --

1 MR. POOLE: It's part of our communication problem.

2 THE COURT: Okay. Mr. -- well, I think that's the
3 problem.

4 Mr. Ackbar, looks like to me the real issue in this
5 case or could be the issue is that y'all just aren't
6 communicating very well. And y'all got to work together
7 rather than, you know, working apart.

8 And if, you know, if there's something that you're
9 entitled to I'm sure Mr. Poole has made a request or filed
10 a motion for -- to have that information provided. And Mr.
11 Bulsa is under an obligation to provide it if it is the
12 type of things that are discoverable.

13 Clearly, your conversations and recordings are
14 discoverable and you're entitled to have them.

15 THE DEFENDANT: And also I been asking for all
16 statements given by all witnesses, you know, and I don't
17 have everything from all witnesses from all the statements.
18 I don't have the Greer supplement of any police report that
19 was given. And, and they allege armed robbery case. I
20 don't have that.

21 THE COURT: All right. Do you have witness'
22 statements that have been provided?

23 MR. BULSA: Armed robbery? You should have just got
24 that. I thought he had gotten it. But I notice you may
25 not have it.

1 MR. POOLE: Well.

2 MR. BULSA: There is a Duncan armed robbery that
3 preceded this murder, Your Honor, and Mr. Poole has all the
4 statements in that case.

5 THE DEFENDANT: Your Honor --

6 THE COURT: Is that being tried?

7 MR. BULSA: No, sir. Just the homicide.

8 THE COURT: All right. So the armed robbery case is
9 not being tried?

10 MR. BULSA: Not at this time, no, sir.

11 THE COURT: All right. Well, how are those statements
12 relevant?

13 THE DEFENDANT: They're saying that because of the
14 armed robbery, and the victim in the case is deceased.
15 He's the victim. He was working with the police as an
16 informant. And they are trying to say that he is, was
17 murdered because he was working as an informant for the
18 police. And I'm just trying to move the case here, my
19 point.

20 THE COURT: All right. Well, what does that have to
21 do with armed robbery?

22 THE DEFENDANT: The state alleges that they received
23 information from the Greer store regarding a possible
24 suspect. And I looked at the sus -- description of the
25 suspect, and it's masked men, black males.

1 Now, it should have been a Greer store reporting it,
2 because this was where the alleged report started from.
3 This is where they got -- received a description at. And
4 I'm wondering if two black males was reported in Greer
5 hanging around the store. That's why I asked for the
6 Gler -- Greer report, because that's where they stated that
7 they received information from, check-cashing business in
8 Greer.

9 MR. BULSA: It's a Duncan armed robbery that the
10 victim cooperated with the police and gave a statement
11 against two other individuals, one of those other
12 individuals being Mr. Ackbar. Two weeks later he was
13 murdered.

14 THE COURT: But those -- any statements you have
15 and -- and any supplement alternate reports have been
16 provided to Mr. Poole?

17 MR. BULSA: Yes, sir.

18 MR. POOLE: I'll be glad if Mr. Ackbar wants --

19 THE COURT: You just haven't had a chance to talk to
20 him about that information?

21 MR. POOLE: I was going to give him that information
22 the other day.

23 THE COURT: Okay.

24 THE DEFENDANT: Your Honor, Mr. Poole said I didn't
25 want to talk to him. Mr. Poole asked for information, more

1 information. I done gave Mr. Poole information regarding
2 case, both of these cases, from day one since he took over
3 the case. Nothing has been done with that information.
4 Nothing.

5 He's, he's -- it's very difficult. I'm, I'm, I'm
6 asking for evidence. I asked Mr. Poole to -- I showed him
7 what I know and I, I pointed him in the right direction.
8 Nothing is done.

9 State's ready to go to trial February the 7th. I have
10 no problem with going to trial, Your Honor. I want a
11 trial. But I have a problem going to trial with Mr. Poole
12 because Mr. Poole is not ready for a trial. He don't
13 communicate with me.

14 THE COURT: Okay. Well, I think that is a problem
15 that y'all are not communicating, but you're going to need
16 to do that because the trial is coming up.

17 Here's the situation, Mr. Ackbar. You had a public
18 defender who you have chosen to relieve. And that public
19 defender was relieved and a different one was appointed.

20 We're not going to go just through the whole public
21 defender's office, or even outside of it. Once you have --
22 you know, sometimes, and it's rare occasions, where lawyers
23 in the public defender's office are substituted, but there
24 are those occasions. And apparently that was done in this
25 case. And so you've had that opportunity. But we're not

1 going to go through it any more. There's nothing that's
2 been told to me today that makes me believe that Mr. Poole
3 can't properly represent you in the case.

4 So it's now --

5 THE DEFENDANT: But, Your Honor --

6 THE COURT: It's simply your choice. There are only
7 three choices as I mentioned.

8 One is to go forward with your appointed lawyer.
9 That's Mr. Poole. Two is to hire a lawyer of your choice;
10 or three is to represent yourself, which is your choice,
11 but that's not something that most people would recommend.

12 THE DEFENDANT: Your Honor --

13 THE COURT: Sir?

14 THE DEFENDANT: -- when, when your attorney has facts
15 in front of you and then deliberately lied to the Court,
16 that's a problem, a serious problem.

17 THE COURT: Well, let me ask you this. What was, what
18 was the reason that you asked that Ms. Hodges be relieved?

19 THE DEFENDANT: She wasn't communicating. She --

20 THE COURT: See, that's what I'm saying. I don't
21 think we're going to accomplish anything.

22 I think y'all need to work. Y'all need to work more
23 diligently at communicating with one another and try to get
24 along so that you can work together instead of apart.

25 So I'm going to deny your motion to relieve Mr. Poole

1 unless you want to adopt one of the other two choices that
2 you have.

3 THE DEFENDANT: I just don't want him as my attorney,
4 Your Honor.

5 THE COURT: All right. Are you going to hire someone?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Who is it you're going to
8 hire?

9 THE DEFENDANT: I don't know yet. My mother is
10 working on it now.

11 THE COURT: All right. When are you going to know
12 something about that?

13 THE DEFENDANT: I don't know. More than likely this
14 week, I mean, if I don't --

15 THE COURT: Well, your case is scheduled for February
16 the 7th.

17 THE DEFENDANT: I don't want Mr. Poole representing
18 me, sir.

19 THE COURT: All right. Well, I'm going to leave Mr.
20 Poole in it until such time as you notify us that you have
21 some other lawyer on retainer. Once you hire another
22 lawyer, then we can address it.

23 THE DEFENDANT: Thank you.

24 THE COURT: Okay.

25 MR. BULSA: Will you inform Mr. Ackbar that the trial

1 will continue on?

2 THE COURT: Oh, yeah. Well, it's scheduled for
3 February 7th, so we're going forward. So that's why I'm
4 leaving Mr. Poole in it.

5 But if you can -- if you can make arrangements to hire
6 another lawyer, then he or she will know what to do if they
7 need to have some additional time. But you need to do that
8 quickly, because otherwise you probably won't have a lawyer
9 that'll be willing to undertake your representation. So
10 I'd try to do that as quickly as I could. Okay.

11 END OF PROCEEDINGS JANUARY 27, 2011
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Jury qualification

1 (Proceedings February 7, 2011)

2 THE COURT: All right. Any matters we need to address
3 before the jury panel is brought around?

4 MR. BULSA: Not from the state, Your Honor.

5 MR. POOLE: None here, Your Honor.

6 THE COURT: All right. Bring them around, please.

7 (The following takes place in the presence of the jury
8 venire.)

9 THE COURT: Thank you, ladies and gentlemen, for your
10 patience.

11 We are now ready to begin with jury selection in the
12 first case that's going to require some of your
13 participation. And the title of that case is the State vs.
14 Supreme Ackbar.

15 They allege that Supreme Ackbar did here in
16 Spartanburg County on or about September the 20th of 2009
17 wilfully and with malice aforethought kill one Ricky Kelly,
18 Jr. by stabbing or cutting him numerous times with a fixed
19 blade hunting knife and that Mr. Kelly died as a proximate
20 result of those wounds.

21 Now, as to that charge the defendant, Supreme
22 Ackbar -- and he was formerly known as Ronald Gary -- he
23 has entered a plea of not guilty as to the charge. And
24 that plea of not guilty therefore places upon the state,
25 because they brought the charge against him, to establish

Jury qualification

1 the allegations set forth in this indictment, to establish
2 each of the essential elements of the crime alleged; and
3 therefore the burden is upon the state to establish the
4 defendant's guilt to the satisfaction of 12 jurors beyond a
5 reasonable doubt before a verdict of guilty could be
6 returned. And therefore we're going to be selecting 13 of
7 you. There'll be 12 primary jurors, and one additional
8 juror will serve as an alternate.

9 By way of your participation you're simply going to be
10 called upon to listen to all of the testimony that might be
11 introduced during the trial of the case, and to consider
12 any other evidence that might be introduced during that
13 trial.

14 And at the trial's conclusion you'll be asked to go
15 back and begin deliberations. And you'll weigh all of that
16 evidence in your minds. You'll decide the facts, that is
17 you'll determine what you believe to be the true facts as
18 they relate to these allegations, in other words, what
19 occurred back September the 20th of 2009, if anything, as
20 it relates to this defendant's being accused of having
21 committed the crime of murder with regard to Mr. Kelly.

22 After you decide the facts you'll apply the law that I
23 will have provided you, and you will determine whether or
24 not the defendant has been proven guilty beyond a
25 reasonable doubt. If he has, then your verdict would be

Jury qualification

1 guilty. And if he has not, then your verdict would be not
2 guilty.

3 Before we begin with jury selection I've got some
4 questions that I'm going to be asking you as a group. And
5 the purpose of the questions is for me to determine whether
6 or not there is some reason why any one of you jurors
7 should not be selected to participate in the trial of this
8 particular case.

9 And so during the course of this process if you need
10 to respond to a question because it applies to you or you
11 think of some reason why you should not serve as a juror in
12 the case, in other words, you have a reason why you think
13 you could not be fair to both sides in this case, I'll ask
14 you to provide me with that information.

15 First of all, I'm going to introduce some people to
16 you. And these are participants in the trial of the case.
17 And that would include all of the potential witnesses, as
18 well as the lawyers involved in the case.

19 The reason I'm introducing these people to you is
20 because I need to find out if you have any connection with
21 any of these persons, in other words, are you related by
22 blood or marriage to any of these people, do you work with
23 them, do you go to church with them, do you socialize with
24 them, or do you have any other connection whatsoever, have
25 you met them somewhere, do you know them in any way.

Jury qualification

1 If you do, as that person's name is called out I will
2 ask that you please stand so that we can determine that
3 connection and whether or not it would have any affect upon
4 your ability to be fair in the case.

5 Now, first of all, as I told you, the defendant in
6 this case is Supreme Ackbar. He was formerly known as
7 Ronald Gary.

8 Mr. Ackbar, if you will, please stand and face the
9 jury panel.

10 (Whereupon, the defendant stood.)

11 THE COURT: All right. Thank you. You may be seated.

12 Mr. Ackbar is represented in this matter by Roger
13 Poole who is his lawyer. He'll be assisting him in the
14 trial of the case.

15 The person who is alleged to have been the victim is
16 Ricky Kelly, Jr.

17 Are some of Mr. Kelly's family members present?

18 MR. BULSA: Yes, sir.

19 THE COURT: Let me ask if you will, please stand and
20 face the jury panel so that they may see who you are. And
21 by seeing you they can determine whether or not they knew
22 Ricky Kelly, Jr.

23 (Whereupon, the victim's family members stood.)

24 THE COURT: Okay. Thank you. Be seated.

25 Presenting the case on behalf of the state is Derrick

Jury qualification

1 Bulsa. He is the deputy solicitor for the 7th Judicial
2 Circuit.

3 (Whereupon, Mr. Bulsa stood.)

4 THE COURT: Potential witnesses to be called during
5 the trial include the following individuals. Now,
6 somebody -- all of these people might not be here in the
7 courtroom. And so if they are not and they have a name
8 that is the same as someone you know, you go ahead and
9 stand. And then we'll try to identify who this particular
10 person is better for your benefit. And we'll decide --
11 we'll determine if it's the same person you know, or
12 perhaps it's someone different.

13 But the following persons are potential witnesses:
14 Lindsey Bridges, Bernadette Brown, Kendra Burnside,
15 Octavious Burnside, Danny Lee Burnside, Freddie Davis,
16 Olivia Kearse, S.K. , Travis Miller, Marcus
17 Wright, Patricia Wright.

18 And the following list of persons are employed with
19 the Spartanburg County Sheriff's Department. They include
20 Richie Foster, Jason Hilton, David Hogsed, Nick Hullinger,
21 Anita Mullinax, Hugh Murphy, Dan Piggins, Ted Saar, Chad
22 Springer, Robert Talanges, David Taylor, Lorin Williams and
23 Allen Wood.

24 Also, we have Jasper Humbert who was formerly employed
25 with the state law enforcement division. We have Mike

Jury qualification

1 Jones who is employed at the Spartanburg County Detention
2 Facility, John David Wren, a pathologist with the
3 Spartanburg Regional Medical Center, and Amy Stephens, also
4 with the state law enforcement division.

5 Now, is any member of the jury panel connected in any
6 way with any of those persons who have been identified for
7 your benefit? That includes all of the potential
8 witnesses. That includes the defendant, as well as any
9 member of his family. That includes the person alleged to
10 be the victim, as well as any members of his family. That
11 includes each of the lawyers involved in the case.

12 And I also need to know if any member of the panel,
13 jury panel, knows anyone else who is employed in the 7th
14 Judicial Circuit Solicitor's Office and/or the 7th Judicial
15 Circuit Public Defender's Office. So if you know of any of
16 those persons I would ask that you please stand.

17 Okay. I've got several jurors standing, so I will
18 start to my right. I'll work my way back on the right
19 side, and then I'll jump the aisle and start on the front
20 row and work my way back.

21 So if you will give me your name and your juror
22 number, please, ma'am, and tell me how that question
23 relates to you.

24 JUROR NO. 26: Sherry Chapman, Juror 26. And I'm
25 close friends of Mr. Bulsa's brother.

Jury qualification

1 THE COURT: Okay. And would that have any bearing
2 whatsoever upon your decision in this case?

3 JUROR NO. 26: No, sir.

4 THE COURT: Thank you. You may be seated.

5 Yes, ma'am.

6 JUROR NO. 89: My name is Karen McClelland. I'm No.
7 89. I knew Ricky.

8 THE COURT: You knew Ricky Kelly?

9 JUROR NO. 89: Yeah.

10 THE COURT: And would that have any bearing upon your
11 ability to be fair and impartial in this particular case?

12 JUROR NO. 89: I'd rather not be on it.

13 THE COURT: All right. Do you think it might affect
14 your judgment?

15 JUROR NO. 89: Yes.

16 THE COURT: Okay. All right. Juror 89 is excused.

17 But don't leave yet.

18 All right. Across the aisle, I'll start with you,
19 ma'am.

20 JUROR NO. 102: 102. And my daughter works in the
21 solicitor's office.

22 THE COURT: And what's her name?

23 JUROR NO. 102: Stephanie Daniels.

24 THE COURT: And would that have any bearing upon your
25 decision in this case?

Jury qualification

1 JUROR NO. 102: No.

2 THE COURT: Thank you. You may be seated.

3 Yes, ma'am.

4 JUROR NO. 62: Yes. Donna Godwin, 62. Allen Wood was
5 a former neighbor of mine.

6 THE COURT: Would that have any bearing upon your
7 decision in the case?

8 JUROR NO. 62: No, sir.

9 THE COURT: Thank you. You may be seated.

10 Yes, ma'am.

11 JUROR NO. 95: Juror 95. Allen Wood is a neighbor.

12 THE COURT: And would that have any bearing upon your
13 decision?

14 JUROR NO. 95: It would not.

15 THE COURT: Thank you. Be seated.

16 Yes, sir.

17 JUROR NO. 34: Buddie Cooper, No. 34. I know a couple
18 of guys that works with the solicitor's office.

19 THE COURT: And who are they?

20 JUROR NO. 34: Tim Tucker and Danny Shields.

21 THE COURT: And would either of those connections have
22 any bearing upon your decision in the case?

23 JUROR NO. 34: No.

24 THE COURT: Thank you. You may be seated.

25 Next row, yes, ma'am.

Jury qualification

1 JUROR NO. 59: Leslie Garber, No. 59.

2 THE COURT: Fifty-nine?

3 JUROR NO. 59: Fifty-nine.

4 THE COURT: Okay.

5 JUROR NO. 59: Mr. Bulsa and I go to the same church.

6 THE COURT: Would that have any bearing upon your
7 decision?

8 JUROR NO. 69: No.

9 THE COURT: Thank you. Be seated.

10 Last row.

11 JUROR NO. 96: James Miller, No. 96.

12 THE COURT: Okay.

13 JUROR NO. 96: I know of a Travis Miller.

14 THE COURT: You know of a Travis Miller?

15 JUROR NO. 96: Yes.

16 THE COURT: And, Mr. Bulsa, who is Travis Miller?

17 MR. BULSA: He was a young man who was at the scene
18 who lives -- his address in a minute, Your Honor.

19 THE COURT: Does he live near or on

20 ?

21 MR. BULSA: He lives nearby, close enough to walk to
22 it.

23 THE COURT: He lives in a neighborhood near
24 which is off of , which is close to the
25 Wellford community. Is that the same one you know?

Jury qualification

1 JUROR NO. 96: It doesn't sound familiar.

2 THE COURT: Okay. In the event that it were the same
3 person would it have any bearing upon your decision in this
4 case?

5 JUROR NO. 96: No, it wouldn't.

6 THE COURT: Okay. Thank you. Be seated.

7 All right. Yes, sir.

8 JUROR NO. 76: Paul Hughes, No. 76. I'm a director at
9 the Spartanburg County Alternative School. Some of the
10 witnesses that you have mentioned were students or are
11 students of mine with family members there now.

12 THE COURT: And would any of those connections have
13 any bearing upon your decision in the case?

14 JUROR NO. 76: Could possibly.

15 THE COURT: Do you think there's a reasonable
16 probability that it could?

17 JUROR NO. 76: Yes, sir.

18 THE COURT: All right. We'll excuse you from service
19 in the case. But don't leave yet.

20 JUROR NO. 76: Yes, sir.

21 THE COURT: All right. And finally you, sir.

22 JUROR NO. 97: Jeremy Miller, Juror 97. And my
23 cousin, Alexandra Lyles, works for the D.A.R. She's a
24 lawyer.

25 THE COURT: Okay. And would that have any bearing

Jury qualification

1 upon your decision in this case?

2 JUROR NO. 97: No.

3 THE COURT: Okay. Thank you. You may be seated.

4 Anyone else know any person who's been identified?

5 Yes, sir.

6 JUROR NO. 165: You said Marcus Miller, I
7 went to school with a Marcus Miller that lived over in that
8 area that --

9 THE COURT: Well, this is Marcus Wright. There was a
10 Travis Miller.

11 JUROR NO. 165: No.

12 THE COURT: There's a Marcus Wright.

13 JUROR NO. 165: Okay. Never mind.

14 THE COURT: All right. What was your number?

15 JUROR NO. 165: 165, Steven West.

16 THE COURT: All right. Thank you.

17 Anyone else need to respond to that question?

18 (No response.)

19 THE COURT: All right. This is an event which the
20 states alleges occurred back on or about September the
21 20th of 2009, wherein the state claims that this defendant,
22 Supreme Ackbar, formerly known as Ronald Gary, did kill
23 Ricky Kelly, Jr.

24 The event is alleged to have occurred at or near a
25 location on here in Spartanburg County.

Jury qualification

1 is a road off of the which is
2 located over near the Wellford community off of .

3 Is there any member of the jury panel who believes
4 that you might have heard, seen, read or been exposed to
5 any type of information that relates to this particular
6 case? In other words, have you heard anything about the
7 case from any person or any other source -- media or
8 otherwise? If so, please stand.

9 (No response.)

10 THE COURT: Is there anything about the nature of the
11 case itself, that is what is alleged against the
12 defendant -- is there anything about the nature of the case
13 itself that would prevent any juror from being able to be
14 fair and impartial if selected in the case? If so, please
15 stand.

16 (No response.)

17 THE COURT: Has any member of the jury panel or any
18 member of your immediate family ever been the victim of a
19 crime that might be classified, characterized or described
20 as a violent crime?

21 Now, first of all, let me say that when I refer to you
22 or an immediate family member, let's define an immediate
23 family member as a parent, a spouse, a child or a
24 sibling -- a parent, spouse, child or sibling.

25 And we'll include in those crimes that might be

Jury qualification

1 described as violent the crimes of murder, manslaughter,
2 assault and battery with intent to kill, criminal domestic
3 violence of a high and aggravated nature, burglary in the
4 first degree, criminal sexual conduct, armed robbery or
5 common-law robbery or any other similar types of offenses.

6 I need to know if you or some member of your immediate
7 family as I defined that term for you has ever been the
8 victim of those types of crimes. If so, please stand.

9 All right. Is everybody standing that needs to
10 respond to that question?

11 All right. Now, I've got six standing. And I'm going
12 to ask you about it. But if it involves a matter that you
13 prefer not to disclose to the audience, feel free to step
14 down here and I'll discuss it with you privately.
15 Otherwise, you can just tell me your response to the
16 question where you are standing. But if you prefer to step
17 down here, feel free to do so.

18 And I'll start with you, ma'am, if you'll give me your
19 name and your juror number, please.

20 JUROR NO. 105: Naomi Jackson, 105.

21 THE COURT: Okay.

22 JUROR NO. 105: I was robbed at gunpoint.

23 THE COURT: All right. And how long ago was that?

24 JUROR NO. 105: Three years.

25 THE COURT: And was somebody charged with that?

Jury qualification

1 JUROR NO. 105: No.

2 THE COURT: All right. And is there anything about
3 that particular experience that would have any impact upon
4 your decision in this case?

5 JUROR NO. 105: Yes.

6 THE COURT: All right. Then we'll excuse you from
7 service in the trial of this case.

8 That's Juror 105.

9 But don't leave yet.

10 All right. Next row. Yes, ma'am.

11 JUROR NO. 117: My --

12 THE COURT: Tell me your number and name, please.

13 JUROR NO. 117: Edith Norman, 117.

14 THE COURT: Okay.

15 JUROR NO. 117: My son. He was convicted of murder.

16 THE COURT: And was that here in Spartanburg?

17 JUROR NO. 117: Yes.

18 THE COURT: And how long ago, about how long?

19 JUROR NO. 117: About 12 years.

20 THE COURT: And would that fact have any bearing upon
21 your decision in this case?

22 JUROR NO. 117: No.

23 THE COURT: All right. Thank you. You may be seated.
24 Yes, sir.

25 JUROR NO. 173: Calvin Wright, 173. My son. He had a

Jury qualification

1 broken house, burglary.

2 THE COURT: And how long ago was that?

3 JUROR NO. 173: About a year and a half ago.

4 THE COURT: Was it here in Spartanburg?

5 JUROR NO. 173: Yes.

6 THE COURT: And is there anything about that fact that
7 would have any bearing upon your decision in this case?

8 JUROR NO. 173: No, sir.

9 THE COURT: Okay. Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 161: My name is Alton Waters, Juror No.

12 161. My sister was robbed at gunpoint.

13 THE COURT: How long ago?

14 JUROR NO. 161: Four years ago.

15 THE COURT: Was it here in Spartanburg?

16 JUROR NO. 161: Yes, sir.

17 THE COURT: Was somebody charged with it?

18 JUROR NO. 161: Yes, sir.

19 THE COURT: Is the case pending or has it been
20 disposed of?

21 JUROR NO. 161: It's been handled.

22 THE COURT: All right. And is there anything about
23 that experience that would affect your judgment in this
24 case?

25 JUROR NO. 161: No, sir.

Jury qualification

1 THE COURT: All right. Thank you. Be seated.

2 Yes, sir.

3 JUROR NO. 164: Mitchell West, 164. About 22 years
4 ago my dad was shot and killed in a robbery.

5 THE COURT: And was that here in Spartanburg?

6 JUROR NO. 164: It was Laurens County.

7 THE COURT: And was someone charged and convicted of
8 that offense?

9 JUROR NO. 164: Yes, sir.

10 THE COURT: And would that experience have any bearing
11 upon your decision in this case?

12 JUROR NO. 164: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 165: Steven West, 165. I was robbed at
16 gunpoint at my place of business, place of employment,
17 about eight years ago.

18 THE COURT: And was someone charged with it?

19 JUROR NO. 165: No, sir.

20 THE COURT: Is there anything about that experience
21 that would affect your judgment in this case?

22 JUROR NO. 165: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 49: I'm Juror 49, Wanda Dowdle. My sons

Jury qualification

1 were involved with domestic violence.

2 THE COURT: And would any of those facts have any
3 bearing upon your decision in this case?

4 JUROR NO. 49: No, sir.

5 THE COURT: Thank you, ma'am. You may be seated.

6 Has any member of the jury panel ever been called to
7 testify as a witness in a criminal case, whether it be that
8 you were called on behalf of the state or called on behalf
9 of a defendant? Were you ever called to testify in the
10 trial of a criminal case? If so, please stand.

11 (No response.)

12 THE COURT: Have you or any members of your immediate
13 family as I've previously defined that term for you, have
14 you or any members of your immediate family ever been
15 employed as a law enforcement officer now or previously --
16 ever been employed as a law enforcement officer?

17 That includes any person employed by a sheriff's
18 department, a city, town or municipal law enforcement
19 agency, a detention facility, the department of
20 corrections, probation and parole, state law enforcement
21 division, F.B.I., any type of law enforcement officer. And
22 that includes both civilian as well as military policemen.
23 Have you or an immediate family member ever been employed
24 as a law enforcement officer? If so, please stand.

25 All right. Now, ma'am, you're 105?

Jury qualification

1 JUROR NO. 105: Yes, sir.

2 THE COURT: All right. You've already been excused
3 from service in the case, so you won't need to answer any
4 further questions. Okay.

5 JUROR NO. 105: Okay.

6 THE COURT: Thank you though. I did need that
7 information.

8 All right. Next row.

9 JUROR NO. 4: Steve Anthony, Juror No. 4. And I was a
10 major for military operations in Iraq with the military
11 police in 2005.

12 THE COURT: Okay. Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 7: Larry Chiles, Juror 27. My father was a
15 Greenville city police officer for 15 years.

16 THE COURT: All right. Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 148: Melissa Swink, Juror No. 148. My
19 grandfather was a sheriff.

20 THE COURT: All right. Thank you. And where was he a
21 sheriff?

22 JUROR NO. 148: Spartanburg County.

23 THE COURT: Okay. Thank you, ma'am.

24 Yes, sir.

25 JUROR NO. 77: Aaron Hurst, Juror 77. I worked at

Jury qualification

1 Dutchman Correctional Facility a couple of years back.

2 THE COURT: Okay. Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 49: Juror 49, Wanda Dowdle. My son was
5 previously employed with the Spartanburg Detention Center.

6 THE COURT: But he's no longer now?

7 JUROR NO. 49: No.

8 THE COURT: He's not there. Okay. Thank you.

9 Yes, ma'am.

10 JUROR NO. 95: Juror 95. My father was a sergeant of
11 police in a suburb of Pittsburgh 21 years. He's deceased.

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

13 Next row.

14 JUROR NO. 82: Paul Licurs, Juror 82. Son in the
15 detention center.

16 THE COURT: All right. Thank you. Be seated.

17 Yes, sir.

18 JUROR NO. 39: Juror 39, Justin Davis. My father and
19 brother both work for the department of corrections.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 48: Angela Dowdel, No. 48. My husband was
23 a former Spartanburg County detention officer.

24 THE COURT: All right. Thank you. Be seated.

25 Sir?

Jury qualification

1 MR. POOLE: What was this juror -- but what was the
2 number of the previous juror?

3 THE COURT: Well, starting back, 48 was the last one,
4 39 was the one before that, 82 before that.

5 MR. POOLE: Thank you.

6 THE COURT: Okay. Anyone else need to respond to that
7 question?

8 (No response.)

9 THE COURT: All right. Does any member of the jury
10 panel know of any reason whatsoever why you believe you
11 could not be fair and impartial if selected to serve as a
12 juror in this particular case? If you have any reason
13 whatsoever, whether I've asked you about it or not -- do
14 you know of any reason why you could not be fair and
15 impartial if called upon to serve as a juror in this case?
16 If so, please stand.

17 (No response.)

18 THE COURT: Any other questions requested by the
19 state?

20 MR. BULSA: May we approach?

21 THE COURT: Yes, sir.

22 (Bench conference held off the record.)

23 THE COURT: Let me ask Juror No. 117. Let me ask you
24 to step down here, please, ma'am. You gave us some
25 information. I'm not going to require that you disclose it

Jury qualification

1 in front of the audience, so I'll just talk to you down
2 here.

3 (Bench conference held off the record with Juror No.
4 117 and counsel.)

5 THE COURT: All right. Anyone know of any reason why
6 you cannot be fair and impartial?

7 (No response.)

8 THE COURT: All right. Any other questions requested
9 by the defense?

10 MR. POOLE: No, sir.

11 THE COURT: All right. Draw us a jury, please, ma'am.

12 As your names are called you're going to be asked to
13 come forward. If you're closest to the wall you can just
14 simply come around where the desks are where the lawyers
15 are seated and just stand.

16 Take a position out here in the middle of the room in
17 front of me. The bailiff will show you when he comes up.
18 If you're towards the center aisle, just come up the center
19 aisle where the desks are and take about two steps towards
20 me.

21 Turn and face your fellow jurors. Each side will have
22 an opportunity to have you excused from service in the case
23 or may agree to have you seated for service in the case.

24 If either side asks that you be excused, simply go
25 back and have a seat where you are now. If both agree to

Jury qualification

1 have you seated for service in the case you'll be having a
2 seat in the jury box to your right and to my left.

3 So if you'll simply come forward as your name is
4 called you'll be informed as to whether you are to be
5 excused or seated for service.

6 THE CLERK: Juror No. 165, Steven West.

7 What say the state?

8 MR. BULSA: Please excuse the juror in this case.

9 THE CLERK: Juror No. 148, Melissa Swink.

10 What say the state?

11 MR. BULSA: Please present the juror.

12 THE CLERK: What say the defense?

13 MR. POOLE: Please excuse Ms. Swink.

14 THE CLERK: Juror No. 157, Melanie Vick.

15 What say the state?

16 MR. BULSA: Please present the juror.

17 THE CLERK: What say the defense?

18 MR. POOLE: Please excuse Ms. Vick from this case.

19 THE CLERK: Juror No. 97, Jeremy Miller.

20 What say the state?

21 MR. BULSA: Please present this juror.

22 THE CLERK: What say the defense?

23 MR. POOLE: Please seat Mr. Miller.

24 THE CLERK: Juror No. 42, Kathy DeShields.

25 What say the state?

Jury qualification

1 MR. BULSA: Please present this juror.
2 THE CLERK: What say the defense?
3 MR. POOLE: Please seat the juror.
4 THE CLERK: Juror No. 80, James Kelley.
5 What say the state?
6 MR. BULSA: Please present the juror.
7 THE CLERK: What say the defense?
8 MR. POOLE: Please seat Mr. Kelley.
9 THE CLERK: Juror No. 59, Leslie Garber.
10 What say the state?
11 MR. BULSA: Please present the juror.
12 THE CLERK: What say the defense?
13 MR. POOLE: Please excuse Ms. Garber.
14 THE CLERK: Juror No. 95, Cecilia Mervosh.
15 What say the state?
16 MR. BULSA: Please present the juror.
17 THE CLERK: What say the defense?
18 MR. POOLE: Please excuse the juror.
19 THE CLERK: Juror No. 34, Buddie Cooper.
20 What say the state?
21 MR. BULSA: Please present the juror.
22 THE CLERK: What say the defense?
23 MR. POOLE: Please excuse Mr. Cooper.
24 THE CLERK: Juror No. 16, Jeffrey Brewington.
25 What say the state?

Jury qualification

1 MR. BULSA: Please present the juror.
2 THE CLERK: What say the defense?
3 MR. POOLE: Please seat the juror.
4 THE CLERK: Juror No. 45, Frances Dilworth.
5 What say the state?
6 MR. BULSA: Please present the juror.
7 THE CLERK: What say the defense?
8 MR. POOLE: Please seat the juror.
9 THE CLERK: Juror No. 57, Ernest Fowler.
10 What say the state?
11 MR. BULSA: Please present the juror.
12 THE CLERK: What say the defense?
13 MR. POOLE: Please excuse the juror.
14 THE CLERK: Juror No. 19, Frankie Brown.
15 What say the state?
16 MR. BULSA: Please present the juror.
17 THE CLERK: What say the defense?
18 MR. POOLE: Please seat the juror.
19 THE CLERK: Juror No. 104, Raymundo Montalvo.
20 What say the state?
21 MR. BULSA: Please excuse the juror in this case.
22 THE CLERK: Juror 119, Richard Osman.
23 What say the state?
24 MR. BULSA: Please present the juror.
25 THE CLERK: What say the defense?

Jury qualification

1 MR. POOLE: Please seat the juror.
2 THE CLERK: Juror No. 128, Karley Roach.
3 What say the state?
4 MR. BULSA: Please excuse the juror in this case.
5 THE CLERK: Juror No. 56, Robert Faulks.
6 What say the state?
7 MR. BULSA: Please present the juror.
8 THE CLERK: What say the defense?
9 MR. POOLE: Please excuse the juror.
10 THE CLERK: Juror No. 116, Nancy Nix.
11 What say the state?
12 MR. BULSA: Please present the juror.
13 THE CLERK: What say the defense?
14 MR. POOLE: Please seat Ms. Nix.
15 THE CLERK: Juror No. 139, Kasey Shippy.
16 What say the state?
17 MR. BULSA: Please present the juror.
18 THE CLERK: What say the defense?
19 MR. POOLE: Please seat Ms. Shippy.
20 THE CLERK: Juror No. 138, Linda Shehan.
21 What say the state?
22 MR. BULSA: Please present the juror.
23 THE CLERK: What say the defense?
24 MR. POOLE: Please seat the juror.
25 THE CLERK: Juror No. 4, Steve Anthony.

Jury qualification

1 What say the state?

2 MR. BULSA: Please present the juror.

3 THE CLERK: What say the defense?

4 MR. POOLE: Please excuse the juror.

5 THE CLERK: Juror No. 12, Joseph Blythe.

6 What say the state?

7 MR. BULSA: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. POOLE: Please seat the juror.

10 THE CLERK: Juror No. 110, James Moryl.

11 What say the state?

12 MR. BULSA: Please present the juror.

13 THE CLERK: What say the defense?

14 MR. POOLE: Please seat the juror.

15 THE COURT: All right. This will be for the

16 alternate.

17 THE CLERK: Juror No. 81, Virginia Lawing.

18 What say the state?

19 MR. BULSA: Please present the juror.

20 THE CLERK: What say the defense?

21 MR. POOLE: Please seat the juror.

22 (Whereupon, a jury was impaneled.)

23 THE COURT: All right. Those who have been selected,

24 I'll ask you to please go with a bailiff to a jury room.

25 And I will bring you back in just a few minutes to excuse

Jury qualification

1 you for lunch.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed regarding jury selection by the state?

6 MR. BULSA: No, sir.

7 THE COURT: By the defendant?

8 MR. POOLE: No, Your Honor.

9 (Whereupon, the remaining members of the jury venire
10 were excused.)

11 THE COURT: Bring the jury in, please, sir.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Ladies and gentlemen, as I indicated,
15 we're going to excuse you now for lunch. We will resume
16 with the beginning of the trial at 2:45, at 2:45 this
17 afternoon.

18 As you leave let me caution you that from now until
19 you are instructed to begin jury deliberations you are not
20 to discuss this case in any fashion whatsoever with any
21 person whatsoever. That includes your fellow jurors.

22 You're only permitted to discuss the case with your
23 fellow jurors when you are involved in jury deliberations.
24 And I'll tell you when that time is to begin.

25 So in the meantime don't discuss the case at all with

Jury qualification

1 any person whatsoever. That includes family members.
2 Because your decision in this case has to be based solely
3 upon what you see and hear during the trial of the case.

4 You can't permit yourselves to be influenced by any
5 outside consideration or extraneous information, and that's
6 why you can't have discussions with anyone about the case
7 and only with your fellow jurors when you're involved in
8 jury deliberations.

9 It's also important that you not permit yourselves to
10 be exposed in any type of media coverage that might relate
11 to the trial. I don't know if there'll be any, but,
12 nevertheless, if you were to see something come across the
13 television or hear something on the radio or an article
14 appear in the newspaper about the case, avoid that
15 exposure. Turn it off, put it down, don't read it, don't
16 listen to it, don't watch it.

17 Again, you've got to base your decision upon the
18 evidence presented during the trial and not what somebody
19 else thinks they might have seen or heard during the trial,
20 because that might influence your decision and it might
21 even be wrong information. So no discussions, no exposure
22 to any type of media coverage.

23 And also you're never permitted to conduct your own
24 research or do our own investigation into any issue that
25 might arise during the trial. As I say, you've got to base

1 your decision upon what's presented. You can't supplement
2 that information by conducting outside research or doing
3 your own investigation into any issue. So no discussions,
4 no investigation, no media exposure.

5 Do have a good lunch, and please report to your jury
6 room at 2:45 this afternoon, 2:45. And you'll be reporting
7 to that jury room that you have just been introduced to.
8 So if you're not sure how to get back to that room discuss
9 it with the bailiff. They'll assist you with those
10 directions.

11 Have a good lunch. We'll see you at 2:45.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Let me know when they are gone, please,
15 sir.

16 (Pause.)

17 THE COURT: All right. Court is in recess until 2:45.

18 (Whereupon, a recess was taken.)

19 (Photographs marked State's Exhibits 1 through 8 for
20 Identification.)

21 THE COURT: All right. Any matters that need to be
22 addressed before the jury is brought in?

23 MR. BULSA: Your Honor, I've shown some photographs to
24 the defense.

25 He's agreed to a portion of them. There are several

1 that he is objecting to. I just want to take those up as
2 we get into them during the trial, but I don't believe
3 there's anything else we need to address.

4 We did have an in-chambers conference. The state is
5 not going to go into a motive, evidence that we have at
6 this time, unless we feel some reason to during the course
7 of the trial. We have sort of whittled down how we're
8 going to present this case based on the conference.

9 THE COURT: Okay. The photographs that have been
10 introduced -- are the ones that there's no objection to
11 already been marked?

12 MR. BULSA: Yes, sir. State's 1 through 8.

13 THE COURT: Pardon me?

14 MR. BULSA: State's 1 through 8.

15 THE COURT: One through eight are not objected to?

16 MR. POOLE: That's correct, Your Honor.

17 (Photographs marked State's Exhibits 1 through 8.)

18 THE COURT: Okay. Anything else?

19 MR. BULSA: Not from the state.

20 MR. POOLE: Nothing at this time, Your Honor.

21 THE COURT: Okay. All right. Bring the jury in, and
22 ask Mr. Osman -- Mr. Osman -- to take the foreperson's
23 seat.

24 (The following takes place in the presence of the
25 jury.)

1 THE COURT: Good afternoon, ladies and gentlemen.

2 We are ready to begin with the trial of the case for
3 which each of you have been selected.

4 Mr. Osman, I'm going to ask you to serve as the
5 foreperson of the jury. As the foreperson you're going to
6 have three specific duties that none of the other jurors
7 will have.

8 No. 1, you'll be asked to serve as the spokesperson
9 for the jury. And so if during trial of this case
10 something arises that needs to be brought to my attention,
11 that is you or one of your fellow jurors has some
12 difficulty or problem or question, you let the bailiff
13 know. He'll let me know. And I'll address any difficulty
14 or answer any question that you may have.

15 Secondly, you'll be called upon to preside over jury
16 deliberations when that time comes. That of course will
17 not be until the end of the trial after all of the evidence
18 has been received and I've instructed you on the law that's
19 applicable in this case.

20 But when the time does come for jury deliberations it
21 will be you who will preside over that process in the jury
22 room simply to ensure that those deliberations are carried
23 out in some orderly fashion.

24 And, thirdly, it will be you who will actually write
25 the verdict or the decision of the jury. And you'll do

1 that on a verdict form that I'll provide you at the trial's
2 conclusion on which you will indicate the jury's unanimous
3 decision in the case.

4 Now, the foreperson has those specific duties that
5 I've just indicated. That does not however mean that the
6 foreperson is any more important than any of you other
7 jurors, and that's because the decision of the jury is the
8 unanimous consensus opinion of all 12 jurors. And
9 therefore each of you will have an equal say and an equal
10 vote in what the ultimate decision in this case will be.

11 Someone simply has to be delegated those
12 responsibilities that I have just indicated, and I have
13 delegated those to Mr. Osman in appointing him as the
14 foreperson. But all of you jurors are equally important so
15 far as the ultimate decision in this case is concerned,
16 because, as I've stated, the verdict has to be unanimous.
17 All 12 of you must be in agreement.

18 Now, Ms. Lawing, you have been selected as an
19 alternate juror. And the function of an alternate juror is
20 to take the place of one of the original 12 jurors if
21 during the trial one of these original 12 jurors can no
22 longer continue to serve.

23 So if an emergency or an illness or some other
24 circumstance prevents one of the original 12 from
25 continuing to serve as a juror, it is you who is called

Jury sworn

1 upon to take that person's place. In that event you become
2 the 12th juror. In that event you participate throughout
3 the course of the trial including the jury deliberations at
4 the trial's conclusion.

5 If however when the time does come for jury
6 deliberations the original 12 jurors are able to
7 participate in that process, then your service would end
8 and you would not participate any further. And that's
9 because the verdict of the jury is the unanimous consensus
10 opinion of 12 jurors. But no more than 12 are permitted to
11 engage in that deliberation process.

12 But it is important that you pay just as careful
13 attention as we ask of all of the jurors in this case
14 because it does occur from time to time for one reason or
15 another one of these original 12 may be unable to continue.
16 In that event you would be called upon to become the 12th.

17 So we do appreciate your participation as an alternate
18 juror, just as we appreciate the participation of each of
19 you jurors who have been selected for the purpose of
20 deciding the verdict in this particular case.

21 You may swear the panel.

22 (Whereupon, the jury was duly sworn.)

23 THE COURT: Ladies and gentlemen, as you know, you
24 have been selected to decide the verdict in the case of the
25 State vs. Supreme Ackbar.

1 As you also know, Mr. Ackbar has been accused by the
2 state of having committed the crime of murder. And the
3 allegations alleging that particular offense against
4 Mr. Ackbar are contained in a document called an
5 indictment.

6 The indictment is that document that I referred to and
7 read from prior to your selection so that you'd understand
8 what the charge is about and who the person is that is
9 charged.

10 But the indictment itself is not evidence in this
11 case, and it's not proof of anything. It does not
12 establish anything. It is simply the means by which any
13 person who is accused of a crime is brought into this court
14 and is formally put on notice as to what crime the state
15 claims they committed.

16 And of course the burden is upon the state to
17 establish the defendant's guilt to the satisfaction of you
18 12 jurors beyond a reasonable doubt.

19 Now, in this case, as you know, the state has accused
20 the defendant, Supreme Ackbar, with having committed the
21 crime of murder. The state alleges that that offense
22 occurred back on or about September the 20th of 2009.

23 And they allege by way of this indictment that the
24 defendant did wilfully and with malice aforethought kill
25 one Ricky Kelly, Jr. by stabbing him with a knife and that

1 he died as a proximate result of wounds received during
2 that stabbing.

3 Now, as to those allegations and as to that charge the
4 defendant, as I've told you, has entered a plea of not
5 guilty. And that plea of not guilty has placed upon the
6 state the burden of proving the allegations that they have
7 set forth in the indictment, the burden of proving each of
8 the essential elements of the crime of murder against the
9 defendant; and therefore the burden is upon the state to
10 establish his guilt to the satisfaction of you 12 jurors
11 beyond a reasonable doubt before a verdict of guilty could
12 be returned.

13 Every person accused of a crime, and it does not
14 matter how serious the offense might be for which that
15 person stands charged, any person accused of a crime is
16 always presumed innocent of the charge.

17 That presumption of innocence remains with any
18 defendant, as it does with this defendant, from the time
19 that he is placed under arrest and throughout the course of
20 the criminal process and even throughout the course of the
21 actual trial in the case.

22 That presumption of innocence will be with Mr. Ackbar
23 even as you go back into your jury room to begin with your
24 deliberations at this trial's conclusion. And that
25 presumption of innocence will be with him in that jury

1 room, and it'll be with him forever unless you 12 jurors
2 determine that he's no longer entitled to that presumption
3 of innocence.

4 In other words, after you've carefully considered all
5 of the evidence in the case, and from that evidence you've
6 determined what you believe to be the true facts as they
7 relate to these allegations, and upon deciding those facts
8 you apply the law that I will have provided you, if you 12
9 jurors unanimously determine that his guilt has been proven
10 beyond a reasonable doubt, then he would no longer be
11 entitled to that presumption of innocence. But it's only
12 if, unless and until you are satisfied of his guilt beyond
13 a reasonable doubt that the presumption of innocence would
14 no longer be applicable.

15 Now, the way the trial will proceed is that in a
16 moment the lawyers are going to address you in what are
17 called opening statements. There are two occasions in the
18 trial of a case where lawyers are permitted to address the
19 jury, and that is at the beginning of the trial before any
20 evidence has been introduced and then again at the
21 conclusion of the trial after all of the evidence has been
22 received.

23 Keep in mind, as I have just indicated, that the
24 evidence upon which you will base your decision comes in
25 between the opening and the closing statements of the

1 lawyers. And therefore what the lawyers tell you in their
2 statements is not to be considered by you as any evidence
3 upon which you will base your decision. And that's because
4 the lawyers don't know anything about this case of their
5 own personal knowledge or experience, because if they did
6 they would be witnesses and they wouldn't be handling the
7 matter as a lawyer.

8 The lawyers will not take the witness stand. They
9 won't testify under oath. They won't be subject to direct
10 and cross-examination as each witness will be. And so what
11 they tell you is not to be considered by you as evidence.

12 You should listen to what they have to say however
13 because their statements do serve a purpose. The opening
14 statements serve to provide you with a basic understanding
15 as to what this case is about from both the perspective of
16 the state and of the defense so that you'll have some
17 context in which to place the evidence that we will be
18 receiving shortly thereafter.

19 The closing statements occur after all of the evidence
20 has been received. And, again, while those statements are
21 not evidence it does afford the lawyers an opportunity to
22 discuss with you the evidence that you have seen and heard
23 during the trial of the case. And through that discussion
24 each will have an opportunity to try to persuade you or to
25 convince you that that evidence does or does not support a

1 particular decision. And, as I say, it's in between those
2 statements that we actually receive the evidence upon which
3 you will base your decision.

4 The state has the burden of proof because they brought
5 the charge against the defendant, and therefore the state
6 will go forward first in its presentation of evidence
7 because they have the burden of proof.

8 Once the state has concluded in that presentation of
9 evidence a defendant has the same opportunity to testify
10 and present evidence, but understand that a defendant in a
11 criminal case is never under any obligation to take the
12 witness stand and testify or to call any witnesses or to
13 produce any evidence. And that's because the burden is
14 never upon a defendant to prove that he or she is not
15 guilty or to prove he or she is innocent because in some
16 cases that might not even be possible.

17 The burden is always upon the state to establish a
18 defendant's guilt beyond a reasonable doubt. There is no
19 burden upon a defendant to establish anything, and
20 therefore a defendant may not testify in a trial. A
21 defendant may not call witnesses or produce evidence.

22 And should that occur that's not a circumstance or a
23 fact that you may consider in any way in the slightest
24 degree against the defendant. You can't allow that to
25 influence your deliberations or influence your

1 determination as to whether or not a defendant's guilt has
2 been proven beyond a reasonable doubt. You may not
3 consider it in any way, nor may you even discuss it while
4 you are engaged in jury deliberations. But, as I say, a
5 defendant is afforded an opportunity to testify and present
6 evidence if he or she wishes to do so.

7 So after all of the evidence has been received and
8 after you've heard the final summations of the lawyers, I
9 will then instruct you fully on the law that's applicable
10 in a criminal case generally and specifically with respect
11 to the crime of murder in this case, after which you'll be
12 asked to go back and begin with your deliberations.

13 Through that process you will examine all of the
14 evidence in the case. From that evidence you will
15 determine what you believe to be the true facts. Once you
16 decide the facts you'll then apply the law that I will have
17 provided you, and you will arrive at what you determine to
18 be a fair and just decision in the case.

19 It is important that you pay careful attention
20 throughout the course of the trial. And it's important
21 that you give every witness the same degree of attention as
22 they testify. That does not mean of course that you will
23 be giving the same degree of weight to each witness'
24 testimony.

25 One of your prerogatives in the case is to evaluate

1 and assess the credibility of witness testimony. And in
2 that regard you can believe everything that a witness has
3 testified to, or you can choose to believe none of it. You
4 may believe some portion of a particular witness' testimony
5 and reject some other portion of that same witness'
6 testimony.

7 In a given case you could believe one witness as
8 opposed to several, or several as opposed to one. But
9 because you are going to be called upon to evaluate the
10 credibility and the believability of witness testimony it's
11 important that you give every witness the same degree of
12 attention as they testify so that at the trial's conclusion
13 you'll be in a proper position to be able to fairly assess
14 a witness' credibility in light of not just that witness'
15 testimony but in light of all of the testimony and all of
16 the evidence received during the trial of the case.

17 It's also important that you keep an open mind
18 throughout the course of the trial, and that simply means
19 that you are not to begin making up your minds or
20 formulating your opinions as to what you think the ultimate
21 decision in this case ought to be until all of the evidence
22 has been received, until I've instructed you on the law and
23 until you've been asked to go back and to begin with your
24 deliberations at the trial's conclusion. That is the
25 process that is designed for you 12 jurors to arrive at a

1 fair and just decision.

2 So I do want to thank you in advance for your
3 participation, as well as for your careful attention.

4 And I also know that sometimes, you know, after we've
5 had a nice lunch and it's warm in the courtroom and we get
6 to sit down and relax a little bit, we might get a little
7 bit sleepy or eyes might start drooping or we get a
8 little -- we'll doze off a little bit and take a little
9 nap. Some people might even take naps in the afternoon. I
10 don't know.

11 But please understand you have been selected today in
12 this case for a very important purpose, and you're not
13 engaged in your ordinary daily activities. You have been
14 selected for a very special purpose in this case, and that
15 is to determine whether or not a person is guilty of a
16 crime or not.

17 And because you've been selected for that very special
18 purpose it's also extremely important that you be very
19 attentive throughout the course of the trial. And if you
20 get to a point where you think you just can't stay awake or
21 you need -- doze off or you need to get some cold water and
22 you need to get up and walk around, let me know. Just
23 raise your hand. We can always take a break and give you
24 an opportunity to be in a position so that you can fairly
25 and appropriately pay close and careful attention.

Opening statements

1 Okay. So I'll simply trust that if you get into a
2 position where you don't think you can do that you'll let
3 me know and we can make those arrangements.

4 Okay. So again thank for you for your participation.
5 Please give the lawyers your attention now as they give you
6 their opening statements.

7 Mr. Bulsa.

8 MR. BULSA: Thank you, Your Honor.

9 Ladies and gentlemen, on the afternoon of
10 September the 20th of 2009 Ricky Kelly, a 19-year-old young
11 man, was over at visiting some friends of
12 his.

13 Football was on the television. He had brought some
14 chicken wings to share with his friends. He stayed a short
15 while inside and went back outside to his car that he had
16 parked in their driveway and was visiting with a couple of
17 other friends out there when the evidence will show the
18 defendant brutally killed him, cut his throat, cut his
19 face, stabbed him in the chest.

20 Mr. Kelly tried to fend him off. You'll see wounds to
21 his hands and his arms. But he was in no position to
22 really fight because he was sitting in the driver's seat of
23 his car. The car door was open. He had -- he had no
24 reason to suspect anything was going to happen.

25 The defendant fled the scene with another individual

Opening statements

1 by the name of Marcus Wright. Marcus Wright was outside at
2 the time of this killing. He saw what happened yet drove
3 the defendant from the scene. Mr. Wright will come and
4 testify and tell you why he did those things and what he
5 saw.

6 Ricky Kelly was not dead in his car. He was able to
7 get up and stumble and walk to the door of the house of his
8 friends that he was visiting. He fell against the front
9 storm door and died in a crunched-over position.

10 People inside were alerted by a dog barking. They
11 went to the door and saw their friend slumped in that
12 position, and the police were called.

13 There's another young man that you'll hear from
14 shortly by the name of S.K. . . . He's not related
15 to Ricky, but he happened to be inside the truck.

16 He was visiting with the defendant who had come to the
17 scene with his girlfriend. His girlfriend's mother
18 actually lived at this house. So she was there visiting
19 her mother.

20 The defendant stayed in this truck. S.K. . . .
21 had been at the house and was leaving to go home when he
22 saw Mr. Ackbar, a man he knew. He got inside the car or
23 the truck with him and had a conversation.

24 Then the defendant began putting on gloves, pulled out
25 a knife and even invited this young man to participate in

Opening statements

1 this killing. S.K. was smart enough not to do that,
2 but he was mostly afraid for his friend and for himself.
3 He will testify.

4 So, ladies and gentlemen, you're going to hear from
5 eye witnesses to this scene. That is not a whodunit. It's
6 not a why. You don't have to -- we don't have to prove
7 motive. You don't have to decide why. You have to decide
8 whether the evidence proves this man guilty of murder.

9 Murder, ladies and gentlemen, is the unlawful killing
10 of another person with malice aforethought. Well, when the
11 pathologist talks to you about the wounds to his body, you
12 can't get much more malicious than that.

13 I trust that you will pay attention like Judge Cole
14 instructed you to and listen closely to the witnesses. The
15 testimony and the evidence will come from the witness
16 stand. You're to take that and decide the facts of the
17 case.

18 You do not decide the punishment. The judge does
19 that. So don't be concerned about what the end results
20 will be. You decide the facts of the case and whether he's
21 guilty or not.

22 I submit to you that the witnesses you hear from will
23 be family and friends and police officers who investigated
24 this case. And you will be convinced beyond a reasonable
25 doubt that Supreme Ackbar killed Ricky Kelly on

Opening statements

1 September 20th of 2009. Thank you.

2 MR. POOLE: May it please the Court.

3 THE COURT: Mr. Poole.

4 MR. POOLE: Mr. Foreman, ladies and gentlemen, I want
5 to formally introduce myself. I am Roger Poole. I
6 represent Mr. Ackbar in this case. He is the defendant in
7 this case, and he is charged with the charge of murder.

8 I want to thank you for being here. I thank you for
9 taking time to listen to this, to the evidence in this most
10 serious case, for both the state and for Mr. Ackbar.

11 I would like to say also just to reiterate a couple of
12 things that Judge Cole said, is that Mr. Ackbar is presumed
13 innocent up until you decide that the case has proven his
14 guilt beyond a reasonable doubt. And you'll be hearing
15 that term reasonable doubt a lot towards the end of this
16 case. And Judge Cole will explain to you the definition of
17 it.

18 Prior to you being selected you were read a list of
19 almost 30 witnesses that were potential or will be
20 potential witnesses in this case. I doubt if all 30 will
21 be called.

22 About half of those people whose names were mentioned
23 were law enforcement, and probably all law enforcement will
24 not be called and probably all of the lay witnesses that
25 were named will not be called.

Opening statements

1 But as you listen to the evidence that's presented
2 from the witness stand and from exhibits presented for your
3 consideration I want you to bear in mind what will be
4 instructed to you toward the end of the case in the context
5 of when the judge tells you what the law is, and that is
6 the credibility of witnesses.

7 Witnesses who take this witness stand will tell their
8 version of the facts. And sometimes they lay ownership to
9 those facts.

10 And I want you to pay attention to the credibility of
11 certain witnesses in this case. Consider what they could
12 gain or lose as a result of their testimony. There will be
13 certain particular witnesses who will testify, and I'll
14 submit to you there will be inconsistencies. I will submit
15 to you that some witnesses may have a reason for testifying
16 the way that they will do so.

17 But all of that is not at this point. Mr. Ackbar is
18 presumed innocent. All of that aside, he is presumed
19 innocent right up until you walk through that door and
20 close it and begin your deliberations when at that time you
21 will have everything at your disposal. That will be the
22 facts and the law that you will apply to the facts.

23 Thank you. Thank you for your attention, and it's
24 nice to see you. Thank you for your service. Okay.

25 MR. BULSA: The state calls Nick Hullinger.

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 NICHOLAS HULLINGER, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 MR. BULSA: Excuse me, Your Honor. May I ask the jury
5 to move down? We're going to be showing some photographs.

6 THE COURT: Sure. Is the rope taken down?

7 (Pause.)

8 BY MR. BULSA

9 Q All right. Officer, would you please introduce
10 yourself to the jury?

11 A Yes, sir. My name is Nicholas Hullinger.

12 Q Who are you employed with?

13 A I work for the Spartanburg County Sheriff's
14 Department.

15 Q In what capacity?

16 A I work for the uniform patrol division.

17 Q How long have you been an officer?

18 A Seven years.

19 Q And this area where you were called to on
20 September 20th of 2009, is that on _____?

21 A Yes, sir.

22 Q Where is that located in Spartanburg County?

23 A In the Wellford community.

24 Q Okay. So that's -- is it a county road?

25 A It is a county road, yes, sir.

Nicholas Hullinger
Direct examination by Mr. Bulsa

- 1 Q Okay. And is that in your normal patrolling district?
- 2 A Yes. At the time I was a float unit, but, yes, I
- 3 covered that area.
- 4 Q Okay. And did you get a call to go to this address?
- 5 A I did.
- 6 Q About what time?
- 7 A It was 4:41 p.m.
- 8 Q Okay. Do you remember what day of the week it was?
- 9 A I do not.
- 10 Q Okay. Do you remember what the weather was like that
- 11 day?
- 12 A I believe it was cloudy --
- 13 Q Okay.
- 14 A -- that day.
- 15 Q All right. And what kind of call did you get?
- 16 A The call -- I don't remember the actual call, but it
- 17 said that there was a stabbing at that residence.
- 18 Q Okay. And you were the first unit on the scene?
- 19 A I did. I arrived first.
- 20 Q Describe to the jury what you saw as you drove up.
- 21 A As I drove up I saw a green vehicle with the door
- 22 open, and then I also saw two people standing near the
- 23 porch of the trailer, and then I did see a person laying
- 24 against the front door of the trailer.
- 25 Q Okay. When you saw this what did you do?

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 A When I saw that I immediately just called and said I
2 was on scene and that they needed to send additional units.
3 And then I got out of my vehicle and proceeded to speak
4 with the individuals who were there near the porch.

5 Q Okay. And did you then go to the individual that was
6 slumped over?

7 A Yes.

8 Q What did you observe?

9 A I saw that there was a tremendous amount of blood and
10 there was splatter against the home, as well as I saw on
11 his neck there was a large cut on his neck.

12 Q Did he appear deceased to you?

13 A He did appear deceased.

14 Q What did you do at that time?

15 A I actually checked for a pulse on, on his neck, and
16 there was no pulse.

17 Q And then what did you do?

18 A At that time I came off the porch, and I asked the two
19 individuals who were there if there was anybody else in
20 this house. And they stated that there was a female, as
21 well as a young child in the home.

22 At that time other officers were arriving. So myself,
23 along with some other officers, went through the back door
24 of the home and just went through and checked the house to
25 make sure there wasn't anybody else there and then asked

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 the female and the child to come outside with us.

2 Q Did you learn whether the suspect was still on the
3 scene?

4 A At that time I wasn't able to determine that.

5 Q Okay. The two individuals that were near the house,
6 what was their emotional state?

7 A They seemed to be in shock, both of them. It was a
8 male and a female.

9 Q Did you get their names?

10 A I did.

11 Q What are they?

12 A It was Danny Lee Burnside and Kendra M. Burnside.

13 Q Did you determine what connection they had to this
14 residence?

15 A They both lived at that residence.

16 Q And the young lady that was inside, do you know who
17 she was?

18 A I have her name. Her name is Octavious Burnside.

19 Q And she had had a child with her?

20 A Yes, she had a small child with her.

21 Q Did you see anybody else on the scene?

22 A No, not that was related to that, no.

23 Q As the officers cleared the house, what was done then?

24 A After we cleared the residence I came back to the
25 front of the house. All three of those subjects were

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 separated just to kind of different areas in the yard. And
2 then with the crime scene tape I established a crime scene
3 that included the car and the house and the surrounding
4 area.

5 Q What was the purpose of doing that?

6 A To preserve any evidence that might be in that area.

7 Q Why would you separate the individuals?

8 A Because I did not know whether they were involved or
9 had any connection to the actual crime that had taken place
10 and just wanted to keep them separate just to preserve the
11 integrity of any statements that they may make.

12 Q So at that time you did not rule them out as possible
13 suspects?

14 A No. At the time I didn't rule anybody out.

15 Q Did you notice if any of those persons had blood on
16 them?

17 A No, I did not notice. But it was -- with the amount
18 of blood that I did see it would have been evident if
19 someone had blood on them.

20 Q Okay. Were you able to determine where the individual
21 at the house had come from?

22 A Yeah. The vehicle that had the door open -- as I
23 approached the house there was a trail of blood that led
24 from the car to the porch of the trailer.

25 Q Approximately how far was that?

Nicholas Hullinger
Direct examination by Mr. Bulsa

- 1 A Maybe 20 yards.
- 2 Q Okay. How long did you stay on the scene?
- 3 A For a few hours, several hours, I believe.
- 4 Q So you were there when the crime scene technicians
- 5 came in?
- 6 A Yes, sir.
- 7 Q You observed, you looked at some photographs earlier,
- 8 have you not?
- 9 A Yes, sir, I have.
- 10 Q I show you State's 1 through 6. Do you recognize
- 11 those photos?
- 12 A Yes, sir.
- 13 Q Do they accurately -- well, one is actually an aerial
- 14 picture, but do the others actually depict what you saw
- 15 that day?
- 16 A Yes, sir.
- 17 Q Make sure you talk up loud when you look at these
- 18 pictures.
- 19 A All right.
- 20 Q If you need to step down, let me know. Here we go.
- 21 This is State's Exhibit No. 1. If you would, orient the
- 22 jury to this location.
- 23 A The road that you see right here, --
- 24 goes out and connects to -- in
- 25 between -- it runs in between and

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 . And runs off of that. The house
2 that we --

3 Q I'm sorry. I'm trying to get this thing to play
4 right. It will shine up underneath on top.

5 MR. BULSA: Your Honor, we have technical
6 difficulties.

7 (Pause.)

8 MR. BULSA: Your Honor, we will take a break. I'm
9 sorry. I thought we had it set up. I apologize.

10 THE COURT: Have the lights on back there, please,
11 sir.

12 (Pause.)

13 MR. BULSA: I'm ready to go.

14 THE COURT: Wait a minute. We've got it fixed.

15 MR. BULSA: Okay. Thank you.

16 BY MR. BULSA

17 Q All right. Now, orient the jury where we are.

18 A This is right here. And, again, as I
19 stated, if you head this way then you'd hit
20 . And the house is right here, and this long driveway
21 is what leads to the house. And that's

22 Q Okay. This is off of a computer system. It's not
23 taken the day in question.

24 A Okay.

25 Q Okay. Now, let's see. State's Exhibit No. 2, what

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 are we seeing?

2 A Here is the vehicle that had the door open, and this
3 is the driveway area. And then here is the porch and the
4 front door -- behind the tree right here -- of the
5 residence.

6 Q Okay. So was the vehicle -- is it positioned in the
7 same way it was when you pulled up?

8 A Yes, sir.

9 Q Would this have been your view as you drove into the
10 driveway?

11 A Yes, sir.

12 Q And where were the individuals you saw near the porch?

13 A They were here and they were standing in the grass
14 area. They were not on the porch. They were just in the
15 grass area here in front of the porch.

16 Q State's Exhibit No. 3. That's just a different
17 perspective with the tree out of the way.

18 A Yeah. This is from the other side of the front of the
19 trailer that -- here you can see the same porch, the steps
20 up, the porch. And here you can see the -- where the body
21 was in the front door.

22 Q What's covering the body?

23 A A white sheet. After I established the crime scene
24 and put the crime scene tape up to delineate that area
25 there began to gather a large crowd out there. And so I

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 retrieved a sheet from my trunk and put it over the body.

2 Q Okay. State's Exhibit No. 4. What view is that?

3 A This is from the side of the house. Here is the side
4 of the porch. The front door would be right here. And
5 then the vehicle that had the door open was right here.

6 Q Were those other vehicles in the driveway, were they
7 there always or did everybody drive up after you?

8 A No, no. These are our -- the police vehicles here.
9 All the vehicles that you see from here forward were
10 present upon my arrival.

11 Q Okay. And you can actually see the crime scene tape
12 that you put up, some of it?

13 A Yeah. There's some -- there's a section of it right
14 there where I went across the driveway and then came out
15 towards that house. There's a house that you pass as you
16 come up a long driveway, and I went along that house and
17 then back all the way, encompassed the whole back area of
18 the home.

19 Q Did, did you go in and look into the car?

20 A Just from the doorway. I didn't go into the car, but
21 I did look into the door, yes.

22 Q State's Exhibit 5. Is that an accurate view of how
23 close you got?

24 A Yes, that would be accurate. I mean, I walked up a
25 little bit closer than where the camera is, but that's

Nicholas Hullinger
Direct examination by Mr. Bulsa

1 accurate.

2 Q And what did you see in the car?

3 A I saw a tremendous amount of blood in the seat that
4 you can see here. And there was blood all along the back
5 of the seat as well and all splattered along the car. And
6 it doesn't pick up here, but there was a lot of blood.
7 There was a whole trail of blood.

8 Q And the trail led where?

9 A The trail led to right to, to the porch of the, of the
10 house there. And then there was a tremendous amount of
11 blood that had been sprayed onto the house as well as if
12 someone was attempting to get into the house but the blood
13 was squirting out.

14 Q And you've testified that you stayed on the scene for
15 a good period of time. What were you doing? Well, did you
16 turn the scene over to anybody?

17 A Yeah. The scene -- I turned the scene over to the
18 investigators who arrived.

19 Q And what did you do while you stayed on the scene?

20 A While I stayed on the scene I just maintained the
21 perimeter -- was maintained. And nobody else entered that
22 area.

23 Q Other than the officer?

24 A Those, yeah, working the scene.

25 Q Okay. Officer, if you would, answer any questions

S.K.

Direct examination by Mr. Bulsa

1 Mr. Poole may have.

2 A Yes, sir.

3 MR. POOLE: No questions of this witness.

4 THE COURT: Okay. You may step down. Thank you.

5 MR. BULSA: Your Honor, we ask he be excused.

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MR. BULSA: The state calls S.K. . . .

9 S.K. . . . , having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BULSA

12 Q S.K. . . . , make sure -- can you slide up a little bit?
13 Don't hit the mike. I want to make sure everybody hears
14 you. Okay. So speak up loud.

15 A Okay. Sorry.

16 Q Introduce yourself to the ladies and gentlemen of the
17 jury.

18 A I'm S.K. . . .

19 Q And how old are you?

20 A Sixteen.

21 Q When is your birthday?

22 A . . .

23 Q Are you in school?

24 A Yes, sir.

25 Q What grade?

S.K. -
Direct examination by Mr. Bulsa

- 1 A Eleventh.
- 2 Q Where do you go to school?
- 3 A Byrnes High.
- 4 Q Where do you live?
- 5 A
- 6 Q Who do you live with?
- 7 A My mother.
- 8 Q Is [redacted] nearby this house?
- 9 A Yes, sir.
- 10 Q About how far?
- 11 A Right down the street.
- 12 Q Okay. Were you living there back in 2009?
- 13 A Yes, sir.
- 14 Q Did you know Ricky Kelly?
- 15 A Yes, sir.
- 16 Q How did you know him?
- 17 A He stayed down the street and he was a very close
- 18 friend.
- 19 Q Okay. He stayed -- do you know what street he lived
- 20 on?
- 21 A I don't know the name of the street, but I know what
- 22 street he stayed on.
- 23 Q Was it close by?
- 24 A Yeah, right on, right on the next road.
- 25 Q So it was within walking distance.

S.K.
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Y'all have the same last name. Were you related?
- 3 A No, sir.
- 4 Q Do you know about how long you knew him?
- 5 A Probably about five years, ever since I been staying
- 6 over there.
- 7 Q Okay. And who, who lived at this house we've got in
- 8 the picture here?
- 9 A D.J. and Ms. Ken and Ta.
- 10 Q Okay. D.J. Is her last name Burnside?
- 11 A Yes, sir.
- 12 Q And is D.J. short for Danny, Jr.?
- 13 A Yes, sir.
- 14 Q Okay. And he stayed with his mother?
- 15 A Yes, sir.
- 16 Q Kendra Burnside. All right. Now, did you go to that
- 17 house often?
- 18 A Yes, sir.
- 19 Q So they were friends of yours.
- 20 A Yes, sir.
- 21 Q Do you remember the day Ricky died?
- 22 A Yes, sir.
- 23 Q Had you been at this house on . . . ?
- 24 A Yes, sir.
- 25 Q And do you remember what was going on?

S.K.
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q What was happening at the house?
- 3 A Well, when I had got there I was -- cause I was at
- 4 D.J. house. And then Ta had took something to the car and
- 5 they -- and looked like she was talking to somebody in the
- 6 back, so.
- 7 Q All right. Let me stop you there. Who is Ta?
- 8 A Shonta, I mean, Octavious.
- 9 Q Octavious. Is she a Burnside too?
- 10 A Yes, sir.
- 11 Q So was she D.J.'s sister?
- 12 A Yes, sir.
- 13 Q So the daughter of Kendra also.
- 14 A Yes, sir.
- 15 Q Did she actually live at this residence?
- 16 A At the time, I don't think so.
- 17 Q Okay. You don't think so, but she was there visiting
- 18 at least.
- 19 A Uh-huh.
- 20 Q And you said she took something to the car. What are
- 21 you talking about?
- 22 A I think it was a basket of clothes.
- 23 Q What was -- what kind of car was it?
- 24 A It was a truck.
- 25 Q A truck. Okay. Look in that picture. Do you see a

S.K.
Direct examination by Mr. Bulsa

1 truck up there?

2 A Yes, sir.

3 Q If you would --

4 A About right there. That's it.

5 Q And that was the last -- okay. That'd be the last
6 vehicle parked. But that's her truck?

7 A Yes, sir.

8 Q Okay. When you said you saw her take something there,
9 where were you when you saw that?

10 A I was standing about like right there, around that
11 area.

12 Q In the front of that house near the porch?

13 A Yes, sir.

14 Q Okay. And what did you do after you saw her take
15 something to the truck?

16 A Then she had -- I think she had came back in the
17 house. And I was about to go home. And I was walking down
18 the driveway. And then I had seen Supreme in the car.

19 Q Okay. And who is Supreme?

20 A Him right there.

21 Q That's the defendant's friend. How do you know him?

22 A Because he was at D.J.-house a couple of times when I
23 was over there.

24 Q Do you know what his relationship is to anybody?

25 A He's -- was Ta's boyfriend.

S.K. ---
Direct examination by Mr. Bulsa

- 1 Q Was Octavius Burnside's boyfriend. Okay. You saw him
2 where?
- 3 A In the truck as I was walking home, as I was walking
4 down the driveway.
- 5 Q Okay. And where was he in the truck?
- 6 A On the back-seat passenger side.
- 7 Q All right. Was anybody else in the truck?
- 8 A Not at the time, no, sir.
- 9 Q What did you do when you saw him?
- 10 A I had went to the truck and was like what's up, man.
11 And he was like what's up. And I had got in the car. And
12 then he was asking did I want to smoke, and I said yeah.
- 13 Q And where did you get in the truck?
- 14 A On the back-seat driver's side.
- 15 Q Okay. So both of you -- let me show you this picture,
16 State's Exhibit 6. Is that the same truck?
- 17 A Yes, sir.
- 18 Q Okay. All right. So that's a 4-door truck. All
19 right. So this is showing the driver's side. So you got
20 in this door that we're looking at on the back?
- 21 A Right here.
- 22 Q Okay. And he was already sitting in on the other
23 side. Was there anything in between the two of you?
- 24 A A car seat.
- 25 Q A car seat. Okay. Is that for Octavious' child?

S.K. -
Direct examination by Mr. Bulsa

1 A I think so.

2 Q All right. So you got in. And y'all were talking.

3 And what happened in the truck?

4 A We was talking, just smoking. And then Rick had
5 pulled up. Then I was about to get out and go talk to
6 Rick, but he said, na, just wait, just chill.

7 Q Let me slow you down. Rick pulled up in that green
8 car?

9 A Yes, sir.

10 Q And when you say he said, who was he? Who was telling
11 you?

12 THE COURT: Please be careful of that microphone.

13 THE WITNESS: I'm sorry.

14 Q Don't, don't point any more. Okay.

15 A All right.

16 Q Just call his name. All right. Who, who told you?
17 Who was talking to you?

18 A Supreme.

19 Q Supreme told you what?

20 A He was just like let's smoke. And then when Rick had
21 pulled up I was about to get out of the car. And then he
22 said don't get out and just went real quick.

23 THE COURT: You've to move up closer so you can speak
24 into the microphone. Just don't touch it.

25 A And then when -- after, after we -- well, we was about

S.K. -
Direct examination by Mr. Bulsa

1 to smoke. Then Rick had pulled up. Then I said I'm about
2 to get out the car, and he was like don't get out, just
3 wait.

4 Q Okay. So he basically stopped you from getting out of
5 the truck. And then what happened?

6 A And then like a minute and a half later Marcus pulled
7 up. Then I was like I'm about to get out and talk to
8 Marcus. Then he was like, na, hold on, wait.

9 Q And Marcus is Marcus Wright. And how did you know
10 him?

11 A Because he was -- that was my friend. We, we hung
12 out.

13 Q And your voice is trailing a little bit. Make sure.

14 A Me and Marcus had hung out a lot. I know him. We
15 used, all of us -- me and him and Rick and D.J. used to
16 chill a lot.

17 Q Okay. All right. So he pulled up in what kind of
18 car?

19 A Silver. It was some kind of silver car. I don't know
20 the name of it. I think it was a Chrysler.

21 Q All right. Let me show you this, State's Exhibit
22 No. 7.

23 A That's, that's, that's the car he pulled up in.

24 Q Okay. He pulls up in this kind of car?

25 A Yes, sir.

S.K.
Direct examination by Mr. Bulsa

1 Q Okay. Now, if you can, show me. Can you point to
2 where you remember him parking?

3 A Yeah. His car was like right there where the police
4 car at.

5 Q Okay. More in front of the house, down from the tree?

6 A No. It was just about like -- it was just about right
7 there where the police car at.

8 Q Okay. All right. So what happened when he pulled up?

9 A Then Marcus had got out to talk to Rick. And, and
10 that's when my brother and D.J. had went in the house.

11 Q All right. So at one point it was Marcus outside,
12 Rick at his car, D.J. and Danny Burnside. And you said
13 your brother?

14 A Yes, sir.

15 Q What's his name?

16 A Travis.

17 Q And what's his last name?

18 A Miller.

19 Q Travis Miller. And Travis and D.J. went inside. So
20 that left Marcus and Ricky.

21 A Outside, yeah.

22 Q Okay. Did you see where they were?

23 A Like Rick car right there and like Marcus car was
24 right there. Marcus probably standing like right around in
25 here.

S.K.
Direct examination by Mr. Bulsa

- 1 Q Okay. Was Ricky still at his car?
- 2 A Yes, sir.
- 3 Q All right. And then what'd you see?
- 4 A And then that's, that's when Supreme had started
- 5 putting on gloves and stuff.
- 6 Q Okay. What kind of gloves?
- 7 A Some latex gloves like the ones that the doctors be
- 8 using.
- 9 Q All right. Was he still in the car or the truck?
- 10 A At the time, yes, sir.
- 11 Q Okay. And was he saying anything while he was doing
- 12 that?
- 13 A Yes, sir. Before that he was just like he was -- he
- 14 just was looking in his bag. And then he just put on some
- 15 gloves. And he was like where my, where my stuff at. He,
- 16 know w'at I'm s'ing, he was like where my stuff at. And he
- 17 pulled out a knife.
- 18 Q What kind of bag did he pull the gloves out of?
- 19 A It was a (sic) Army fatigue book bag.
- 20 Q Okay. And where was he looking for what you called
- 21 his stuff? Where was he looking for that?
- 22 A Well, he was just doing like that in the, in the back
- 23 seat of the car. And then he just pulled it out.
- 24 Q Okay. He pulled out a knife?
- 25 A Yes, sir.

S.K.
Direct examination by Mr. Bulsa

1 Q Was it in some sort of sheath?

2 A Yes, sir.

3 Q Did you see what he did with the sheath?

4 A Not really. I just know that he just did like that.

5 Q Pulled it out. Okay.

6 MR. BULSA: Can I get this marked without objection?

7 (Photograph marked State's Exhibit No. 9.)

8 Q I show you State's Exhibit No. 9. Does that look
9 familiar?

10 A Yes, sir.

11 Q Does that appear to be the sheath that he had pulled
12 the knife out of?

13 A Yes, sir.

14 Q Okay. So he pulled a knife out of the sheath. And
15 was he saying anything then?

16 A Well, he was just like I'm about to kill this nigger.
17 And then I was like who. And then when he said that my
18 heart dropped. And then he was like Rick. And then I was
19 thinking in my head if I can do something to help Rick. I
20 said I should go tell 'em over there. Then I was like, na,
21 because he'd kill me right here in the back seat.

22 So after that, then he just jumped outta the car then
23 went around to the truck, went around to, to Rick's
24 driver's side -- driver's-side door. Then I heard Rick
25 saying chill man, chill. And then that's when Marcus had

S.K.-
Direct examination by Mr. Bulsa

- 1 backed back. And then I had jumped out and ran.
- 2 Q Did the defendant ask you to participate in this
- 3 crime?
- 4 A Yes, sir.
- 5 Q Describe what he said to you.
- 6 A He said. He, he asked me did I want to help, and I
- 7 was like na.
- 8 Q He asked you if you wanted to help --
- 9 A Help.
- 10 Q -- kill Rick?
- 11 A Yes, sir.
- 12 Q And you thought to yourself you could do something to
- 13 help Rick. Why didn't you?
- 14 A Because I was afraid that he might try to do something
- 15 to me.
- 16 Q Did you actually see him stab Rick?
- 17 A No, sir. I just heard Rick saying chill, chill.
- 18 Q Was he yelling?
- 19 A Yes, sir.
- 20 Q Where was Marcus?
- 21 A Marcus was like -- he was like not that far from his
- 22 car but like right in front of it.
- 23 Q That's a picture. He had backed away and was near his
- 24 car?
- 25 A That's, that's Rick's car right there. And Marcus is

S.K.
Cross-examination by Mr. Poole

1 like around in here. By this -- if this, this right here
2 would be Marcus car, he'd be like right here beside his
3 car. And then after that I ain't seen nothing. I just
4 ran.

5 Q You jumped out and ran.

6 A Yes, sir.

7 Q Where did you run to?

8 A I ran home.

9 Q Did you tell the police? Did you run and call the
10 police?

11 A No, sir. I was scared to. So I just waited until he
12 got locked up.

13 Q Did you tell the police when they came and got you?

14 A Yes, sir, I told them.

15 Q What were you afraid of?

16 A That he might just come looking for me and kill me or
17 something.

18 Q All right. S.K., answer any questions Mr. Poole
19 may have.

20 CROSS-EXAMINATION

21 BY MR. POOLE

22 Q Mr. Kelley, you stated that you and Marcus Wright hung
23 out a lot, is that right?

24 A Yes, sir.

25 Q And describe to us what you mean by hanging out a lot.

S.K. -
Cross-examination by Mr. Poole

1 A Like we just chilling. Like we'll either be down at
2 Rick-house chilling or at D.J.'s house chilling.

3 Q How long have you known Marcus Wright?

4 A About the same, around town that I known everybody
5 down there.

6 Q You've known him longer than you've known Supreme
7 Ackbar, haven't you?

8 A Yes, sir.

9 Q So about how long have you known Marcus Wright then?

10 A About like four years, five years. Just like I been
11 knowing Ricky and D.J. ever since I been living down there.

12 Q Okay. He's a good friend of yours?

13 A Yes, sir.

14 Q Marcus Wright is. Okay. And it's your testimony that
15 you were there with Mr. Ackbar in the truck. And then at
16 some point in time Marcus pulled up.

17 A Yes, sir.

18 Q Right? Did he immediately get out of the car or did
19 he stay there a little while?

20 A He just stayed. He got outta the car. Yeah. He got
21 outta the car and went to talk to Rick and went and said
22 what's up to Rick and stuff, and D.J. and 'em too.

23 Q Pardon me?

24 A I said he, he got outta the car and spoke to everybody
25 that was outside.

S.K. -
Cross-examination by Mr. Poole

1 Q Okay. But he went up to the car and talked to Rick,
2 right?

3 A Yes, sir. Like he had spoken to Rick from what I
4 seen.

5 Q Okay. And, and then some folks inside -- were inside
6 the house, is that correct?

7 A I think my -- D.J. and my brother had went in the
8 house.

9 Q Your brother's name is --

10 A Travis.

11 Q Travis went inside the house. So that left Marcus
12 Wright.

13 A And, and Rick outside. They was outside.

14 Q Outside. Okay. And when -- did you hear what -- not
15 saying, not asking you to say what was said, but did you
16 hear any of the conversation between Rick and Marcus
17 Wright?

18 A No, sir. I just seen them talking.

19 Q All right. And how long did that last?

20 A That lasted -- when he jumped outta the car.

21 Q Okay. Well, was -- let me ask you this. Was
22 Rick's -- excuse me -- Marcus Wright's car running or was
23 it turned off?

24 A I don't remember.

25 Q Okay. And I'm talking about while he was outside of

S.K.
Redirect examination by Mr. Bulsa

1 his own car and speaking with Rick.

2 A I don't remember.

3 Q You do not remember. Okay. And then it's according
4 to your testimony after Mr. Ackbar got out of the truck and
5 you saw what was happening, you, you left.

6 A Yes, sir.

7 Q Okay. Did you see Rick -- Marcus Wright leave?

8 A No. When I was home -- when I was running home I just
9 seen Mar -- I seen his car go down, go up like leaving
10 going towards

11 Q Okay. Did you see who was in that car?

12 A I just -- I seen Marcus driving. I ain't seen nobody
13 in the passenger side.

14 Q Do you know if anybody was in the car?

15 A Na. I just knew that I just seen somebody driving.

16 Q Okay. Do you know how long Marcus Wright was there?

17 A No, sir.

18 Q Okay. Thank you, Mr. Kelly.

19 REDIRECT EXAMINATION

20 BY MR. BULSA

21 Q Just a few on redirect. S.K. how long have you known
22 Mr. Ackbar?

23 A I ain't, I ain't really known 'im. I just seen 'im a
24 couple of times at D.J.-house.

25 Q Did you have anything against him?

S.K.

Redirect examination by Mr. Bulsa

1 A No, sir. I just, I just -- I ain't never knowed that
2 he to tell you the truth, I ain't never had nothing against
3 'im.

4 Q Okay. In fact, you stopped and got in the truck with
5 him to talk to him and smoke with him. Did you consider
6 him a friend?

7 A We was just chilling, so I ain't knowed, yes, sir. We
8 was just chilling, so basically.

9 Q He's a lot older than you, but you still felt
10 comfortable around him.

11 A Yeah, because I got a lot of older cousins.

12 Q Okay. Now, Mr. Poole asked you about Marcus and Ricky
13 talking. Did either one of them seem upset with each
14 other?

15 A No, sir.

16 Q They seemed okay?

17 A Yes, sir.

18 Q Are you telling this jury what you saw and heard that
19 day?

20 A Sir?

21 Q Are you telling this jury what you saw and heard?

22 A Yes, sir.

23 Q Scared you to death?

24 A Yes, sir.

25 MR. POOLE: Objection, Your Honor. It's improper.

S.K.
Redirect examination by Mr. Bulsa

1 redirect.

2 THE COURT: Sustained.

3 Q Mr. Poole tried to imply that you might be protecting
4 Mr. Wright. Are you protecting him from anything?

5 MR. POOLE: Objection, Your Honor. An implication is
6 an inference that the jury can draw.

7 THE COURT: Overruled.

8 Q Are you protecting Mr. Wright from anything?

9 A No, sir.

10 Q Are you telling the jury what he did just like you
11 told them what Mr. Ackbar did?

12 A Yes, sir.

13 Q Did -- thank you. That's all I have. One minute.
14 Did you miss school to come up here?

15 A Yes, sir.

16 Q Have you got school tomorrow?

17 A Yes, sir.

18 Q Okay. Thank you.

19 MR. POOLE: No other questions.

20 THE COURT: You may step down.

21 Ladies and gentlemen, we're going to need to take a
22 short break right now, so I'll ask you to please go to your
23 jury room.

24 Remember the caution I've already previously given
25 you. Don't talk about the case in any fashion. We'll

1 bring you back after that short break.

2 We'll be at ease for 15 minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Something to address?

5 MR. BULSA: Yes, sir. We have one more picture from
6 the crime scene I was seeking to introduce Mr. Poole is
7 objecting to.

8 THE COURT: All right.

9 MR. BULSA: It's basically a closer picture of the
10 vehicle that established where the victim was and the
11 malicious nature of the crime.

12 THE COURT: Well, there's not -- I mean, it's not an
13 issue where the victim was, is it? I mean, the fact that
14 this occurred or at one time was in the vehicle.

15 MR. BULSA: I don't know what the argument is going to
16 be.

17 THE COURT: Well, we'll wait and see. Okay. We'll
18 see if that becomes an issue. And how is this going to
19 show the --

20 MR. BULSA: Shows malice, Your Honor, the extent of
21 the blood and the cuts.

22 THE COURT: Well, this is a picture of blood in the
23 car. I mean, you could have a puncture wound and cause
24 blood, but that wouldn't necessarily show malice. I
25 understand your argument in that respect but --

1 MR. POOLE: May it please the Court, your Honor.

2 THE COURT: Yes, sir.

3 MR. POOLE: Your Honor, the Court's holding the
4 proposed exhibit in your hand which shows a great deal of
5 what appears to be blood all over a seat and within the
6 interior of a car. But there was no objection made to this
7 photo which has already been introduced into evidence which
8 shows a side view.

9 THE COURT: Well, what number is that?

10 MR. POOLE: This is Exhibit No. 5. Our position is
11 that photo -- it's the proposed exhibit -- it's prejudicial
12 effect outweighs its probative value.

13 There's been testimony to the amount of blood within
14 the car already. The next witness, the forensics officer,
15 Saar, is undoubtedly going to testify about the interior of
16 the car. And I'm sure there'll be other testimony about
17 it. So just the fact that that photo is showing as
18 explicitly what it does --

19 THE COURT: All right. I'm going to sustain the
20 objection for the present time.

21 Mr. Bulsa, if it becomes an issue in the case such
22 that this is necessary in order to establish some element
23 or some fact that's in actual dispute, then I'll reassess
24 my evaluation of it. But right now I find that it's more
25 prejudicial than it is probative.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 MR. BULSA: Yes, sir.

2 THE COURT: But testimony could develop that would
3 show otherwise.

4 MR. BULSA: We're ready otherwise.

5 THE COURT: Okay. All right. Bring the jury in,
6 please.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: All right. The jury is present. You may
10 proceed.

11 MR. BULSA: The state calls Ted Saar.

12 THEO DEMUED SAAR, III, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BULSA

15 Q Officer Saar, introduce yourself to the jury, please.

16 A My name is Theo Demued Saar, III.

17 Q Who are you employed with?

18 A Spartanburg County Sheriff's Office.

19 Q In what capacity?

20 A I am a master deputy-investigator, and I'm currently
21 the fingerprint examiner for the sheriff's office.

22 Q And did you work with the crime scene unit?

23 A I did.

24 Q How long have you been an officer?

25 A Thirteen years.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

- 1 Q How long were you with the crime scene unit?
- 2 A I was with the crime scene unit about two years.
- 3 Q And now you do all the fingerprints?
- 4 A Yes, sir.
- 5 Q Okay. Back in September of 2009 were you assigned to
- 6 go to this crime scene?
- 7 A I was.
- 8 Q Would you describe it as it appeared when you arrived?
- 9 A When I got to the crime scene there were already
- 10 several police officers there. Crime scene tape was up.
- 11 It was kind of a large crowd had gathered there at the
- 12 house.
- 13 It was still daylight and had kind of -- I think it'd
- 14 been raining that day. It was still pretty, pretty damp
- 15 out. But there was, there was a lot of people there
- 16 already when I got there.
- 17 Q This was in Spartanburg County.
- 18 A It was.
- 19 Q And were people within the crime scene or did the
- 20 police have everybody outside?
- 21 A The police had everybody out. The crime scene tape
- 22 was up. I don't recall anybody being inside the crime
- 23 scene tape at that time.
- 24 Q Were they basically waiting on you?
- 25 A Correct.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

- 1 Q Someone from your unit.
- 2 A Yes, sir.
- 3 Q And were you the first in your unit to arrive?
- 4 A I was.
- 5 Q And we saw pictures of some of the parts of the scene.
- 6 Did you take those photos?
- 7 A I did.
- 8 Q Okay. Now, did you inspect the -- I believe it was a
- 9 Honda. Is it a green Honda?
- 10 A Yes. When I first arrived I noticed -- one of the
- 11 first things I noticed was a green Honda Accord. And I
- 12 noted the tag number.
- 13 Q Did you know who that belonged to?
- 14 A No, not at the time.
- 15 Q Did you do anything with Mr. Kelly's body?
- 16 A The only thing that I did with Mr. Kelly was take
- 17 photographs. Coroner's office handled the, the victim. I,
- 18 I just took photographs.
- 19 Q When you say you took photographs, did somebody turn
- 20 him over?
- 21 A Correct. The coroner's investigators once they got on
- 22 the scene later on in the process moved, moved the victim
- 23 around so that we could see the wounds.
- 24 Q So was he already deceased?
- 25 A He was.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 Q Okay. And what wounds did you observe on Mr. Kelly?

2 A When I first got there he was laying up against the
3 front of the house at the front door, and he was kind of on
4 his side. And as I was looking down at him I could see his
5 left side. And really the only wound that I could see was
6 just a, a gaping laceration to the side of his neck.

7 Q How about when they turned him?

8 A When they turned him you could see several more -- and
9 if I could refer to my notes -- numerous lacerations and
10 puncture wounds. He had lacerations on both arms, face and
11 neck area, hands. And I observed several puncture wounds
12 to the chest.

13 Q Did he appear to have lost a lot of blood?

14 A Yes, yes, a large amount of blood.

15 Q Where did you observe what appeared to be his blood?

16 A At, at him or at the crime scene in general?

17 Q Crime scene in general.

18 A The, the vehicle that was parked in the driveway, this
19 green Honda Accord, I noticed it first when I got there
20 because I could hear the, the buzzer going off inside the
21 car like if you leave the door open and the key in the
22 ignition. But it wasn't running.

23 So I noticed. You know, my attention was drawn there.
24 I noticed a large amount of blood that I could see from a
25 distance on the, on the door of the car. I took a closer

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 look and started taking pictures, and there was a, a very
2 large amount of blood pooled up in the driver's seat.

3 I got to looking closer. There was actually -- there
4 was a large pool of blood on the driver's seat. But I
5 could also see that there was blood spattered on the
6 headliner passenger seat, windows, windshield, dashboard,
7 steering wheel, and also into the back seat a large amount
8 of blood.

9 There was also some blood pooling on the ground right
10 outside the, the car door, and then was able to see a blood
11 trail that went, that led, from where the car was through
12 the yard, up the front porch steps, onto the porch, and all
13 the way over to where the victim was laying.

14 Q Was there blood on the house?

15 A There was. Like I said, he was right in front of the
16 front screen door, and so there was, there was blood
17 spatter on the front of the house and on the, on the front
18 door itself.

19 Q Do you see it in this, from this? You won't be able
20 to see it in the jury --

21 A There was, there was blood spattered all along this
22 area here, all the way up the door, side of the house, on
23 this part of the door, on the glass, all the way up in
24 here.

25 Q Okay. Let me draw your attention back to the location

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 of the vehicle. Did you notice anything about the ground
2 outside the vehicle?

3 A Yes. The drive -- the driveway was gravel and also
4 loose dirt. And it had been raining that day. It wasn't
5 raining at the time. There wasn't any water puddles or
6 anything in this area, but the ground was definitely wet.
7 But I could see where the -- right in the apex of the door
8 in this area the gravel and dirt was, was all disturbed.
9 And I could see what appeared to be several partial shoe
10 prints right there, and also located several other shoe
11 prints throughout the area, but there was definitely a lot
12 of disturbed gravel and dirt right in this area and what
13 appeared to be shoe prints.

14 Q And from your observation and experience did it appear
15 that a struggle had occurred there?

16 A Yeah, yes, it appeared to me that there had been a
17 struggle right there.

18 Q Based on your observation of the victim and the trail
19 of blood did it appear that he was stabbed inside of his
20 car?

21 A It did.

22 Q And you have no idea as to how he was positioned in
23 his car, do you?

24 A I do not.

25 Q Did you make any attempts to recover any shoe

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 prints --

2 A We did.

3 Q -- taken for identification?

4 A We did. We -- and I took photographs of all of the
5 shoe prints that I found throughout the crime scene. This
6 being loose gravel and dirt and the ground being as moist
7 as it was, we attempted to cast, pour molds, of the shoe
8 prints there, but it just wasn't -- the gra -- the gravel
9 and the way that the dirt was, it was, we weren't able to
10 get good shoe-print molds from that area.

11 Q So that -- was that method of identification, did it
12 lead anywhere?

13 A No.

14 Q Okay. Did you do anything with the vehicle itself?

15 A Other than test some areas of the blood to test and
16 see whether or not -- we did a presumptive test to see
17 whether it was human blood, to confirm that it was, and
18 collect some blood samples from the vehicle on scene. That
19 was all we did as far as possessing on scene of the
20 vehicle.

21 Q Did you have the vehicle towed?

22 A We did. We had the vehicle towed and secured and
23 locked up at our county shop.

24 Q Now, you took a lot of pictures, right?

25 A Yes, sir, I did.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

- 1 Q We've only seen a few of them. Were you trying to
2 document the scene --
- 3 A Yes, sir.
- 4 Q -- knowing what had happened?
- 5 A Correct.
- 6 Q And you turned those over to the investigators?
- 7 A Once, once I'm done with the, the photos -- and I took
8 a total of 468 photos on scene. Once I'm done taking my
9 photos and I get back to the sheriff's office, we have a, a
10 computer that we download all of our photos into.
- 11 Q You took pictures of all of those cars that were
12 there?
- 13 A Correct.
- 14 Q And the various vantage points of the house.
- 15 A I did.
- 16 Q You, you don't know what had happened. You didn't
17 even speak with anybody, did you?
- 18 A No.
- 19 Q Did you get a briefing from Officer Hullinger?
- 20 A I did just, just very briefly that, that it appeared
21 that there had been a stabbing, that there was a victim on
22 the front porch, just very brief.
- 23 Q Okay. So you didn't actually speak to any of the
24 witnesses.
- 25 A No, sir.

Theo Demued Saar, III
Direct examination by Mr. Bulsa

1 Q You leave that up to the investigators.

2 A Correct.

3 Q So you preserved the scene through photographs.

4 A I did.

5 Q And there are a lot of closer pictures of various
6 things, even of that blood in the seat.

7 A Yes, sir.

8 Q Okay. Do you recall if you did anything with the
9 truck other than photographing the outside?

10 A Just photographs of the truck.

11 Q Did you -- were you asked to do anything more with the
12 truck?

13 A I was not. There were numerous vehicles on scene, and
14 I was -- I just took photos of every vehicle there and all
15 the tag numbers, VIN numbers on all the, all the vehicles
16 there, but I was not asked to do anything with that
17 vehicle.

18 Q So at that point you didn't know whether that truck
19 had any connection with the crime --

20 A I did not.

21 Q -- other than being on the premises.

22 A Correct.

23 Q Do you know if it was later towed to be processed?

24 A Yes. I was made aware that later it was.

25 Q But you didn't participate in that.

Theo Demued Saar, III
Cross-examination by Mr. Poole

1 A I did not.

2 Q Answer any questions Mr. Poole may have.

3 CROSS-EXAMINATION

4 BY MR. POOLE

5 Q Officer Saar, were there any tests, or were there any
6 tests done to try to lift any fingerprints on the Honda?

7 A Not on, on scene. Later after the vehicle was taken
8 to the shop, yes, the vehicle was processed for
9 fingerprints.

10 Q Okay. And are you aware of the results of the test?

11 A I am not other than what was done on scene.

12 Q Are you aware of the results of the fingerprint
13 tests --

14 A I am not.

15 Q -- that were taken later on?

16 A No, I am not.

17 Q Okay. Thank you.

18 MR. BULSA: Nothing further.

19 THE COURT: You may step down.

20 MR. BULSA: Your Honor, we ask he be excused.

21 THE COURT: He may be.

22 (Whereupon, the witness was excused.)

23 MR. BULSA: The state calls Kendra Burnside.

24

25

Kendra Burnside
Direct examination by Mr. Bulsa

1 KENDRA M. BURNSIDE, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Ms. Burnside, please introduce yourself to the ladies
5 and gentlemen of the jury.

6 A My name is Kendra Burnside.

7 Q And, Ms. Burnside, where do you live?

8 A

9 Q And how long have you lived there?

10 A Approximately 11 years.

11 Q Are you buying that home?

12 A Yes, sir.

13 Q Who lives there with you?

14 A My daughter and my son and my daughter-in-law and my
15 grandkids.

16 Q Can you give us their names, please?

17 A Octavious Burnside, D.J. Burnside, which is Danny,
18 Jr., Shonta Adams, my three grandkids -- A. , C. and

19 K. . And also my fiancé stays there, Kelvin Robbs.

20 Q Okay. Now, who was living there back in September of
21 2009?

22 A It was just me and my son, Danny, and my fiancé,
23 Kelvin.

24 Q Where was your daughter living?

25 A She was living on in Wellford.

Kendra Burnside
Direct examination by Mr. Bulsa

- 1 Q With whom?
- 2 A With Supreme Ackbar.
- 3 Q She has a daughter?
- 4 A Yes, my grandbaby, A.
- 5 Q Okay. Are you employed, ma'am?
- 6 A No, sir.
- 7 Q Do you have a physical condition you're trying to
8 overcome?
- 9 A Yes, sir.
- 10 Q What is that?
- 11 A I had three extended back surgeries. I've had surgery
12 done that they took my gallbladder out and messed up my
13 liver. I had to go to Charleston to have the right lobe of
14 my liver removed.
- 15 And around this particular time when this happened on
16 that Sunday, I had to go back to Charleston that Monday to
17 have a tumor removed out of my stomach.
- 18 Q So you were actually in the bedroom resting --
- 19 A Uh-huh.
- 20 Q -- when this occurred?
- 21 A Yes.
- 22 Q Do you know who had been at your house that afternoon?
- 23 A Well, I knew the kids was there. And Ta had went to
24 my mama's, and she had came back because she was bringing
25 me something to eat.

Kendra Burnside
Direct examination by Mr. Bulsa

1 Actually, I didn't know that Travis was there or I
2 didn't even notice that -- didn't know that Supreme was
3 outside in the truck because I was in the bed and I was
4 sleeping.

5 Q So he never came in to say hello or anything?

6 A No, sir.

7 Q I guess you know him through your daughter.

8 A Yes, sir.

9 Q About how long had they been together back then?

10 A Approximately probably almost a year and a half or two
11 years.

12 Q Did they visit often?

13 A Occasionally, they did.

14 Q Okay. Did D.J. have friends come over often?

15 A Yes.

16 Q Did you know Ricky Kelly?

17 A Yes.

18 Q How, how did you know him?

19 A Rick stayed at my house so much it's, it's like he was
20 a child of mine. You have kids that be around all of the
21 time. And by me being sick the way I was, he, he made sure
22 that I had food in the evening just like this day. He was
23 bringing D.J. something to eat. He really, he really just
24 like a child of mine. He took care of me just as well as
25 my children did, because, like I said, I was sick, going

Kendra Burnside
Direct examination by Mr. Bulsa

1 through some sickness at times. And my fiancé worked the
2 first shift. So in the evenings when Rick got off he would
3 bring me something to eat just about every night to make
4 sure that I ate before I went to sleep.

5 Q Now, on this day your fiancé wasn't there, was he?

6 A No, sir.

7 Q Where was he?

8 A He's a musician in Gaffney at the church that he
9 belongs to, and he was at a program.

10 Q Okay. So it was essentially you and your children.
11 And Octavious had come over to visit.

12 A Uh-huh.

13 Q Okay. And then whatever friends were there to see
14 D.J.

15 A Uh-huh.

16 Q Did you actually see Ricky that afternoon?

17 A Actually I was asleep. I didn't even know Rick had
18 came in the house. And when I -- like you said earlier, I
19 had a puppy, and she was barking. And any time she barks
20 continuously I always look out the window to see if
21 somebody's in the yard.

22 Q Let's orient the jury first to your home. Here's the
23 front of your house, is that right?

24 A Yes, sir.

25 Q Here is a pointer. Push that red button when you

Kendra Burnside
Direct examination by Mr. Bulsa

1 point at the picture.

2 Would you show us where the window, your bedroom
3 window, would be?

4 A My bedroom window is right here.

5 Q Okay. So you heard the puppy barking.

6 A Uh-huh.

7 Q And what did you do?

8 A My granddaughter, which is A. , she was in the
9 living room with my puppy, because I kept hearing her. And
10 then the puppy got to barking so loud I was trying to
11 holler through the house for them to come and see what was
12 wrong.

13 But I opened the blinds and I looked out the window.
14 And I just seen a car gray turning around and going down
15 the driveway.

16 Q Okay. Let's see if we've got a picture to use. I
17 show you State's Exhibit No. 4. Your window would have
18 been on the left-hand side of this picture. And you would
19 have seen the car?

20 A It would have been on this side.

21 Q About where?

22 A It would've been over on this side past the door.

23 Q And where was -- where was the car that you saw?

24 A The car that I seen was actually right up in this
25 area. And when I looked out the window the car just -- it

Kendra Burnside
Direct examination by Mr. Bulsa

1 just came through the yard like this and turned around and
2 went flying down the driveway if you can see. The pen is
3 wiggling, but it was like in this area. And it turned
4 around and went flying down the driveway.

5 Q Okay. Was it moving when you first saw it, or did you
6 actually see it when it was stationary?

7 A No. It was moving when I saw it.

8 Q So it would have been driving towards us in the
9 picture.

10 A Yeah. It would have been coming toward this way in
11 the picture and going around like that.

12 Q Do you see where the police car is parked?

13 A Uh-huh.

14 Q Do cars park there on a regular basis?

15 A Are you talking about where the police car right here?

16 Q Yes, ma'am.

17 A Yes. A lot of times the kids would come in, come in
18 the yard. They -- my son had several friends, and they
19 parked in the yard and parked over here in the grass.
20 Even, they even, parked over here on this side in the yard.
21 They there so often, so they feel free to park wherever.

22 Q Okay. Let me show you State's Exhibit 2. This is a
23 little different view. Do you see sort of a dirt area off
24 to the left of your driveway? Is that about where the --

25 A This area?

Kendra Burnside
Direct examination by Mr. Bulsa

1 Q No. Over where the officer is.

2 A Over here?

3 Q Yes, ma'am. Is that about where the car would have
4 been?

5 A Yes.

6 Q Okay. Now, you need to back up. You're about to hit
7 the mike. I'm sorry.

8 All right. Someone would have actually driven towards
9 your window almost.

10 A It drove like if it was right up in here, it actually
11 turned around. My yard is bigger than what, what you
12 looking at. It's more. You can see more of it. But it
13 actually was like right up in here. And it came through
14 the yard like that and turned around and down the driveway.

15 Q Did you know whose car that was?

16 A Actually, I didn't.

17 Q Okay. Did you, did you get a good enough look to
18 maybe even try to be able to try to identify it?

19 A Uh-huh. I noticed the car because it was driving so
20 fast. And we have a light pole that's right, right up over
21 in here.

22 Q Let me see if we've got it in another picture. Does
23 that show the pole?

24 A Well, the pole is a little bit over farther than that
25 police car right there.

Kendra Burnside
Direct examination by Mr. Bulsa

1 Q All right. What about the light pole?

2 A It's a little farther over past this police car.

3 Q What's important about the light pole you were fixing
4 to tell us?

5 A Because it has the -- uh-oh. I'm sorry. It has a
6 string hanging down from the light pole, and it's got a
7 little hook thing on it. And if you run over it you're
8 going to bust your tire.

9 So that's what made me notice it the car was going so
10 fast. And I thought they was actually fixing to hit the
11 light thing, and-but they went straight on down the
12 driveway.

13 Q Did you notice anything about who might have been in
14 the car?

15 A Uh-uh.

16 Q Could you tell even how many people were in it?

17 A No.

18 Q You just know it turned around and left out pretty
19 fast.

20 A Uh-huh.

21 Q What did you do after you saw that?

22 A Actually, after I saw that my puppy was still in the
23 front door, and my granddaughter, and the puppy was still
24 barking. And so I was trying to figure out whether
25 somebody had actually got out of the car and was out in the

Kendra Burnside
Direct examination by Mr. Bulsa

1 yard, because if you come in the yard, period, she's going
2 to bark. That's how she is. She sets in the windows, and
3 she's going to bark.

4 So she got to barking worse. And I was like D.J. I
5 was calling D.J. through the house. But then actually my
6 daughter came through. And when she came to the door she
7 looked, and she had grabbed A. in her arm, and she was
8 pregnant with my other grandson. And she sat on the bed,
9 and she was like, oh, my gosh. And I was like what is it.

10 MR. POOLE: Objection. Hearsay, Your Honor.

11 THE COURT: Sustained.

12 Q I believe her emotional state was what?

13 A She was real scared, and she had -- she was holding
14 A. , my grandbaby. And she was pregnant, so she was
15 holding her stomach.

16 And I asked her. I said what's wrong. And she was
17 just -- had her head down. So I just jumped outta the bed
18 and went to the door. And that is when I went to the door
19 and I seen Rick. And his arm was going down.

20 So I immediately tried to push the door, but he was so
21 close on the door that I couldn't push it open. And I seen
22 him. His head was going like this. It moved three times,
23 and it stopped.

24 And I was telling my son. I said somebody call 9-1-1.
25 And my son told me. He said, "Mama, you have the phone in

Kendra Burnside
Direct examination by Mr. Bulsa

1 your hand." He said, "Go ahead and call."

2 So I called 9-1-1. And I was telling the lady that I
3 couldn't get out to the front porch where he was at because
4 he was so close to the porch. And she said, "Ma'am," she
5 said, "just calm down and go out your back door."

6 So I went out the back door and I went around. And
7 when I went around the first thing I seen was the neck
8 opening. I could see that from when I went -- the time I
9 got around the house.

10 And so I was telling the lady. I said, "He hasn't
11 been shot." I said, "He's been cut."

12 And then I went up on the porch where he was at. And
13 she was trying to get me to turn him over, to put my hands
14 on his ankles to see could I get a pulse. And I put my
15 hands on his ankles. And I kept telling her no, I wasn't
16 getting a pulse. And I was telling her to tell them to
17 hurry, because I knew he was gone at the time. But if
18 somebody coulda got there, I'm thinking in my head that
19 somebody could help him.

20 So, and my son D.J. had came. Him and Travis, they
21 had came outside. And she told me, the 9-1-1 lady she told
22 me. She said get them to help you --

23 MR. POOLE: I object to hearsay again, Your Honor.

24 THE COURT: Well, let me see y'all just a minute.

25 (Bench conference held off the record in the presence

Kendra Burnside
Direct examination by Mr. Bulsa

1 of the jury but out of the hearing of the jury.)

2 THE COURT: Overruled.

3 BY MR. BULSA

4 Q Continue on, ma'am.

5 A The lady was telling me to tell them to -- my son had
6 come up on the porch with me, and see if we could turn him
7 over. And he was so upset. And so I told her, I said, "I
8 don't think he need to do anything," because I knew he was
9 already gone.

10 And then I started walking off the porch. And she was
11 telling me not to touch, you know, any blood or anything.
12 There was three big splatters on the porch as they showed.
13 And it was on the front door. And then going down the
14 steps it was blood.

15 And when you got out in the yard, when I was going out
16 this way, the steps from the porch, I was walking straight
17 out through here where Rick's car was at. And it was like
18 blood splatters right here in the grass. On like here it
19 was like another big puddle.

20 And then when I got to the car, she told me. She
21 said, "Don't touch the car." I told her the door was open
22 on the car. She said don't touch it.

23 And I seen all that blood that was in the seats of the
24 car. And I was like, oh, my, gosh. I said whoever did
25 this, I said it started in the car. And-but he had got out

Kendra Burnside
Direct examination by Mr. Balsa

1 of the car. And he made it all the way back up the steps
2 to the front door, and that's where.

3 Q And were you standing outside when the police actually
4 arrived?

5 A Uh-huh.

6 Q Now, let me ask you. Your daughter drove a truck?

7 A Uh-huh.

8 Q And that's the truck we've seen in the photograph?

9 A Yes, sir.

10 THE COURT: Let me ask you please when you respond to
11 answer yes or no so that we'll be certain to know what your
12 response is.

13 THE WITNESS: Okay.

14 A Yes, sir.

15 Q You don't know who came with her to your house, do
16 you?

17 A No, sir.

18 Q You just saw her and your granddaughter.

19 A Yes, sir.

20 Q Do you know Marcus Wright?

21 A Yes, sir.

22 Q How do you know him?

23 A I've actually known his mom. We went to school
24 together. So I been knowing her for over 42 years.

25 And Marcus has been in and out of my house just like

Kendra Burnside
Direct examination by Mr. Bulsa

1 the other kids. He was my son's friend. So numerous
2 occasions or whatever, they all, all the kids that hang in
3 the neighborhood, hangs at my house.

4 Q About how -- what age is Mr. Ackbar, do you know
5 approximately?

6 A Around, around 32 or 33.

7 Q And D.J. is about how old?

8 A Twenty-one.

9 Q And how old is Marcus?

10 A About 21. I think him and D.J. about the same age.

11 Q Okay. All right. So your son has got these friends,
12 but you only knew one of them, and then Mr. Ackbar comes on
13 the scene with your daughter.

14 A Uh-huh.

15 Q Do you know anything about the relationship? Did it
16 appear friendly? Did anybody have any animosity towards
17 anyone?

18 A Talking about the relationship with her and him or --

19 Q No, no. Let me ask it this way. Did Marcus have any
20 problem with Ricky?

21 A Not that I know of at the time.

22 Q Okay. Did you ever witness any problems they had?

23 A No, sir.

24 Q Okay. Did your son have any issues with Ricky?

25 A No, sir.

Kendra Burnside
Cross-examination by Mr. Poole

1 Q Did you know Ricky's parents?

2 A Actually his real dad is my cousin, but I never really
3 knew that until after all of this stuff happened, because
4 all I knew him by was Rick. The Kelly came in after the
5 situation.

6 Q So he was actually related to you.

7 A Uh-huh.

8 Q Thank you, ma'am. Answer any questions Mr. Poole may
9 have.

10 CROSS-EXAMINATION

11 BY MR. POOLE

12 Q Ms. Burnside, I believe you gave a statement to law
13 enforcement later on that evening.

14 A Uh-huh.

15 Q Do you remember doing that around 7:35?

16 A Yes, sir.

17 Q And you have demonstrated visually basically what you
18 told the law enforcement that night, is that correct?

19 A Yes, sir.

20 Q And did you --

21 MR. POOLE: May I approach the witness, Your Honor?

22 Q Is this -- let me show you this. Is this the
23 statement that you gave that evening?

24 A Uh-huh.

25 Q And in your own words you mention the gray car --

Kendra Burnside
Cross-examination by Mr. Poole

1 A Uh-huh.

2 Q -- at the top.

3 A Yes, sir.

4 THE COURT: Excuse me. Please answer yes or no.

5 A Yes, sir.

6 Q Could you read what you stated there at the very
7 beginning?

8 A "I was laying in my bed and my puppy was barking
9 louder and louder. So I looked out the window and I seen a
10 gray car turning around in the yard and drive down the
11 driveway."

12 Q Okay. And then there at the end you mentioned the
13 gray car again. Would you read that to us, please?

14 A "I saw a gray car turning around in the yard. It was
15 light gray. I believe it was -- it had four doors and kind
16 of a sport like. The front was a little lower than, than
17 the back. The car turned around kind of quick and almost
18 hit the wires and sped down the driveway."

19 Q Okay. Thank you, Ms. Burnside.

20 A Thank you.

21 THE COURT: Mr. Bulsa.

22 MR. BULSA: I didn't know he was finished. Nothing
23 further, Your Honor.

24 THE COURT: All right. You may step down.

25 Ladies and gentlemen, we are going to recess for the

1 afternoon.

2 Keep in mind the caution that I gave you prior to
3 excusing you for lunch. No discussions about the case. Do
4 not permit yourselves to be exposed to any type of media
5 coverage that might relate to the case. And do not
6 conduct any type of research or do our own investigation
7 into any issue related to the case.

8 With that do have a good evening, and please report to
9 the jury room at 9:30 in the morning, 9:30 in the morning.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Court's in recess until 9:30 in the
13 morning.

14 END OF PROCEEDINGS FEBRUARY 7, 2011

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1 (Proceedings February 8, 2011)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MR. BULSA: Yes, sir.

6 MR. POOLE: Yes, sir.

7 THE COURT: Bring them in, please.

8 MR. BULSA: Your Honor, there is a matter I need to
9 address with you.

10 (Bench conference held off the record.)

11 THE COURT: We will take five minutes.

12 (Whereupon, a recess was taken.)

13 (The following takes place in chambers with Juror No.
14 97.)

15 THE COURT: Mr. Miller, you can have a seat right
16 there, please, sir.

17 All right. We are in chambers on the record with
18 Juror No. 97, who is Jeremy L. Miller. Is that correct,
19 Mr. Miller?

20 JUROR NO. 97: Yes, sir.

21 THE COURT: Present in chambers with me are the
22 counsel for the defendant, Roger Poole, and deputy
23 solicitor for the state, Derrick Bulsa.

24 Mr. Miller, this morning I was informed that a juror
25 had had some discussion about this case during the

1 overnight recess. And we narrowed down the identification,
2 and I believe that juror to have been you. Am I correct
3 about that?

4 JUROR NO. 97: Yes, sir.

5 THE COURT: And do you recall after your selection in
6 the case the Court instructing you not to have any
7 discussions about this case whatsoever with any person
8 whatsoever?

9 JUROR NO. 97: Yes, sir.

10 THE COURT: And after you left yesterday evening have
11 you had any discussions about this case in any fashion with
12 any person?

13 JUROR NO. 97: Yes, sir.

14 THE COURT: And what discussions have you had?

15 JUROR NO. 97: I called my cousin and told her that I
16 think I might have met the victim at a party.

17 THE COURT: And who is your cousin?

18 JUROR NO. 97: Alexandra Lyles.

19 THE COURT: And why did you call Alexandra Lyles?

20 JUROR NO. 97: Because she works for the solicitor's
21 office.

22 THE COURT: All right. And why did you feel the need
23 to call her?

24 JUROR NO. 97: Because at the moment she was the only
25 person I knew would give me a straight answer. And she was

1 the only one I trusted.

2 THE COURT: All right. And when did you call her?

3 JUROR NO. 97: I called her around 6:00, somewhere in
4 there, when I got home.

5 THE COURT: And what discussions did you have with
6 her?

7 JUROR NO. 97: I just told her because I think I might
8 have met the victim at a party, what do I need to do.

9 THE COURT: And you were referring to the victim in
10 this case?

11 JUROR NO. 97: Yes, sir.

12 THE COURT: Ricky Kelly.

13 JUROR NO. 97: Yes, sir.

14 THE COURT: When those questions were asked of you
15 prior to your selection did you know Ricky Kelly?

16 JUROR NO. 97: No, sir. Like I did not realize I knew
17 him until I saw the picture of his car.

18 My cousin had got a job at Pizza Hut, and he was a
19 delivery driver there. And, like I say, within the next
20 month -- I met him at a party, and he had got killed. And
21 since I really wasn't connected to him I just brushed it
22 off because it didn't concern me.

23 THE COURT: Well, when you were asked questions prior
24 to your selection as a juror in the case and I asked you if
25 you knew anything about the case, did you know about Ricky

1 Kelly being killed by or alleged that he was killed by
2 Supreme Ackbar?

3 JUROR NO. 97: No, sir. I just knew that he had got
4 killed.

5 THE COURT: But you didn't know it related to the case
6 that you were being questioned about prior to your
7 selection?

8 JUROR NO. 97: No, sir. I mean, I knew -- when I met
9 him I never knew his last name. He was just introduced as
10 Rick.

11 THE COURT: All right. And when you told your cousin,
12 Alex Lyles, that you realized that you knew who the victim
13 was what did she tell you?

14 JUROR NO. 97: She told me to sit tight and she would
15 call, I guess, her boss to ask what do I need to do.

16 THE COURT: And did you hear any more from her or talk
17 to her about it after that?

18 JUROR NO. 97: Yeah. She called me back and said that
19 it would -- just go to court tomorrow and there would be
20 discussions then about it.

21 THE COURT: Did you have any other discussions with
22 Alex Lyles about it?

23 JUROR NO. 97: No, sir. All I told her is I might
24 have knew the victim.

25 THE COURT: Did you have any other discussions with

1 any other person after you left the courthouse yesterday?

2 JUROR NO. 97: No, sir, just her.

3 THE COURT: Did you have any discussions with any
4 other juror about the fact that you believe you knew the
5 victim or that you did know Ricky Kelly?

6 JUROR NO. 97: Yes, sir. When I saw the picture of
7 the car, that's when I, I just said, oh, my God, I think I
8 know him.

9 THE COURT: And how is it that the car jogged your
10 memory about knowing Ricky Kelly?

11 JUROR NO. 97: Like I said, he was a delivery driver,
12 and I used to pick my cousin up, and I used to see it. And
13 when I met him at the party I saw him getting into it. And
14 it's the same make as the one that my sister drives, the
15 same Honda.

16 THE COURT: All right. And where did you have this
17 discussion with a juror or where did you make the comment
18 that you knew the victim?

19 JUROR NO. 97: We were in the jury box.

20 THE COURT: In the courtroom?

21 JUROR NO. 97: Yes, sir.

22 THE COURT: And who was the juror that you made that
23 comment to?

24 JUROR NO. 97: I don't know his name. It's --

25 THE COURT: Can you describe him for me?

1 JUROR NO. 97: It's the older black gentleman with the
2 bald head. And when I said, he went just like just sit
3 tight and be quiet, and cause it's, he's like cause I don't
4 think it really matters. But I was like I need to talk to
5 somebody that know the law.

6 THE COURT: Well, is, is the only comment that you
7 made or the only discussion you had with any juror the
8 comment you just told me about?

9 JUROR NO. 97: Yes, sir. The only thing I said, oh,
10 my God, I might have known him.

11 THE COURT: And that took place in the jury box, sir?

12 JUROR NO. 97: Yes, sir.

13 THE COURT: Did you ever have any discussions in the
14 jury room with any juror about that fact?

15 JUROR NO. 97: No, sir. I kept my mouth shut the
16 whole time. He told me to be quiet, so I just, I just sat
17 there and kept quiet. And I was like, when I was going
18 home I was like, if somebody find out this might affect
19 this case or anything, so I need to talk to somebody that
20 know. So that's when I told my grandma to call Alex, that
21 I really needed to talk to her.

22 THE COURT: Did you ever say anything to any juror in
23 the jury room or outside of the jury room about that fact?

24 JUROR NO. 97: No, sir.

25 THE COURT: Did you at any time while you were in the

1 jury room, or outside of it for that matter, ever hear any
2 other jurors discussing the fact that you had made that
3 comment?

4 JUROR NO. 97: No, sir. I just leaned over to the guy
5 that was right beside me, and I was like, oh, my God. And
6 he was like well. I don't think he told nobody. I think
7 it's just like little between me and him.

8 THE COURT: Okay. Ask Mr. Watson to step back in --
9 the bailiff.

10 (Whereupon, the bailiff returned to chambers.)

11 THE COURT: All right. The bailiff is going to take
12 you back down to the jury assembly room. Again, have no
13 further discussions about the case.

14 Take him back down to the jury assembly room, please,
15 sir.

16 (Whereupon, the juror was excused from chambers.)

17 THE COURT: The juror that he's referring to, I don't
18 know if that was Mr. Kelley or Mr. Brown. I've got two
19 black males. One is 54 (sic) and one is 52 (sic). Do
20 y'all happen to remember?

21 MR. POOLE: He's the one -- I don't remember those
22 two, but he's the one that's bald.

23 THE COURT: Yeah. I know that. But I don't have a
24 picture of them.

25 (Whereupon, a recess was taken.)

1 (The following takes place in chambers with Juror No.
2 19.)

3 THE COURT: Mr. Brown, if you will, just have a seat
4 right there in that chair, please, sir.

5 JUROR NO. 19: Yes, sir.

6 THE COURT: You're Frankie Brown.

7 JUROR NO. 19: Uh-huh.

8 THE COURT: And you're Juror No. 19.

9 JUROR NO. 19: Yes, sir.

10 THE COURT: You're also a juror in the case of the
11 State vs. Supreme Ackbar. True?

12 JUROR NO. 19: Yeah.

13 THE COURT: This morning Juror Miller, Jeremy Miller,
14 indicated to me that he had made a comment to another juror
15 in the box who he described -- he didn't know your name.

16 JUROR NO. 19: Uh-huh.

17 THE COURT: But he described a juror. And I'm
18 operating under the assumption that it might be you, so
19 that's why I brought you back here.

20 But he says that he made a comment to a juror sitting
21 next to him yesterday about the fact that he believed he
22 knew the victim in this case. Was that you?

23 JUROR NO. 19: He said he thought he knew some lady
24 that worked at a pizza place. I don't know who the
25 juror -- he said something about he thinks he might know.

1 THE COURT: Well, let me ask you this. Do you know
2 who I'm talking about -- Jeremy Miller? Do you know which
3 juror I'm talking about?

4 JUROR NO. 19: I guess you're talking about that black
5 guy that just left here.

6 THE COURT: That's right, yeah. And did you have or
7 did he make some comment to you while y'all were sitting in
8 the jury box yesterday?

9 JUROR NO. 19: He said that he thinks he might know
10 some lady that works at a Pizza Hut. I don't know who she
11 was or what -- who she was or whatever was. And-but that's
12 about all he said to me, was he thought he knew this lady.
13 I guess that -- I guess that white lady that worked at a
14 Pizza Hut or something. I don't know.

15 THE COURT: Well, did he mention anything about the
16 victim in the case, Ricky Kelly?

17 JUROR NO. 19: Uh-uh.

18 THE COURT: He didn't say anything about Ricky Kelly?

19 JUROR NO. 19: Who is Ricky Kelly?

20 THE COURT: Ricky Kelly is the person that the state
21 claims was killed in this murder case that you're sitting
22 as juror in.

23 JUROR NO. 19: No. He didn't say nothing to me about
24 that fellow, whoever that is. But he say he thought he
25 knew some lady that worked at a -- she worked at the Pizza

1 Hut or Pizza Inn or something. I don't know these other
2 names you're calling, calling out.

3 THE COURT: You still don't know who Ricky Kelly is?

4 JUROR NO. 19: Well, you was just telling me he was
5 the victim in this whole thing?

6 THE COURT: Were you not aware of that?

7 JUROR NO. 19: No, I wasn't. You know, I was
8 listening to you yesterday, but I, you know -- this is the
9 first time I ever heard of it, you know, this whole thing.

10 THE COURT: Right now is the first time you've heard
11 of Ricky Kelly?

12 JUROR NO. 19: You may have -- they may have mentioned
13 it yesterday, but, you know, it was so much going on
14 yesterday that I couldn't remember all of these names.

15 But this young fellow did say he thought he knew
16 some -- somebody. I don't know if it was the mama or that
17 lady. Something about the lady he might have knew.

18 Other than that, that's about all he said. And I
19 said, well, why didn't you stand up and tell them that when
20 he was, you know, asking all these questions yesterday.

21 And what I said was, just as I heard you say up there
22 when you was talking to people, I said, well, will it
23 affect your decision, so to speak. And I might have said
24 something like that. But other than that, that's about it.

25 THE COURT: Have you had any discussions with anybody

1 else about the comments made by Mr. Miller?

2 JUROR NO. 19: Uh-uh.

3 THE COURT: Were there any discussions in the jury
4 room, or outside of the jury room for that matter, about
5 Mr. Miller's comments?

6 JUROR NO. 19: Not, no, not to me, not to my
7 knowledge, there wasn't. He was, he was saying that
8 yesterday while the trial was going on, which I ain't paid
9 much attention to it because I didn't know any of these
10 people, that he should have spoke up when you asked that
11 question.

12 THE COURT: You're talking about his comments were
13 made while you were in the courtroom during the trial?

14 JUROR NO. 19: Yeah, when we were sitting there in the
15 jury box.

16 THE COURT: Right.

17 JUROR NO. 19: He said he think he might know one or
18 other of the people. I'm assuming it was some lady. He
19 didn't call the lady's name. I'm just assuming.

20 THE COURT: But you're telling me there are no other
21 discussions about it, no other comments made by Mr. Miller?

22 JUROR NO. 19: No.

23 THE COURT: Either in the courtroom or outside of the
24 courtroom.

25 JUROR NO. 19: I never saw him any more besides in the

1 courtroom.

2 THE COURT: Okay. And have you heard any discussions
3 anybody else has had about Mr. Miller's comments?

4 JUROR NO. 19: Just awhile ago when he got up and
5 walked out there was.

6 THE COURT: When he got up and walked out of --

7 JUROR NO. 19: When they called him to come out.

8 THE COURT: Right.

9 JUROR NO. 19: Him to walk back out the door, now,
10 there was this young white guy, and I can show you. He, he
11 just said awhile ago just before he walked back in there,
12 he was saying that they might have took him out of here
13 because he said he think he knows -- he think -- that's
14 what he said to me. "I think I might know somebody,"
15 whoever's name he called.

16 THE COURT: And this young white guy you're talking
17 about is a fellow juror?

18 JUROR NO. 19: Uh-huh.

19 THE COURT: And he made the comment he may have taken
20 Mr. Miller out because he thought he knew the victim?

21 JUROR NO. 19: Uh-huh, just now just a couple of
22 minutes ago.

23 THE COURT: Right. Were there any other discussions
24 about Mr. Miller in the jury room?

25 JUROR NO. 19: No.

1 THE COURT: Is there anything that Mr. Miller has said
2 to you that would in any way affect your ability to
3 continue to be a juror in the case and to be fair and
4 impartial?

5 JUROR NO. 19: No, sir, nothing he said. He didn't
6 say anything that was to me -- to me he didn't say it.
7 Like he just said he, he think he might know somebody. But
8 I don't know whoever he was talking about, I don't even
9 know who they were.

10 THE COURT: So are you telling me that you're certain
11 it would have no bearing upon your decision in this case?

12 JUROR NO. 19: No, no, sir. It wouldn't have any
13 bearing on me.

14 THE COURT: All right. I'm going to ask you to go
15 with the bailiff back to the jury room.

16 Do not discuss in any fashion with any of your fellow
17 jurors about any discussion you and I have had back here or
18 any discussion or any comments that you heard Mr. Miller
19 make. You're to have no discussions about that with
20 anyone. Do you understand that?

21 JUROR NO. 19: Yeah.

22 THE COURT: Okay. Thank you. If you'll go with
23 Mr. Watson, he'll take you back to the jury room.

24 JUROR NO. 19: Okay.

25 THE COURT: Don't even discuss with the jury why you

1 were back here.

2 JUROR NO. 19: All right.

3 THE COURT: Okay. Thank you.

4 (Whereupon, a recess was taken.)

5 (The following takes place in the courtroom.)

6 THE COURT: All right. Mr. Poole, as you are aware,
7 Juror No. 97 has been removed from any further
8 participation in the trial of this case based upon his
9 failure to comply with the instruction by the Court.

10 And I have also interviewed an additional juror that
11 Mr. Miller indicated had made a comment to, and he has
12 indicated that it would not affect his judgment in any way
13 and he could still be fair and impartial.

14 So the fact that Mr. Miller has been removed means
15 that Ms. Lawing will take his place as the alternate juror,
16 who will now become the 12th juror.

17 And do you have any other matters we need to address
18 before the jury is brought back in?

19 MR. POOLE: Yes, sir. May it please the Court. I do.

20 I will move for a mistrial at this point in time. As
21 the Court knows, Mr. Miller, while did not respond to the
22 Court's voir dire questions whether he knew anybody
23 involved in the case, during the course of the trial
24 yesterday afternoon he leaned over and told Mr. Frankie
25 Brown, Juror No. 19, oh, my God, I know of Ricky Kelly.

1 And then according to Mr. Miller, Mr. Brown said just sit
2 tight, don't worry about it.

3 We have a problem with that. It was communication
4 between two jurors, including Mr. Brown, on that very
5 point. I know Mr. Miller has been removed, but he further
6 went on and made a phone call and spoke to a solicitor, and
7 that's how we became aware of this development this
8 morning.

9 My concern is Mr. Brown in testimony that has been
10 given in chambers stated that he -- basically claimed that
11 Mr. Miller told him something about some woman that he knew
12 associated with this case.

13 But Mr. Miller was very explicit about what he himself
14 told Mr. Brown -- I know Ricky Kelly. And, and of course
15 Mr. Brown didn't say anything about rendering advice to him
16 such as sit tight and don't worry about it. And I might be
17 paraphrasing a little bit. But I do believe that
18 Mr. Miller unequivocally stated that Mr. Brown told him to
19 sit tight and not worry about it or say anything. That was
20 my impression of what Mr. Miller said. Mr. Brown didn't
21 say anything about that.

22 But the fact that we have that said by Mr. Miller
23 under oath tends to reflect on Mr. Brown as to whether he
24 can be a fair juror and continue to sit.

25 And finally Mr. Brown went on to say that he had

1 before he entered into Your Honor's chambers, that he
2 overheard a third juror state that -- paraphrasing --
3 they're thinking about taking him out because he knew the
4 victim. And that is a third juror who's making a remark
5 about what has gone on up to now.

6 Given all of this, Your Honor, I think that the jury
7 is so, for lack of a better word, contaminated that they
8 could not give Mr. Ackbar a fair trial at this point. And
9 we would move for a mistrial based on that.

10 THE COURT: All right. Mr. Bulsa, do you wish to be
11 heard?

12 MR. BULSA: Your Honor, the state feels there's no
13 prejudice. There was no real discussion of any fact in
14 question, merely the realization that one juror knew the
15 victim once he saw a picture of the car. We certainly feel
16 the Court has cured any issue by removing that juror and
17 placing the alternate in his position.

18 Any comments that Mr. Brown told us in court clearly
19 show that he was not influenced at all by what Mr. Miller
20 said to him. So we feel the case should go forward. And
21 there has been no taint of any juror.

22 THE COURT: All right. Well, of course my purpose in
23 interviewing the jurors was to try to determine exactly
24 what was said regarding any fact relating to the case based
25 upon being informed this morning that Mr. Miller had

1 contacted someone and had indicated that he believed he
2 knew the victim in this case.

3 The purpose of the interview of the jurors was to
4 determine what exactly that conversation was. And I have
5 interviewed with, in the presence of counsel, Mr. Miller,
6 as well as Mr. Brown.

7 Mr. Miller from my grasp of the situation appears to
8 have simply recognized during the course of the testimony
9 that he believed that he knew the victim in the case. He
10 indicated, and I think credibly so, that he did not realize
11 prior to his selection that he knew Ricky Kelly.

12 It was only after he heard testimony and saw some
13 photographs during the course of the trial that he realized
14 that the victim in this case was someone that he had met on
15 one occasion and knew from his employment, I believe, as a
16 pizza delivery driver.

17 So there was really no discussion about the case other
18 than the fact of Mr. Miller's realization that he thought
19 he might know the victim. And that was conveyed to
20 Mr. Brown.

21 Mr. Brown -- and that was conveyed here in the
22 courtroom during the course of the trial in the jury box.
23 So there were no outside discussions about it between the
24 jurors.

25 Mr. Brown indicated that he didn't even realize what

1 Mr. Miller had said about knowing the victim. And the way
2 Mr. Miller testified about it, that's also credible in that
3 Mr. Miller apparently simply blurted out that he thought he
4 knew the victim.

5 Then he turned to Mr. Brown and had some discussion
6 about he thought he knew some lady that had something to do
7 with pizza. And I didn't really grasp all of those
8 discussions or understand exactly what he was intending or
9 meant by those comments.

10 But, nevertheless, it was clear that there was no
11 discussion about the facts of the case. It was simply
12 Mr. Miller's realization that he knew someone in the case
13 and his conveying of that information to Mr. Brown.

14 Mr. Brown has indicated that he didn't even realize
15 that Mr. Miller was telling him that he knew the victim but
16 that he knew someone that was involved in the case.

17 Mr. Brown indicated that there were no other
18 discussions between he and Mr. Miller or with any other
19 jurors regarding Mr. Miller's statement. And Mr. Brown
20 also further indicated that there's nothing about that
21 comment that would in any way affect his judgment in the
22 case and that he can continue to be fair and impartial.

23 So based upon my interviews with those jurors and
24 based upon my consideration of any prejudice that could
25 have resulted, I find that there is no prejudice resulting

1 to the defendant, and therefore the defendant's motion for
2 a mistrial should be and therefore is denied.

3 MR. POOLE: Your Honor, I object to your ruling.

4 THE COURT: Okay. Is there anything else we need to
5 address, Mr. Poole, before I bring the jury back?

6 MR. POOLE: No, sir.

7 THE COURT: All right. Bring the jury back, please,
8 sir.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 I apologize for the delay, but I had a couple of
13 issues that I had to deal with this morning before we could
14 get back with the trial of this case. Those issues have
15 been dealt with and have been resolved.

16 As you perhaps are now aware, Mr. Miller has been
17 excused from any further participation in the trial of the
18 case.

19 And that means, Ms. Lawing, that you will be taking
20 his place. And therefore you are now the 12th juror, as I
21 indicated to you earlier that you might become during the
22 course of the trial.

23 So we will now continue with the state's presentation
24 of evidence.

25 Mr. Bulsa.

Danny Lee Burnside
Direct examination by Mr. Bulsa

1 MR. BULSA: Thank you, Your Honor. The state calls
2 Danny Burnside.

3 DANNY LEE BURNSIDE, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Mr. Burnside, introduce yourself to the jury, please.

7 A Danny Burnside.

8 Q What do you go by?

9 A D.J.

10 Q How old are you, sir?

11 A Twenty-one.

12 Q And where do you live?

13 A

14 Q Who do you live with?

15 A My mom and my sister and my stepfather.

16 Q Are you employed?

17 A No, sir.

18 Q Did you finish school?

19 A I have three quarters left.

20 Q Okay. Where are you going to school?

21 A At I.T.T. Technical College in Greenville.

22 Q I.T.T. Technical College?

23 A Yes, sir.

24 Q So you've got a high school diploma?

25 A Yes, sir.

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 Q And how long have you been in that program?
- 2 A Two years.
- 3 Q Now, did you live with your mother back in September
- 4 of 2009?
- 5 A Yes, sir.
- 6 Q Was she having some health concerns?
- 7 A Yes, sir.
- 8 Q What were those that you remember?
- 9 A She had back problems, I think like three back
- 10 surgeries, and she had a stomach surgery.
- 11 Q Did those cause her to have to stay in the room most
- 12 of the time?
- 13 A Yes, sir.
- 14 Q Did her daughter come over and help out some?
- 15 A Yes, sir.
- 16 Q And that's your sister.
- 17 A Yes, sir.
- 18 Q Octavious?
- 19 A Yes, sir.
- 20 Q She goes by Ta?
- 21 A Yes, sir.
- 22 Q Okay. Now, did you know Ricky Kelly?
- 23 A Yes, sir.
- 24 Q How did you know Mr. Kelly?
- 25 A He was my best friend.

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 Q Did he live nearby?
- 2 A Yes, sir.
- 3 Q How often would you see him?
- 4 A Every day.
- 5 Q Every day. Where would y'all see each other most?
- 6 A In the neighborhood at his house or at my house.
- 7 Q Okay. So you visited each other.
- 8 A Yes, sir.
- 9 Q So you're familiar with his family.
- 10 A Yes, sir.
- 11 Q Where did he work?
- 12 A Pizza Hut.
- 13 Q Do you know which one?
- 14 A He used to work by the one on -- by the Dorman
- 15 Center -- but I think he was moved. I'm not sure. I think
- 16 he had switched jobs.
- 17 Q You think he switched locations?
- 18 A Yes, sir.
- 19 Q And would he bring you food sometimes?
- 20 A All the time.
- 21 Q Okay. Would it be food from the Pizza Hut?
- 22 A Yes, sir.
- 23 Q Okay. And on the day of his death did he bring you
- 24 some food over?
- 25 A Yes, sir.

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 Q And what did he bring?
- 2 A Hot wings.
- 3 Q Did you know that he was coming over?
- 4 A Yes, sir. He had called me.
- 5 Q He called you?
- 6 A Yes, sir.
- 7 Q Okay. Was he, was he on his way home from work when
- 8 he stopped by?
- 9 A I think so, yes, sir.
- 10 Q Okay. Do you remember about how long he was there?
- 11 A I'd say like 15 minutes.
- 12 Q Not long?
- 13 A Uh-uh.
- 14 Q Okay. Who else was at your house when he was there?
- 15 A My mom, my sister, her two kids, me, Travis Miller and
- 16 S.K.
- 17 Q Okay. And S.K. is the young man we saw yesterday,
- 18 right?
- 19 A Yes, sir.
- 20 Q Travis Miller is his brother?
- 21 A Yes, sir.
- 22 Q So they lived in the neighborhood also.
- 23 A Yes, sir.
- 24 Q All right. Now, when did you first realize something
- 25 had happened to Ricky?

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 A When the dogs started barking at the door.
- 2 Q And where were you when the dog started barking?
- 3 A In the house.
- 4 Q Who was in the house at that time?
- 5 A My mom, my sister and Travis.
- 6 Q And you and Travis were still inside.
- 7 A Yes, sir.
- 8 Q And what were y'all doing?
- 9 A Watching football.
- 10 Q So you didn't know -- you didn't see anything that
- 11 happened to Ricky, did you?
- 12 A No, sir.
- 13 Q Did you know if he had left your yard?
- 14 A No, sir. I don't know.
- 15 Q All right. When was the last time you actually saw
- 16 Ricky?
- 17 A That day when he brought me the food.
- 18 Q He brought you the food. Did he come inside?
- 19 A Yes, sir.
- 20 Q And then he went back outside.
- 21 A Yes, sir.
- 22 Q Did you go outside with him at any time?
- 23 A No, sir, not, not after he gave me the food, no, sir.
- 24 Q Okay. Were you outside at any time with him?
- 25 A Yes, sir.

Danny Lee Burnside
Direct examination by Mr. Bulsa

1 Q All right. Describe what was going on outside.

2 A Well, really he -- after he came in and brought me the
3 food -- well, before he brought me the food he was outside.
4 And then that's when me and Travis -- me and Travis walked
5 back in the house. And then he brought me the food. And
6 he stepped back outside.

7 Q Okay. Now, you're making it sound like he was there
8 twice. Did he leave and come back?

9 A No, sir.

10 Q He had the food in the car. He just didn't bring it
11 in right away.

12 A Yes, sir.

13 Q Okay. All right. So he came over one time. The
14 first time you and Travis went out and talked with him?

15 A Yes, sir.

16 Q Okay. And then y'all went back inside?

17 A Yes, sir.

18 Q He brought the food in with him.

19 A Yes, sir.

20 Q And then he actually left the house.

21 A No. He went back outside.

22 Q Okay. Mr. Kelly left and went outside.

23 A Yes, sir.

24 Q Did you think he was leaving?

25 A Yes, sir.

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 Q All right. Do you know where S.K. had gone?
- 2 A No, sir.
- 3 Q Had he left?
- 4 A Yeah, he had left.
- 5 Q Okay. Now, we've heard the name Marcus Wright a lot
- 6 in this trial. Do you remember seeing him at your house?
- 7 A Yes, sir.
- 8 Q Okay. Describe how he got there and what he did.
- 9 A Well, I didn't, I didn't -- I wasn't outside when he
- 10 pulled up. But when he pulled up he just -- he was
- 11 standing beside the car.
- 12 Q And how was it that you were able to see him by the
- 13 car?
- 14 A Through the door.
- 15 Q Okay. And whose car was he by?
- 16 A His car.
- 17 Q His car. And do you recall what kind of car that was?
- 18 A A silver car. I don't know what kind of car it is.
- 19 Q Okay. Let me show you a picture, State's Exhibit
- 20 No. 7. Does that appear to be his car?
- 21 A Yes, sir.
- 22 Q Okay. Is that his car or his mother's car?
- 23 A I think it's his mother's car.
- 24 Q Okay. Did he drive that often?
- 25 A Yes, sir.

Danny Lee Burnside
Direct examination by Mr. Bulsa

1 Q All right. So he was standing by a silver car. What
2 else happened at that time?

3 A Well, we had talked, and then that's when me and
4 Travis walked in the house.

5 Q Okay. And which room were you inside the house?

6 A The den.

7 Q The den. Is that on the front side or the back side
8 of the house?

9 A The back side.

10 Q And what were y'all doing?

11 A Watching football.

12 Q So you were watching television. Your attention is at
13 the T.V.

14 A Yes, sir.

15 Q All right. But when you went in you know Marcus was
16 outside and Ricky had gone outside.

17 A Uh-huh.

18 Q Is that right?

19 A Yes, sir.

20 Q S.K. had left sometime during that timeframe also.

21 A Yes, sir.

22 Q Did you see the defendant, Supreme Ackbar?

23 A No, sir.

24 Q What relation is he, if any, to you?

25 A We wasn't really that close, but we chill sometimes,

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 smoke, sometimes.
- 2 Q Did he live with your sister?
- 3 A Yes, sir.
- 4 Q How long did he live with her?
- 5 A I think like a year and a half, two years.
- 6 Q Okay. Do you know their address?
- 7 A No, sir.
- 8 Q Were they ever -- did they live in Wellford?
- 9 A Yes, sir.
- 10 Q All right. Did Mr. Ackbar come over often?
- 11 A Not too often, no.
- 12 Q Okay. When he came over did he usually come inside?
- 13 A Yeah.
- 14 Q Did you even know he was over there that day?
- 15 A No, sir.
- 16 Q So he did not come inside at any time.
- 17 A No, sir.
- 18 Q You didn't know whether he was in the truck or not.
- 19 A No, sir.
- 20 Q And the truck we're talking about is the one we've
- 21 seen the picture of. That's your sister's truck?
- 22 A Yes, sir.
- 23 Q State's Exhibit No. 6. When you were outside with
- 24 Mr. Kelly did you remember seeing your sister's truck out
- 25 there?

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Let's go back to the dogs barking. What did you do
3 when you heard those dogs?
- 4 A I was sitting there. And when the dogs started
5 barking, then that's when everybody jumped up and went to
6 the living room.
- 7 Q Okay. And what happened?
- 8 A Then my sister -- I think it was my sister and my mom
9 opened the door. And that's when I seen Ricky.
- 10 Q Okay. You said you opened the door. You opened the
11 main door to the house?
- 12 A Yes, sir.
- 13 Q And then what did you see?
- 14 A Ricky laying on the front porch.
- 15 Q Okay. Was there a storm door?
- 16 A A screen door, yes, sir.
- 17 Q A screen door. All right. Did anybody try to go out
18 that door to check on him?
- 19 A My mom did, but she couldn't get the door open. So we
20 had to go out the back door.
- 21 Q Now, when you went out into the living room did Travis
22 come with you?
- 23 A Yes, sir.
- 24 Q So he basically saw what you saw.
- 25 A Not, not inside. Once we went out the back door, then

Danny Lee Burnside
Direct examination by Mr. Bulsa

- 1 he seen it.
- 2 Q Okay. So he didn't actually see him outside the door.
- 3 A No, sir.
- 4 Q He went outside with you?
- 5 A Yes, sir.
- 6 Q The back door. Now, we heard an officer testify about
- 7 who was at the house when he got there. Travis Miller was
- 8 not there. What happened to Travis?
- 9 A He, he ran home.
- 10 Q Okay. Did he see Ricky on the porch?
- 11 A Yes, sir.
- 12 Q Do you know why he ran home?
- 13 A Probably was scared.
- 14 Q All right. Did you at any time see Marcus' car leave?
- 15 A No, sir.
- 16 Q Do you know why that is?
- 17 A No, sir.
- 18 Q Were you in a position to see him where you were
- 19 located in the house?
- 20 A No, sir.
- 21 Q But your mother's bedroom has a window that faces
- 22 outside.
- 23 A Yes, sir.
- 24 Q And you didn't know where S.K. was or when he left.
- 25 A No, sir.

Danny Lee Burnside
Cross-examination by Mr. Poole

1 Q Okay. Did you get a good look at Ricky, what happened
2 to Ricky?

3 A No, sir.

4 Q How close did you get to him?

5 A I was, I was right in front of the porch, but I, I
6 wouldn't look.

7 Q What do you mean, you wouldn't look?

8 A I couldn't stand to look up there to see him. I
9 wasn't trying to see him.

10 Q Was it because of all of the blood?

11 A Yes, sir.

12 Q Thank you. Answer any questions Mr. Poole may have.

13 CROSS-EXAMINATION

14 BY MR. POOLE

15 Q Mr. Burnside, how long have you known Marcus Wright?

16 A Like six or seven years.

17 Q Okay. He is a good friend of yours?

18 A Yes, sir.

19 Q And does he come over to your house often, or this
20 house?

21 A Yes, sir.

22 Q And did he call before he came over there that day?

23 A He had called earlier, not right before he came, but
24 he had called earlier like he do every day.

25 Q Did he call every day?

Danny Lee Burnside
Cross-examination by Mr. Poole

- 1 A Yeah. We always call each other.
- 2 Q So you're good enough friends that you call one
- 3 another on a daily basis.
- 4 A Yes, sir.
- 5 Q And did he indicate he was coming over?
- 6 A Well, he said he would be over in a little while. He
- 7 didn't say no exact time.
- 8 Q Okay. And what time did Ricky Kelly call?
- 9 A I'm not sure of the exact time.
- 10 Q All right. How long was it between his phone call and
- 11 when he brought the food to you?
- 12 A I can't really say. I can't. I don't know.
- 13 Q Okay. All right. And after he brought the food --
- 14 you testified to this -- but he brought the food over, and
- 15 then you went outside, is that right?
- 16 A When he pulled up we was already outside, then when he
- 17 brought the food in, and then he came back out.
- 18 Q Okay. You were already outside when Mr. Kelly pulled
- 19 up.
- 20 A Yes, sir.
- 21 Q Then he brought the food in.
- 22 A Uh-huh.
- 23 Q And then you went inside.
- 24 A Uh-huh.
- 25 Q And who was with you?

Danny Lee Burnside
Cross-examination by Mr. Poole

- 1 A Travis Miller.
- 2 Q Did y'all go outside after that?
- 3 A No, sir.
- 4 Q You did not. Okay. Did you see Marcus Wright pull
5 up?
- 6 A Yes, sir.
- 7 Q Okay. And did he get out of his car?
- 8 A Yes, sir.
- 9 Q And where did he go?
- 10 A He was just standing in front of the car smoking a
11 cigarette.
- 12 Q Okay. His car?
- 13 A Yes, sir.
- 14 Q Okay. We're hearing testimony about smoking and
15 smoking cigarettes. Was any marijuana being smoked?
- 16 A Not at the moment. Well, we didn't never get to
17 smoke.
- 18 Q Okay. You were planning on it?
- 19 A Yes, sir.
- 20 Q So Marcus Wright is out in front of his car smoking a
21 cigarette?
- 22 A Uh-huh.
- 23 Q Okay. And you do not see him leave.
- 24 A No, sir.
- 25 Q Okay. Did you speak with him?

David Hogsed
Direct examination by Mr. Bulsa

- 1 A Yeah. I just said hey.
- 2 Q Was that the extent of the conversation?
- 3 A Sir?
- 4 Q Was that the extent of the conversation?
- 5 A Yes, sir.
- 6 Q How long was he there?
- 7 A Not long.
- 8 Q And by not long, can you give us an estimate?
- 9 A Five to ten minutes.
- 10 Q Pardon me?
- 11 A Like ten minutes.
- 12 Q Thank you.
- 13 MR. BULSA: Nothing further.
- 14 THE COURT: You may step down.
- 15 MR. BULSA: The state calls David Hogsed.
- 16 DAVID HOGSED, having been
- 17 first duly sworn, testified as follows:
- 18 DIRECT EXAMINATION BY MR. BULSA
- 19 Q Officer, please introduce yourself to the ladies and
- 20 gentlemen of the jury.
- 21 A David Hogsed.
- 22 Q And you're in uniform. What uniform is that?
- 23 A This is actually sheriff's office class A uniform.
- 24 Q Okay. How long have you been with the sheriff's
- 25 office?

David Hogsed
Direct examination by Mr. Bulsa

1 A Going on six years.

2 Q How long have you been an officer?

3 A I'm actually in my 22nd year.

4 Q You were formerly with which agency?

5 A With the City of Spartanburg Public Safety Department.

6 Q What is your title with the sheriff's office now?

7 A I am actually night shift supervisor for the crime
8 scene.

9 Q And the crime scene unit is what? Describe that.

10 A The crime scene unit, any time that one of our uniform
11 patrol officers-investigators, S.R.O., basically we are a
12 support group for the entire sheriff's office.

13 If they deem that a crime has occurred and they call
14 requesting for our assistance, we respond and process those
15 crime scenes.

16 Q So the patrol officer basically guards the crime scene
17 until y'all get there.

18 A That's correct and --

19 Q Okay. I'm sorry.

20 A And of course a crime scene can be for us going in and
21 taking photographs of the abused victim to working a
22 homicide scene or a murder scene. And once the uniform
23 patrol officer gets there they determine what they have.
24 They'll quarter off and get everybody out. And then we
25 respond. And usually the only ones that's allowed inside

David Hogsed
Direct examination by Mr. Bulsa

1 the crime scene once we're there is the crime scene unit,
2 personnel with the coroner's office and the lead
3 investigators.

4 Q Now, did some of your duties also involve processing
5 items away from the scene?

6 A Yes. We do not process everything at the crime scene.
7 There's a lot of factors to that -- vehicles. And there's
8 also some things that we can collect that we'll actually
9 take back to our crime lab and process there. So not
10 everything is actually processed at the crime scene. It's
11 just collected.

12 Q Do you also, in fact, participate in the searches of
13 certain locations?

14 A Yes. As far as being with the crime scene unit, the
15 investigators do a search warrant or get permission to
16 search on somebody, they'll contact us. And we will go
17 with them. We will actually execute those search warrants
18 and actually search for items of evidence.

19 Q In this case earlier yesterday we heard from Officer
20 Ted Saar. Did he work in your unit?

21 A Yes. When this, when this incident, occurred Ted was
22 actually the crime scene investigator and actually went out
23 and processed the crime scene. Now he's actually our
24 fingerprint or latent fingerprint examiner. But at that
25 time he was actually responding out and processing crime

David Hogsed
Direct examination by Mr. Bulsa

1 scenes.

2 Q Okay. So he went to the initial scene. Did you ever
3 yourself go to that scene?

4 A Yes, actually I did. Being a supervisor with the
5 crime scene unit, one of our responsibilities when a major
6 crime occurs in Spartanburg County, that one or two
7 supervisors over the crime scene unit will respond.

8 Basically, at that time we do not actively get
9 involved with processing a crime scene most of the time.
10 However we do respond to make sure that the guys that are
11 processing the crime scene are pretty much -- they have
12 everything that they need and, and so forth.

13 We're there to support them to make sure that they
14 have what they need and get them what they need if they do
15 need something.

16 Q And you would have actually gone out on September the
17 20th.

18 A Yes. I actually did respond to the crime scene and
19 actually did a walk-through with the crime scene
20 investigators on the scene.

21 Q They were doing their job. Did you then leave?

22 A Yes. I probably was there maybe an hour or an hour
23 and a half. And then I left the crime scene that day.

24 Q Okay. Did you get involved at any other time with any
25 processing of items pertaining to this case?

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes. I was actually back out at the crime scene on
2 November the 21st.

3 Q And what was your reason for going?

4 A Investigator Lorin Williams called me. I'm the night
5 shift supervisor. I work the 7-p to 7-a. The autopsy --
6 when the autopsy was performed I was not there. However
7 the investigators was there.

8 Investigator Lorin Williams called me and told me that
9 during the autopsy that it was discovered that Mr. Kelly
10 had actually lost two teeth during the altercation and that
11 we needed to go back out and look for those, and which I
12 did meet Investigator Williams back out at . . .
13 And we did locate Mr. Kelly's two teeth.

14 Q Where were they located?

15 A If you're facing the front of the house the actual
16 porch is like cinder block, part cinder block of the
17 framing of the porch.

18 If you're looking at the front door, front storm door,
19 to the left of that, the two teeth had actually fallen down
20 inside of the cinder blocks. They were down in -- and
21 inside of the cinder blocks, the hole within the cinder
22 block.

23 Q Was that location where Mr. Kelly's body was found?

24 A Yes. Where Mr. Kelly was found would be to the left
25 of where he was at.

David Hogsed
Direct examination by Mr. Bulsa

1 Q Did it appear that they would have come out of his --
2 they would have gotten knocked out when he fell?

3 A Could have got knocked out or fell. Or, I mean, he
4 could have had them in his mouth and aspirated them out,
5 any of those, those scenarios.

6 Q Okay. Was that the extent of your revisit to the
7 scene?

8 A Yes.

9 Q Okay. And during your time involved in this case did
10 you have an occasion to process the truck that was, I
11 believe, State's Exhibit No. 6?

12 A Yes, sir, I did.

13 Q Okay. And that had been towed from the scene?

14 A That was actually towed to the scene and was located
15 at the -- what we referred to as the county shop. It's the
16 county -- they do work on all of our cars. But they secure
17 vehicles for us there.

18 I was notified, did a search warrant, had been written
19 up and signed by a judge, and it needed to be executed.
20 And I executed it on the -- September the 23rd of 2009.

21 Q Okay. So pursuant to a valid search warrant you began
22 to examine this truck.

23 A That's correct.

24 Q Okay. Show you, show you a group of photographs.

25 Just look through them and see if you can identify them for

David Hogsed
Direct examination by Mr. Bulsa

1 me.

2 A Yes, sir. Those are photographs I took of the truck
3 and of items found inside the truck when I executed the
4 search warrant.

5 Q Do they depict the location of where the items were
6 recovered?

7 A Yes, they do.

8 Q In fact, some of them, you actually opened up some
9 items to show what was inside.

10 A That's correct. There is a camouflage type book bag
11 that was in. And we as before just opening it up, we
12 started opening compartments and taking picture of the
13 compartment and taking a picture and so forth.

14 MR. BULSA: Your Honor, I would ask that these be
15 entered into evidence.

16 MR. POOLE: No objection, Your Honor.

17 THE COURT: They're admitted.

18 (Photographs marked State's Exhibits Nos. 10 through
19 20.)

20 Q Okay. All right. I'm sure you can see from where you
21 are. Let me ask you first. This view in your examination
22 of that truck, were the back windows tinted?

23 A Yes. They are.

24 Q Okay. So it would be difficult to see if anybody is
25 in there?

David Hogsed
Direct examination by Mr. Bulsa

1 A Can I step down?

2 Q Yes, sir.

3 (Whereupon, the witness left the stand.)

4 A I would say the bad tint, and backed up against those,
5 those trees, and then it had been raining, was very cloudy
6 that initial day, yeah, it probably would be a little hard
7 to see who was sitting inside the vehicle.

8 Q Thank you. Have a seat back.

9 (Whereupon, the witness returned to the stand.)

10 Q This view shows us the driver's side. State's Exhibit
11 No. 10 shows us the passenger side. And we can see a lot
12 of mud on the wheels.

13 A That's correct.

14 Q Is that because of the rain from that day?

15 A Rain from that day, and that would probably be where
16 the tow truck pulled it up onto the rollback.

17 Q To your knowledge this truck was removed from
18 and taken straight to this location.

19 A As far as I know, yes.

20 Q Okay. All right. State's Exhibit No. 11. Explain
21 what that is for us.

22 A We always take photographs, tag, V.I.N. and some
23 registration cards in the vehicle -- we also take a picture
24 of the registration card to show the tag on there is
25 correct, V.I.N. matches the car and also who the registered

David Hogsed
Direct examination by Mr. Bulsa

1 owner to the vehicle is.

2 Q And this owner is listed as Octavious Burnside?

3 A That's correct.

4 Q Actually has the address of : : : .

5 A That's correct.

6 Q Now, I start your -- showing photos of your processing
7 with this side. This is the left side, the passenger side,
8 State's Exhibit No. 12. Is that a view into the back
9 passenger door?

10 A Yes. That's the -- what I refer to as right side and
11 left side, right rear floorboard, which is in the passenger
12 side. And when I say right or left, it's as if you
13 visualize yourself sitting in the car. You sit on the left
14 side -- the driver. That's the right rear floorboard, is
15 the passenger side of the rear floorboard.

16 Q All right. And that shows how the occupants were
17 located in the car.

18 A Yes. The first thing we do before we start moving
19 anything is document what we see as is with photographs.

20 Q All right. And in this photograph we see a blue
21 object in the floorboard.

22 A That's correct.

23 Q What is that?

24 A It actually turns out to be some a -- people call them
25 latex, but it is called nitrile glove, or a latex glove as

David Hogsed
Direct examination by Mr. Bulsa

1 most people would know. That's actually -- that's what's
2 laying on the floor, and it was turned inside out.

3 Q State's Exhibit 13, is that a closer view of it?

4 A Yes, that's a closer view of the glove.

5 Q Okay. Now, let's look at the other side of the
6 vehicle.

7 A The driver's side.

8 Q Let me remove some of these. There we go.

9 A That's actually a picture showing the back seat, the
10 driver's side of the vehicle.

11 Q Turn the picture so you can get the correct view.

12 A That's correct. When we take the picture we get the
13 overall. We have to turn the camera up and to get an
14 elongated view.

15 Q All right. And in the floorboard I see an object that
16 looks like a backpack. What is that?

17 A That's actually a camouflage type backpack, or book
18 bag as some people call it, that was in the floorboard.

19 Q Okay. Looking at it from the other view, State's
20 Exhibit 16, was it open like that when y'all found it?

21 A I don't recall if the zipper was opened. But I'm -- I
22 would say yes with the photograph being taken like that.

23 Q Let's look back at State's Exhibit No. 12 and the
24 other side. Can you tell from that picture?

25 (Whereupon, the witness left the stand.)

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes. It appears to be open.

2 (Whereupon, the witness returned to the stand.)

3 Q Okay. And this is -- these pictures were taken before
4 you removed anything.

5 A That's correct, yes, sir.

6 Q Okay. So whoever left that truck left that backpack
7 open like that.

8 A That's correct.

9 Q We see the backpack in apparently a different
10 position, State's Exhibit 17. Can you explain this to us?

11 A That will be once we started collecting items, moved
12 the backpack to bring it out. Like I said earlier, what
13 we'll do is we'll open the compartment and take a
14 photograph of the compartment and take a photograph. This
15 is the outer pocket of the backpack or book bag. When you
16 open it up -- as I opened it up I took the photograph.
17 This item right in here is a Kel-Tec 9mm handgun.

18 MR. POOLE: Your Honor, I object. May we approach the
19 bench?

20 THE COURT: Yes.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 MR. POOLE: Your Honor, the objection is that --

24 THE COURT: Let me see you just a minute.

25 (Bench conference held off the record in the presence

David Hogsed
Direct examination by Mr. Bulsa

1 of the jury but out of the hearing of the jury.)

2 Q Let me show you a closeup picture, State's 18. Does
3 that show that same pistol?

4 A It does.

5 Q Did that pistol appear to be functional to you?

6 A Actually I didn't -- we, we cleared it and rendered it
7 safe for us, and then it went straight to a box. And we
8 never messed with it again.

9 Q Okay. Was it loaded?

10 A The magazine -- the magazine contained four 9mm
11 bullets, but there was no round actually chambered.

12 Q Okay. All right. That was contained within the book
13 bag in the floorboard.

14 A That's correct.

15 Q Okay. And that was on the outer pocket, I think you
16 said.

17 A That's correct.

18 Q Now, let me show you State's Exhibit No. 19. What
19 view are we seeing here?

20 A That's the inside of the book bag. It's opening it up
21 further, the actual main compartment of the book bag,
22 packback.

23 Q So is this the same part of the book bag that we saw
24 in State's Exhibit No. 16?

25 A That's correct. That's just opening it up further so

David Hogsed
Direct examination by Mr. Bulsa

1 I could see what was actually down inside or if anything
2 was down inside the actual book bag.

3 Q When you open it up what do you see in there?

4 A That is latex glove, shoe strings, looks like a shoe
5 string. There's a mesh type bag that was inside, was also
6 inside the book bag.

7 Q And were those gloves similar, similar to the one you
8 found before?

9 A That's correct.

10 Q Okay. All right. And yesterday we saw a picture.
11 And let me show you this one first, State's Exhibit No. 20.
12 That shows a baby seat. And what are we seeing there?

13 A That's a car seat, actually sets in the center of the
14 back-seat area. And that is an M-Tech knife sheath that is
15 setting on the baby's seat or within the car seat.

16 Q What is the blue object?

17 A That's a piece of a -- of the nitrile -- of one of the
18 nitrile gloves.

19 Q Okay. Appears to be a couple of other items in the
20 seat.

21 A Car keys. And I forgot what the other one was.

22 Q Is that a cell phone?

23 A Looks like a cell phone, yes, sir.

24 Q Okay. And then State's Exhibit No. 9 that we saw
25 yesterday, those two items aren't there.

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes. We took everything away. Took out -- took
2 everything, collected cell phone, car keys, bag, and tagged
3 those, and took another photograph just where the knife
4 sheath was. And of course the piece of the nitrile glove.

5 Q All right. Now, you actually recovered, took into
6 possession these items.

7 A That's correct.

8 Q All right. We have a few of them here in court today.

9 MR. POOLE: Your Honor, I, I object to the
10 introduction of these items.

11 We have photographs of them already. That's all that
12 these items are, just what we saw in those photographs. We
13 would contend that these items are duplicative and not
14 necessary.

15 THE COURT: All right. Let me see y'all just a
16 second.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Overrule the objection.

20 Q You saw me pull one bag off this.

21 A That's correct.

22 Q Let me get it marked first if I may. And what I'm
23 going to ask, that we leave it in one bag so that you can
24 mark the bag.

25 (Backpack marked State's Exhibit 21 for

David Hogsed
Direct examination by Mr. Bulsa

1 Identification.)

2 Q State's Exhibit 21. Let me ask you this. You removed
3 the pistol from that bag --

4 A That's correct.

5 Q -- and packaged it separately.

6 A Yes, it was packaged completely separate.

7 Q So it's not in the bag.

8 A No.

9 Q But it's -- what is still remaining in the bag?

10 A This is the mesh type bag that I was referring to.

11 There's a pair of sunglasses, a cell phone case, the shoe
12 string and one -- excuse me -- one, two, three, four,
13 five -- five of the natural gloss, bluish color nitrile
14 gloves, and actually this appears to be one of the
15 fingertips off of a glove.

16 Q Okay.

17 (Blue latex glove marked State's Exhibit No. 22 for
18 Identification; piece of latex glove marked State's Exhibit
19 No. 23 for Identification; M-Tech knife sheath marked
20 State's Exhibit No. 24 for Identification.)

21 Q Let me show you what's been marked State's Exhibit 22.
22 What is that?

23 A This would be the blue colored latex glove. Can I
24 open it?

25 Q Yes, sir. Please.

David Hogsed
Direct examination by Mr. Bulsa

1 A This would be the blue colored latex glove that was
2 recovered from the, the floorboard of the vehicle.

3 Q That relates to the item in State's Exhibit No. 12.

4 A That's correct.

5 Q Okay. State's Exhibit No. 23. Would you open that
6 and explain it?

7 A A torn piece of latex glove that was in the child's
8 seat beside the knife sheath.

9 Q Is it readily apparent that all of these gloves were
10 similar consistency?

11 A Yes. They're all consistent and the same color and
12 texture.

13 Q And now State's Exhibit No. 24. It's already been
14 opened. But tell us what that is.

15 A That is the M-Tech knife sheath that was actually in
16 the child's seat of the -- in the back.

17 Q Can you estimate the length of that blade?

18 A Six or seven inches maybe.

19 Q Thank you.

20 Now, Officer, did you have an occasion to participate
21 in the search of a residence on : : : ?

22 A Yes. That was actually done on September the 22nd.

23 Q And which residence was that?

24 A It was at : : : in Wellford.

25 Q Do you know who was residing there?

David Hogsed
Direct examination by Mr. Bulsa

1 A It was my understanding at the time that a
2 Ms. Octavious Burnside, that was her residence.

3 Q Okay. All right. And you took a lot of pictures
4 there.

5 A Yes.

6 Q Searched the whole house and the property.

7 A That's correct.

8 Q And we're only concerned with one item in question.

9 That's what I'm going to ask you about it here in a second.

10 MR. POOLE: No objection.

11 (Pack of opened gloves marked State's Exhibit No. 25
12 for Identification.)

13 Q Just a couple of questions before I show you this.

14 You were there searching Ms. Burnside's residence. Do
15 you know who was living there with her?

16 A No, I do not.

17 Q You didn't know yourself. You were there to call on
18 behalf of the investigators?

19 A That's correct. The investigators notify us that they
20 have a search warrant, and we go and execute it and start
21 looking for items of evidence.

22 Q Were you looking for bloody clothes?

23 A Yes.

24 Q You were looking for the knife that perhaps went to
25 that sheath?

David Hogsted
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Did you find either of those?

3 A No, we did not.

4 Q Okay. Were you looking for gloves that might have
5 been similar to those gloves?

6 A We pretty much looked for anything that was consistent
7 with what was found at the crime scene or anything that may
8 have -- any sharp instrument or whatever that could have
9 been used that was consistent with what we find at the
10 crime scene, and also during the autopsy of Mr. Kelly.

11 Q All right. And I show you what's been marked as
12 State's 25. Open that up and tell us what it is.

13 THE COURT: Twenty-five is admitted without objection,
14 Mr. Poole?

15 MR. POOLE: That's right, Your Honor.

16 (Pack of opened gloves marked State's Exhibit No. 25.)

17 A When you go to the back of the residence at
18 you have a back yard, and then you start a wood
19 line.

20 Q Yes, sir.

21 A Woods there.

22 Q Don't go into that.

23 A Okay.

24 Q Tell us what that is.

25 A It's an open pack of the purplish-bluish nitrile

David Hogsed
Cross-examination by Mr. Poole

1 gloves made by Stanley that was found back behind the
2 house.

3 Q Okay. And are those of similar consistency or --

4 A Yes, they are. They color and --

5 Q The ones we've seen that were found in the truck.

6 A The color and texture were consistent with the same
7 ones found within the vehicle.

8 Q Okay. Okay. That's all I have at this point. Answer
9 any questions Mr. Poole may have.

10 CROSS-EXAMINATION

11 BY MR. POOLE

12 Q So, Sergeant, at this house you did not find any
13 bloody clothes, nor did you find any weapon, is that
14 correct?

15 A No. We did not.

16 Q And the only thing that you found that could be tied
17 to this incident was some gloves that appeared to be of the
18 same consistency in nature of the glove found in the truck.

19 A Yes. That's correct.

20 Q Did you also execute a search warrant on a silver
21 colored Chrysler Sebring?

22 A Sir?

23 Q Did you also execute a search warrant to look inside
24 of a silver colored Chrysler Sebring?

25 A Yes, I did.

David Hogsed
Cross-examination by Mr. Poole

1 Q And that was on September the 24th of 2009?

2 A That's correct.

3 Q And what is the relationship with that Sebring to this
4 case?

5 A Again, investigators contact us. The car is taken to
6 the shop. They tell us they have a search warrant that
7 they want to us execute and look for evidence of the crime
8 in it. And we execute it. I don't know who the car
9 belongs to or what relationship it was or what it had to do
10 with the actual crime.

11 Q Do you know who was driving it on the day of
12 September the 20th?

13 A No, I do not.

14 Q Can you tell us what you think you found inside of it?
15 You took -- let me put it this way. You took some swabs
16 from what appeared to be blood, is that right?

17 A That's correct.

18 Q Would you tell us what you saw and where you saw it as
19 it relates to what apparently was blood?

20 A When you open your car door you have on the inner
21 framing -- not the door -- the inner framing where the door
22 closes into it -- you have weather stripping there or a
23 weather sill, a weather stripping.

24 On that sill about the top center I located what I
25 believed to be and what actually turned out to be human

David Hogsed
Redirect examination by Mr. Bulsa

1 blood, tested positive for human blood, a very minute drop
2 of blood in that area.

3 We also found one on the, the window. And this was on
4 the passenger-side front. We also found some on -- a small
5 amount also on that weather sill that's around your window
6 where you roll your window down. You have that sealing
7 that the window comes up into. There was also a very small
8 amount of blood there. When I say small amount, these
9 areas are about a millimeter or smaller in size.

10 Q Did you not also find some blood on the driver's-side
11 front floor mat?

12 A I don't know if what we -- what we did -- should I go
13 through the whole processing of the vehicle?

14 Q No, sir. I'm just asking you if you found blood on
15 the driver's-side front floor mat.

16 A That did not test positive. I'm not sure that was
17 blood.

18 Q Okay. That's all the questions.

19 MR. BULSA: Briefly in reply.

20 REDIRECT EXAMINATION

21 BY MR. BULSA

22 Q Let me explore this Sebring a little bit further.

23 Mr. Poole asked you about what you found. You
24 described to the jury finding some blood, as you called it,
25 on the passenger side.

David Hogsed
Redirect examination by Mr. Bulsa

1 A That's correct.

2 Q How can you determine that is blood?

3 A We actually have two ways of testing for blood. One
4 is called a quick-check system, which we use. And all that
5 does is tells us if it's blood. It doesn't distinguish if
6 it's human, animal, fowl or whatever.

7 However we use a system called O.B.T.I., which is
8 actually the same system the hospital uses to test for
9 blood in fecus matter and urine and so forth.

10 It distinguishes human blood from everything else
11 based on your hemoglobin. That's what we use, was an
12 O.B.T.I. test that tested if it was first blood, and,
13 second, human. If it was not human blood we would not have
14 gotten a positive reaction whatsoever.

15 Q And the area you described, do you have any -- well,
16 in your experience how would blood have gotten to that
17 location in the car?

18 A One -- in those areas the one -- the one that was on
19 the windowsill, the one on the window, had to be at least
20 partially down.

21 The one that was on the inside door indicates to me
22 that that door would have had to at least been opened in
23 one of two ways in my opinion and from doing this for 11
24 years, is, one, it would have had to spattered there, or,
25 two, it would have had to have been transferred there,

David Hogsted
Redirect examination by Mr. Bulsa

1 which I'm basically meaning it was on one surface and
2 transferred to that surface. It could have been on
3 clothes, hands, anything and actually transferred to that
4 surface.

5 Q Okay. So somebody opening the door could have
6 transferred it there.

7 A Yes. That's correct.

8 Q Okay. Now, Mr. Poole asked you about the substance in
9 the driver's floorboard. Explain that a little further.

10 A What we did when we found those two minute areas of
11 blood and we started -- after we found what we found with
12 the naked eye and flashlights, we'd go in and we'd go under
13 low light conditions. And then we sprayed the car with
14 what's called BlueStar Blood Reagent. And basically what
15 happens is, is it has an observation chemical in it that
16 oxidizes when it hits blood, the protein in blood. It
17 makes it aluminous and visible to the eye.

18 If we spray an area and it luminesces, we collect it.
19 It doesn't mean it's blood, but it's going with us.

20 Q Okay.

21 A Basically.

22 Q Did you run a presumptive test on it?

23 A Yes. And I don't recall it being positive for human
24 blood.

25 Q Would you have noted it if it was?

Octavious Burnside
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Okay. So the only human blood that you documented
3 finding was on the passenger side.

4 A That's correct.

5 Q Thank you.

6 MR. POOLE: No other questions.

7 THE COURT: You may step down.

8 MR. BULSA: The state calls Octavious Burnside.

9 May we excuse?

10 THE COURT: He may be.

11 (Whereupon, the witness was excused.)

12 OCTAVIOUS BURNSIDE, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BULSA

15 Q Ma'am, please introduce yourself to the jury.

16 A I am Octavious Burnside.

17 Q How old are you, ma'am?

18 A Twenty-four.

19 Q How many children do you have?

20 A Two.

21 Q Are you married?

22 A Yes.

23 Q To whom?

24 A Supreme Ackbar.

25 Q When did y'all get married?

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 A July 15th of 2009.
- 2 Q How long have you known him?
- 3 A I met him June of 2007.
- 4 Q So you'd known him about two years before you actually
- 5 got married?
- 6 A Yes, sir.
- 7 Q Okay. How old is he?
- 8 A Thirty-four.
- 9 Q So he's ten years older than you. All right. Where
- 10 were y'all living back on September 20th of 2009?
- 11 A We were living at . . . , Wellford.
- 12 Q Okay. Is that the address that the officer just
- 13 described having searched?
- 14 A The second address, yes, sir.
- 15 Q Okay. Where the gloves were found.
- 16 A Yes, sir.
- 17 Q Okay. How long had y'all lived there?
- 18 A I want to say about seven or eight months.
- 19 Q Okay. Now, was Mr. Ackbar working during that
- 20 timeframe?
- 21 A Partially, part of it.
- 22 Q How about yourself? Were you working?
- 23 A Yes, sir.
- 24 Q Where were you working?
- 25 A I work at Super Cuts in the Dorman Center.

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 Q You're a hair stylist?
- 2 A Yes, sir.
- 3 Q How long have you held that job?
- 4 A I've been with Super Cuts, the company, since June of
- 5 2004, but I been at that location for four years.
- 6 Q Okay. And how old are your children?
- 7 A My daughter A. is two and a half. Her birthday is
- 8 in . And my son just turned one .
- 9 Q So were you pregnant back on September the 20th of
- 10 2009?
- 11 A Yes, sir.
- 12 Q And we've heard from your mother and your brother.
- 13 They lived at , is that right?
- 14 A Yes, sir.
- 15 Q Did you go to visit them often?
- 16 A Yes, sir.
- 17 Q Why?
- 18 A Because these are family.
- 19 Q Okay. Did your mother need assistance?
- 20 A Yes, sir.
- 21 Q And did you go to help her some?
- 22 A Yes, sir.
- 23 Q Did you know Ricky Kelly?
- 24 A Yes, sir.
- 25 Q How did you know him?

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 A He was my brother's best friend.
- 2 Q So you knew him through your brother.
- 3 A Yes, sir.
- 4 Q Did you associate with him any?
- 5 A A couple of times, yes, sir.
- 6 Q Okay. Is it safe to say you mostly saw him when he
- 7 was visiting your brother?
- 8 A Yes, sir.
- 9 Q Did Mr. Ackbar know your -- know Mr. Kelly?
- 10 A Yes, sir.
- 11 Q Okay. Did he know him the same way through your
- 12 brother?
- 13 A Yes, sir.
- 14 Q Do you remember the day of Mr. Kelly's death?
- 15 A Yes, sir.
- 16 Q Where were you?
- 17 A Inside my mother's house.
- 18 Q Why were you at your mother's?
- 19 A I was doing laundry and I was baking a cake or about
- 20 to bake a cake.
- 21 Q Was that -- what was the cake for, any special
- 22 occasion?
- 23 A Well, I was pregnant, so I was craving it for a while.
- 24 And I was making it for my mom also.
- 25 Q Did your mother have some surgery she was going to

Octavious Burnside
Direct examination by Mr. Bulsa

1 have?

2 A Yes, sir.

3 Q Okay. Do you remember about the time that you got
4 over there, or had you been there more than once that day?

5 A Yes. I was there twice that day.

6 Q Okay. Did Mr. Ackbar ever go over there with you?

7 A Yes, sir.

8 Q All right. How'd you get there?

9 A I drove my truck.

10 Q Your truck. How long had you had that truck?

11 A I don't remember.

12 Q It was in your name?

13 A Yes, sir.

14 Q We saw the registration on the screen. Were you
15 driving Mr. Ackbar anywhere in particular that day?

16 A No, sir.

17 Q Okay. But he rode with you to your mother's.

18 A Yes, sir.

19 Q Did he go there on both occasions?

20 A No, sir.

21 Q So just on the second occasion was he with you.

22 A Yes, sir.

23 Q Where was he seated in the truck when he rode?

24 A He was in the back seat on, I believe on, the right
25 side. I really don't remember.

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 Q He was just in the back.
- 2 A The back seat.
- 3 Q Was he back there because of your daughter being in
4 the car seat?
- 5 A Yes. And I had a basket of clothes in the front seat
6 passenger side.
- 7 Q Those were the clothes you were going to wash.
- 8 A Yes, sir.
- 9 Q Okay. Did he get out of the truck and go inside with
10 you?
- 11 A No, sir.
- 12 Q Why not?
- 13 A He told me he was waiting on his ride.
- 14 Q Was that unusual for him to stay outside and not go
15 in?
- 16 A Sometimes he would go in, and sometimes he wouldn't.
- 17 Q Okay. But he told you that he was waiting on a ride?
- 18 A Yes, sir.
- 19 Q Why didn't he ask you to take him somewhere?
- 20 A I have no idea.
- 21 Q Did you know who that ride was supposed to be?
- 22 A No, sir.
- 23 Q Do you know about how long he stayed outside?
- 24 A Probably 45 minutes.
- 25 Q Let me ask you this. Once you went inside did you

Octavious Burnside
Direct examination by Mr. Bulsa

1 ever come back outside to your truck again?

2 A Yes, sir.

3 Q Okay. And why did you do that?

4 A He called inside and told me he was thirsty.

5 Q Okay. So this is Supreme Ackbar sitting in the truck
6 at your mother's house.

7 MR. POOLE: Objection, Your Honor. We don't know
8 whether the defendant was in a truck outside or what not,
9 simply --

10 THE COURT: Overruled.

11 Q State's Exhibit No. 6. Is this where you parked your
12 truck?

13 A Yes, sir.

14 Q State's Exhibit No. 4 appears to be at the end of a
15 row of cars. There's an awful lot of cars at the
16 residence. Okay. This is one right here. Right. So when
17 you went inside the first time he was in the back, still
18 sitting in the back?

19 A Yes, sir.

20 Q All right. And he actually called you from outside
21 and asked you to do what?

22 A Bring him something to drink.

23 Q Did you understand that he was still in the truck?

24 A Yes, sir.

25 Q All right. And did you bring him something to drink?

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q And what did you bring him?
- 3 A I brought him a red wine punch that was in the
- 4 refrigerator.
- 5 Q State's Exhibit No. 12. We see a bottle in that seat.
- 6 Does that, does that appear to be what you brought him?
- 7 A Yes, sir.
- 8 Q Okay. And what was he doing when you brought him that
- 9 drink?
- 10 A He was just sitting there.
- 11 Q Still sitting. Did you have a conversation with him?
- 12 A No, sir.
- 13 Q So you weren't at the truck very long. You just
- 14 handed him the drink and went inside.
- 15 A Yes, sir.
- 16 Q All right. Did you come outside any other time after
- 17 that?
- 18 A No, sir.
- 19 Q So do you know actually when he left?
- 20 A No, sir.
- 21 Q Do you know who his ride was?
- 22 A No, sir.
- 23 Q Do you know how he left?
- 24 A No, sir.
- 25 Q Did he -- State's Exhibit No. 14. The backpack in the

Octavious Burnside
Direct examination by Mr. Bulsa

1 back seat, do you recognize that?

2 A Yes, sir.

3 Q All right. Whose is that?

4 A Supreme's.

5 Q Okay. Do you know when he put it into your truck?

6 A I think it was after I went back to pick him up.

7 Q Okay. So you recall him putting that in the truck
8 when he got in the truck to ride to your mother's.

9 A Yes, sir.

10 Q Okay. Did you know what was inside that bag?

11 A No, sir.

12 Q See State's Exhibit No. 9. This is the knife sheath
13 that is setting in a car seat. That's the car seat where
14 your daughter rode?

15 A Yes, sir.

16 Q Have you seen that knife before?

17 A Yes, sir.

18 Q When and where?

19 A We purchased it months ago, like in the summer maybe,
20 at a flea market.

21 Q Okay. When you say we, who do you mean?

22 A I was with him when he purchased it.

23 Q Okay. So Supreme purchased that and you happened to
24 be with him.

25 A Yes, sir.

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 Q So you know. You know that he owned that knife.
2 A Yes, sir.
3 Q Do you know where he kept it in the house?
4 A No, sir.
5 Q Did you know that he had it with him when he got into
6 your truck?
7 A No, sir.
8 Q How about that blue piece of rubber there? Do you
9 have any idea what that was?
10 A I know now since.
11 Q Were there any gloves like that in your truck before
12 that day?
13 A Not to my knowledge.
14 Q Was this knife sheath and that piece of glove in your
15 baby's car seat when you got out?
16 A No, sir.
17 Q Had Mr. Ackbar said anything to you about Ricky Kelly
18 prior to this day?
19 A I don't remember.
20 Q Do you know if Mr. Ackbar was looking for Mr. Kelly?
21 A I didn't know if he was looking for him, no, sir. He
22 asked me a question about him, but he didn't let me know if
23 he was looking for him.
24 Q What was the question?
25 A He asked me what time he got off work.

Octavious Burnside
Direct examination by Mr. Bulsa

- 1 Q What time Rick got off work?
- 2 A Yes, sir.
- 3 Q Are you familiar with where Rick worked?
- 4 A I knew he worked at Pizza Hut, but I didn't know which
- 5 one.
- 6 Q Did you know his schedule?
- 7 A No, sir.
- 8 Q So were you able to answer Mr. Ackbar's question?
- 9 A I was that day, sir, yes.
- 10 Q I'm sorry?
- 11 A Yes, sir.
- 12 Q You were able to tell him when Rick was getting off?
- 13 A Yes, sir.
- 14 Q Do you remember about when that question would have
- 15 been posed to you?
- 16 A Maybe earlier. I'm not sure.
- 17 Q Was it close in time with Mr. Kelly's death?
- 18 A No, sir. I can't remember.
- 19 Q Okay. Was it within the last week of his life?
- 20 A Yes, sir.
- 21 Q Okay. So we know Mr. Kelly died on September 20th.
- 22 Sometime in that preceding week Mr. Ackbar had asked you
- 23 basically if you knew his schedule.
- 24 A Yes, sir.
- 25 Q Okay. Who do you recall seeing at your mother's house

Octavious Burnside
Direct examination by Mr. Bulsa

1 on September 20th?

2 A I saw me, my mother, my daughter, my brother and S.K. -
3 and Travis.

4 Q Okay. And when did you learn that something was going
5 on?

6 A After my dog started barking and my daughter screamed,
7 so I went to the door to grab her.

8 Q And you would have been in the kitchen?

9 A Yes, sir.

10 Q And what side of the house is the kitchen on?

11 A When you walk in the front door, it is the living
12 room. And then you walk through a passageway, and it's the
13 doorway.

14 Q So it's to the back side of the house.

15 A Uh-huh.

16 Q Okay. When the dog barked and your daughter screamed,
17 what did you do?

18 A I went to the living room and I grabbed my daughter,
19 and that's when I saw Rick.

20 Q Was the door -- do you recall whether the door was
21 open or not?

22 A Yes. The door was open because I picked her up.

23 Q And Rick was laying against the screen door?

24 A Yes, sir.

25 Q And then what did you do?

Octavious Burnside
Direct examination by Mr. Bulsa

1 A And I went into my mother's room and sat on her bed
2 and was telling her what I saw.

3 Q And then what happened?

4 A And I got up. She got up. She went to the front door
5 and I went to the living room area where my brother was.
6 Well, he was like coming through the kitchen, so we kind of
7 met right there.

8 Q What was your emotional state, ma'am?

9 A Dev -- I was devastated.

10 Q Why so? Could you see anything --

11 A Yes.

12 Q -- wrong with Rick?

13 A Yes.

14 Q What did you see from your vantage point?

15 A I didn't see exactly what was wrong with him, but I
16 saw the blood on the door and I saw him moving still like
17 he was trying to get up. And that was enough for me.

18 Q Did you ever go outside?

19 A After the police came in and got me out, yes, sir.

20 Q Okay. Who all went outside to your knowledge after
21 y'all saw Rick?

22 A My mom and my brother and Travis.

23 Q Had you seen -- do you recall when S.K. left?

24 A I think I passed him when I was coming in from
25 bringing him something to drink.

Octavious Burnside
Direct examination by Mr. Bulsa

1 Q So you had already been to the truck and given Supreme
2 Ackbar the drink. S.K. was outside?

3 A Yes, sir.

4 Q Okay. Gotcha. All right. Did you see Ricky that
5 day?

6 A Yes, sir.

7 Q Other than being slouched on the porch, what
8 interaction did you have with Ricky that day?

9 A Not really interaction. He came in, and my dog barked
10 at him at first. And him and my brother do this whistle
11 thing to calm her down. And he went into the living room
12 where my brother was. And I was still in the kitchen, and
13 we spoke, hey, and then he went back out.

14 Q Did you know that he had brought some food over?

15 A Yes.

16 Q Did you see Marcus Wright outside that day?

17 A No, sir.

18 Q So you don't -- let me ask you this way. When you
19 brought Mr. Ackbar the drink did you see a silver car or
20 Marcus Wright anywhere?

21 A No, sir.

22 Q So did you ever see the car outside?

23 A No, sir.

24 Q How well do you know Marcus Wright?

25 A I know he was my brother's friend. And I just knew

Octavious Burnside
Direct examination by Mr. Bulsa

1 him because I know some of his family members.

2 Q Okay. After the police arrived and the scene was
3 dealt with did you have any more contact with Supreme
4 Ackbar?

5 A After I left the sheriff's office, like physical
6 contact or any kind of --

7 Q Physical -- physical. Did you communicate with him in
8 any way?

9 A Yes, over the phone the next morning. He called my --

10 Q The next morning.

11 A Yes.

12 Q Okay. Did you -- you didn't see him at the home on
13 September 20th?

14 A No, sir.

15 Q So how did you talk to him September 21st?

16 A He called my grandparents' house.

17 Q Do you know where he was?

18 A No, sir.

19 Q Did you actually see him at all?

20 A Right before he turned himself in I was on my
21 grandparents' porch. And when me and his sister went over
22 to my house to see if we could get in, because my purse was
23 still at my mom's house, he was behind the porch.

24 Q Okay. All right. Did you have a conversation with
25 him?

Octavious Burnside
Direct examination by Mr. Bulsa

1 A Not really. His sister did.

2 Q Well, did you see anybody come to your house at any
3 time after that?

4 A Yes, sir.

5 Q Describe that for us.

6 A I saw Marcus go over to my house. And he went on my
7 back porch, and then he came --

8 MR. POOLE: Object to the relevance of this line of
9 questioning, Your Honor.

10 THE COURT: Well, let me see y'all just a minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Overruled.

14 Q Describe what happened.

15 A I saw Marcus pull into my driveway. And he went into
16 the back of my house, and he came out with a small bag and
17 got into the car and left.

18 Q Do you know what was in the bag?

19 A No, sir.

20 Q Do you know what part of the house he went into?

21 A No, sir. He just went to the back of my house.

22 Q Where were you when you saw this?

23 A I was in my grandparents' house. And the way their
24 house is made there's a big window in the front, and you
25 can see across the street.

Octavious Burnside
Cross-examination by Mr. Poole

1 Q Was Mr. Ackbar at home at that time?

2 A No, sir.

3 Q Had he already left the area?

4 A Yes, sir.

5 Q Thank you. Answer any questions Mr. Poole may have.

6 CROSS-EXAMINATION

7 BY MR. POOLE

8 Q Ms. Burnside, how long have you known Mr. Ackbar?

9 A Since June of 2007.

10 Q So that's four years, almost four years.

11 A Yes, sir.

12 Q Okay. And he is the father of your two children.

13 A Yes, sir.

14 Q How old are they?

15 A My daughter is one and a half and my son just turned
16 one. I mean two and a half. I'm sorry.

17 Q Okay. And you got married. What was the date of your
18 marriage again?

19 A July 15th.

20 Q All right. Is he a good father?

21 A Yes, sir. He was.

22 Q Is he a good husband?

23 A Yes, sir. He was.

24 Q Did he provide for his children?

25 A Yes, sir.

Octavious Burnside
Cross-examination by Mr. Poole

- 1 Q Did he provide for you?
- 2 A 50-50.
- 3 Q You worked, he worked?
- 4 A Yes, sir.
- 5 Q Okay. The week preceding the date of
- 6 September 20th of 2009, of course you would have a lot of
- 7 conversations with your husband, wouldn't you?
- 8 A Yes, sir.
- 9 Q And you said that during the course of maybe that
- 10 preceding week he asked you something about Rick's
- 11 schedule.
- 12 A Yes, sir.
- 13 Q All right. Did he say anything that was threatening
- 14 against Rick Kelly?
- 15 A No, sir.
- 16 Q And of course if it's a week's time a husband and a
- 17 wife are going to have a lot of conversations about a lot
- 18 of things.
- 19 A Yes, sir.
- 20 Q Isn't it fair?
- 21 A Uh-huh.
- 22 Q Okay. And where were you working at the time?
- 23 A Super Cuts.
- 24 Q Well, would he ask you about your schedule?
- 25 A Sort of, I guess.

Octavious Burnside
Cross-examination by Mr. Poole

1 Q Or did he know your schedule?

2 A He probably knew it.

3 Q Okay. And let me ask you that. When you testified
4 that you went over to the house, was it your mother's house
5 over on _____?

6 A Yes, sir.

7 Q That he rode in the back of the truck.

8 A Yes, sir.

9 Q Right? And the reason for him riding in the back of
10 the truck was because there were objects in the front seat,
11 passenger side?

12 A Yes, sir.

13 Q And what were those objects?

14 A Clothes basket with clothes in them.

15 Q In fact, you did some clothes washing when you got to
16 your mother's house, is that right?

17 A Yes, sir.

18 Q Okay. And you further testified that although he
19 didn't go in that was not unusual, is that right?

20 A Sometimes he went in and sometimes he didn't.

21 Q So it's not unusual for him not to go into the house.

22 A No, sir.

23 Q Okay. You further testified that you did not know
24 when he left or how he left.

25 A Yes, sir.

Octavious Burnside
Redirect examination by Mr. Bulsa

1 Q Is that right?

2 A Yes, sir.

3 Q And you further testified you didn't know if he had a
4 knife with him, is that correct?

5 A Yes, sir.

6 Q Did you go outside of the house after you entered
7 initially other than to bring him something to drink?

8 A No, sir.

9 Q Okay. Were you looking out the window or just pretty
10 concentrated, or were you concentrating on what you were
11 doing there?

12 A I was concentrating on what I was doing.

13 Q So you were not able to see whether or not Marcus
14 Wright was outside the house?

15 A No, sir.

16 Q Okay. Do you know what kind of car he drives?

17 A It -- no, sir.

18 Q Okay.

19 MR. POOLE: That's all the questions I have got.

20 MR. BULSA: Briefly in reply.

21 REDIRECT EXAMINATION

22 BY MR. BULSA

23 Q Ms. Burnside, how is it that you knew Rick's schedule?

24 A I don't remember. Maybe my brother told me. I really
25 can't remember.

Octavious Burnside
Redirect examination by Mr. Bulsa

1 Q Okay. Did Rick come to the house often?

2 A Yes, sir.

3 Q Was he there almost every day?

4 A Yes, sir.

5 Q Was that unusual for your husband to ask for Rick's
6 schedule?

7 A Yes, sir.

8 Q And do you know why he didn't get out of the truck and
9 just come and get the drink himself?

10 A Well, he had a warrant, so he, I guess, was hiding.

11 MR. POOLE: I object, Your Honor, to the elicitation
12 of those old warrants.

13 THE COURT: Sustained.

14 BY MR. BULSA

15 Q So you don't, you don't really know. Okay. That's
16 fine.

17 MR. BULSA: Nothing further.

18 THE COURT: You may step down.

19 MR. BULSA: The state calls Lorin Williams.

20 Your Honor, may we approach?

21 THE COURT: Yes.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24

25

Lorin Williams
Direct examination by Mr. Bulsa

1 LORIN WILLIAMS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q All right. Officer Williams, introduce yourself to
5 the jury if you would.

6 A My name is Lorin Williams.

7 Q And what is your occupation?

8 A I'm a violent crime investigator with the Spartanburg
9 County Sheriff's Office.

10 Q How long have you been with the sheriff's office?

11 A Six years.

12 Q And how long have you been an investigator?

13 A I've been an investigator with the sheriff's office
14 since 2006.

15 Q How long have you been in the violent crime division?

16 A Since two thousand -- the end of 2006.

17 Q And as a violent crime investigator is it your duties
18 to investigate homicides?

19 A Yes, sir.

20 Q Were you assigned to investigate the death of Ricky
21 Kelly?

22 A Yes, sir.

23 Q When was your first involvement in this case?

24 A It would have been on the afternoon of the -- I don't
25 have the initial incident report with me.

Lorin Williams
Direct examination by Mr. Bulsa

1 Q Did you go to the scene?

2 A The scene when, when the -- after the 9-1-1 call came
3 in.

4 Q Okay. Did you yourself look for evidence, or did you
5 leave that to the crime scene technicians?

6 A No, sir. We normally leave that to the crime scene
7 guys.

8 Q Did you interview any witnesses at that location?

9 A Yes, sir.

10 Q Did you do it at the scene or did you bring them to
11 the sheriff's office?

12 A Spoke to a few people at the scene. And subsequently
13 we had them transported to the sheriff's office for further
14 interviews.

15 Q Okay. Now, you didn't speak with Mr. Miller or
16 Mr. S.K. -- that day, did you?

17 A No, sir.

18 Q Did you learn about them later in the investigation?

19 A Yes, sir.

20 Q Did you locate them?

21 A Yes, we did.

22 Q And did you learn that -- what did you learn about
23 Mr. Miller, where he was when this happened?

24 A Mr. Miller --

25 Q Don't tell us what he said but your understanding of

Lorin Williams
Direct examination by Mr. Bulsa

- 1 where he was during the incident.
- 2 A You're talking about Travis?
- 3 Q Mr. Miller, yes.
- 4 A Travis was inside the residence.
- 5 Q Okay. From your understanding did he have a view of
- 6 anything that happened?
- 7 A No, sir.
- 8 Q How about his brother, S.K. _ _ _? Did you have
- 9 an understanding of where he was during the incident?
- 10 A During the, during the actual incident itself, yes,
- 11 sir. He was, he was in -- located in the vehicle with
- 12 Mr. Ackbar in the yard of the residence.
- 13 Q Okay. And you met with him and you took his
- 14 statement.
- 15 A I did.
- 16 Q Is that statement consistent with what he testified to
- 17 yesterday?
- 18 A Yes, sir, it was.
- 19 Q Was, were the vehicles towed from the scene at your
- 20 direction?
- 21 A Yes, sir.
- 22 Q And you asked for them to later be processed?
- 23 A Yes.
- 24 Q And we've seen the items in the truck primarily. Did
- 25 you participate in the processing at all?

Lorin Williams
Direct examination by Mr. Bulsa

1 A I went to the shop when Sergeant Hogsed was processing
2 the vehicle. But as far as actually participating in
3 searching the vehicle or in the processing, no, sir.

4 Q Okay. Did you also direct the search warrants to be
5 obtained for some locations?

6 A Yes, sir.

7 Q What locations did you actually have searched?

8 A The, the residence on . . . There was also an
9 address on . . .

10 Q The residence on . . . was whose residence?

11 A The defendant's.

12 Q The residence on . . . was whose?

13 A That was Marcus Wright's.

14 Q Okay. Did you have an occasion to speak with Mr.
15 Wright?

16 A Yes, sir.

17 Q Did you have an occasion to have his vehicle
18 processed?

19 A Yes, sir.

20 Q So you spoke with Mr. Wright and had his vehicle
21 processed, and searched his residence, and you also had
22 Mr. Ackbar's residence searched.

23 A That's correct.

24 Q Okay. And we've seen the gloves that were found at
25 the residence of Mr. Ackbar, is that correct?

Lorin Williams
Cross-examination by Mr. Poole

1 A Yes, sir.

2 Q Were you present when those were found?

3 A Yes, sir.

4 Q Were you looking principally for a murder weapon?

5 A Anything that would, would associate Mr. Ackbar and
6 the two, two locations.

7 Q Had you gone to the autopsy?

8 A Yes, sir, I had.

9 Q Did you have any idea of what kind of weapon you were
10 looking for?

11 A We just knew that it was, was some type of an edged
12 weapon.

13 Q Did you ever locate that weapon?

14 A No, sir.

15 Q Thank you. Answer any questions Mr. Poole has.

16 CROSS-EXAMINATION

17 BY MR. POOLE

18 Q Is it fair to say, Investigator, that you were the
19 lead investigator in this case?

20 A Yes.

21 Q And you have testified that you had certain knowledge
22 about basically every aspect of this case, is that right?

23 A Yes, sir.

24 Q You knew about one man can't be at every place at one
25 time, so therefore you have a team of people working in

Lorin Williams
Cross-examination by Mr. Poole

1 this investigation.

2 A That's correct.

3 Q And so search warrants were issued pursuant to your
4 request. Statements were taken by you and others pursuant
5 to your request, is that correct?

6 A That's correct.

7 Q And did you not ask for a search warrant dated
8 September 22 to search the car that had been driven by
9 Marcus Wright, a 2004 Chrysler Sebring?

10 A Yes, sir, we did. We did search that vehicle.

11 Q And you asked for the search warrant, didn't you? You
12 signed for it.

13 A I don't recall who signed the search warrant. If
14 you've got a copy of it I'll be glad to look at it.

15 MR. POOLE: May I approach the witness?

16 THE COURT: You may.

17 A Yes, sir.

18 Q Okay. And in this search warrant it has a section
19 called reason for affiant's belief that the property sought
20 is on the subject premises, the whole section.

21 A Yes, sir.

22 Q And that's information you provided to a magistrate.

23 A That's correct.

24 Q And is it your signature right here? Is this your
25 signature?

Lorin Williams
Cross-examination by Mr. Poole

1 A Yes, sir.

2 Q And it's subscribed before the magistrate judge.

3 A That's correct.

4 Q And this was obtained on September 22, about two days
5 afterwards.

6 A Yes, sir.

7 Q And as a portion of the reason for the belief that the
8 property needs to be searched, then you state that the
9 victim's vehicle was processed.

10 MR. BULSA: Objection, Your Honor -- objection, Your
11 Honor. I believe he's getting into hearsay information off
12 the search warrant.

13 THE COURT: Are you?

14 MR. POOLE: No, sir. It's his reason for belief that
15 he's familiar with the case and --

16 THE COURT: You're referencing information in the
17 affidavit for the warrant?

18 MR. POOLE: Yes, sir.

19 THE COURT: I sustain the objection.

20 BY MR. POOLE

21 Q Were you aware that a fingerprint of Mr. Wright had
22 been found on the victim's car?

23 A I'm not sure if I knew it at that point. Can I --

24 THE COURT: Well, no. He's asking if you know of your
25 own personal knowledge.

Lorin Williams
Cross-examination by Mr. Poole

1 A I do know that one was recovered, but I don't know
2 that I knew it at that point.

3 Q If I showed you this could it clarify your memory?

4 A Yes, sir.

5 (Pause.)

6 A Yes, sir, I did.

7 Q So you did know that a fingerprint had been found on
8 the victim's car and that fingerprint belonged to Marcus
9 Wright.

10 A That's correct.

11 Q Okay. So that's another aspect of the investigation
12 that you're aware of.

13 A Yes, sir.

14 Q And at one point in time Marcus Wright, is it fair to
15 say, he was the chief suspect in this case?

16 A I don't know that you would call him the chief
17 suspect.

18 Q Okay. Did you personally take statements from Mr.
19 Wright?

20 A Yes, sir.

21 Q And without getting into the details of those
22 statements let me ask you this. How many statements did he
23 give you?

24 A Two, I believe.

25 Q Okay. Were they inconsistent statements?

Lorin Williams
Cross-examination by Mr. Poole

1 A As to the actual events that had taken place?

2 Q Anything inconsistent about one statement and the
3 other?

4 A Yes, sir.

5 Q Okay. He gave one statement at a particular point in
6 time of course. And you took that statement, is that
7 right? I'm talking about -- I'm talking about Mr. Wright.

8 A Uh-huh, yes, sir. He gave two statements.

9 Q And did you not after reading the first statement tell
10 him all of the evidence and witnesses that you had in the
11 case?

12 A Yes, sir.

13 Q Okay. And then did he not ask if he could give
14 another statement?

15 A He gave, he gave a second statement, yes, sir.

16 Q Did he state in the second statement involvement in a
17 homicide?

18 A I would have to look at it and see exactly what was --

19 MR. BULSA: Your Honor, I need to object to this line
20 of questioning. I think it's backwards.

21 Mr. Poole needs to ask Mr. Wright his questions first
22 to see his answers before he goes into the officer's --
23 questioning of his statements.

24 THE COURT: Sustained.

25 MR. POOLE: That's all the questions I've got.

Lorin Williams
Redirect examination by Mr. Bulsa

1 MR. BULSA: Briefly in reply.

2 REDIRECT EXAMINATION

3 BY MR. BULSA

4 Q Detective Williams, this Sebring that Mr. Poole asked
5 you about when you requested it be processed --

6 A Yes.

7 Q -- where did you actually find it?

8 A I believe that the -- that Mr. Wright's mother was
9 actually driving the vehicle when we actually located it.

10 Q Okay. Did she bring it to the location for you?

11 A No, sir. We actually conducted a traffic stop and
12 then had the county rollback come and take the vehicle to
13 the county shop where the search warrant could be executed
14 and it could be processed.

15 Q So at that time you had reason to believe that it
16 might have been involved in the incident.

17 A Yes.

18 Q So the description of it was consistent with the
19 description given of the vehicle at the scene.

20 A Absolutely.

21 Q And Mr. Poole asked you about the fingerprint on the
22 victim's car. Where was that located?

23 A I don't have it documented here. It was in the --

24 Q Let me see what you showed.

25 A It was on the roof of the vehicle, I believe is what

Lorin Williams
Redirect examination by Mr. Bulsa

1 the affidavit stated.

2 Q Let me show you the item, object, that Mr. Poole
3 showed you. See if at the end of that affidavit it
4 designates where it was.

5 A At the driver's door of the victim's car.

6 Q Okay. Is that location consistent with information
7 you had about where Mr. Wright might have been in relation
8 to Mr. Kelly --

9 A Yes, sir.

10 Q -- at some point during the day?

11 A Yes, sir.

12 Q Did you have information that they had visited
13 together and spoke?

14 A Yes, sir.

15 MR. BULSA: Nothing further.

16 MR. POOLE: Nothing further.

17 THE COURT: You may step down.

18 Ladies and gentlemen, due to witnesses' scheduling
19 issues we're going to recess now for lunch. We'll resume
20 with the balance of the trial at 1:45, at 1:45 this
21 afternoon, a quarter till 2:00. So you're going to be
22 excused now for lunch. Please report to your jury room at
23 1:45, a quarter till 2:00, this afternoon.

24 Keep in mind no discussions about the case with any
25 person including your fellow jurors. Do not conduct your

Dr. John David Wren
Direct examination by Mr. Bulsa

1 own research or do your own investigation or be exposed to
2 any type of media coverage that might relate to the case.

3 Have a good lunch, and we'll see you at a quarter till
4 2:00.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Mr. Bulsa, let me ask you if you will
8 please bring all of those exhibits back up to the court
9 reporter.

10 Court is in recess until 1:45.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Are we ready for the jury?

13 MR. BULSA: Yes, sir.

14 THE COURT: Bring them in, please.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Good afternoon, ladies and gentlemen.

18 We're going to continue with the state's presentation.

19 Mr. Bulsa.

20 MR. BULSA: Thank you, Your Honor. The state calls
21 Dr. David Wren.

22 DR. JOHN DAVID WREN, having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Good afternoon, Dr. Wren. Would you introduce

Dr. John David Wren
Direct examination by Mr. Bulsa

1 yourself to the jury?

2 A My name is John David Wren.

3 Q And what is your occupation, sir?

4 A I'm a medical doctor with a specialist in pathology.

5 MR. BULSA: Is there any challenge to Dr. Wren's
6 qualifications, Mr. Poole?

7 MR. POOLE: No challenges.

8 MR. BULSA: We would offer Dr. Wren as an expert in
9 pathology.

10 THE COURT: He is so qualified.

11 BY MR. BULSA

12 Q Dr. Wren, how long have you been a medical doctor?

13 A I finished my requirements for my degree January the
14 31st of 1979, but I did not graduate until my class did in
15 first of June of 1979.

16 Q So you've been practicing for 30 years or more?

17 A Yes.

18 Q And as a pathologist you work out of the Spartanburg
19 Regional Medical Center?

20 A Yes. I'm employed by Carolinas Pathology Group as a
21 partner. I'm based at Spartanburg Regional Medical Center
22 where I'm the laboratory medical director of both the
23 Regional Hospital and the Hospital for Restorative Care.

24 Q If you would, could you briefly give the jury an
25 overview of pathology and how it pertains to criminal

Dr. John David Wren
Direct examination by Mr. Bulsa

1 court?

2 A Well, pathology is broadly defined as the study of the
3 disease processes of the body. Classical pathology is
4 divided into two portions as far as what pathologists do.

5 One is clinical pathology, which is basically
6 laboratory and blood work. As a clinical pathologist one
7 supervises the laboratory, chooses tests, chooses the
8 equipment, establishes procedures, establishes the ranges
9 of normal values, and as such supervises microbiology,
10 blood bank clinical chemistry, which is mostly blood work,
11 hematology and those things that are done, basically tests
12 on tissue -- not tissues but fluids from the body.

13 The clinical pathologist acts as a consultant for the
14 physician to establish the meaning of tests, to interpret
15 those tests and to provide further information into which
16 additional tests may be necessary based on those results in
17 case the clinician has a question as to the validity and
18 what else should be tested for.

19 Anatomic pathology is the other branch of pathology
20 that is basically concerned with tissue pathology, whether
21 it be Pap smears or cytology specimens that are fluids that
22 are removed from either body cavities -- or everyone knows
23 what Pap smears are.

24 Pathologists are responsible for interpreting those
25 specimens, and then any tissues that are removed either in

Dr. John David Wren
Direct examination by Mr. Bulsa

1 surgery or physician's office are sent to the pathologist.
2 He looks at those tissues, what is called grossly looks at
3 them with his naked eye or with the aid of a hand lens
4 magnifying glass, and chooses areas which in his experience
5 is necessary to provide a diagnosis.

6 Once that is done that tissue is prepared in
7 microscopic slides to either substantiate or disprove the
8 possible diagnoses that are made, whether it be malignant,
9 infectious, benign or immune-mediated so that the physician
10 can further treat that patient based on these diagnoses.

11 Another portion of anatomic pathology which everyone
12 recognizes is autopsy pathology. Classical autopsy
13 pathology by a pathologist entails hospital-based autopsies
14 where a person may pass away in the hospital. And to
15 either establish the diseases that are there, establish the
16 cause of death or to validate treatment processes or even
17 establish new diagnoses an autopsy is done on a -- at the
18 request of the physician and the family to establish those
19 things.

20 Now, a subspecialty of anatomic pathology is forensic
21 pathology, which is basically a medical-legal pathology
22 where a pathologist specifically trained in forensic
23 pathology then does medical-legal autopsies which are
24 classically for coroners' autopsies or medical-examiner
25 autopsies.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q And in this case did you perform an autopsy on Ricky
2 Kelly?

3 A Yes. I did an autopsy at the request of the
4 Spartanburg County Coroner's Office on Ricky Kelly, Jr., a
5 19-year-old mixed race male, in the Spartanburg Regional
6 Autopsy Room on September the 21st of 2009, beginning that
7 autopsy at 5:45 p.m.

8 Q What was his condition when you began your autopsy?

9 A He was fully clothed. He had a black short-sleeve
10 pullover t-shirt, an orange tank top t-shirt, a pair of
11 blue denim jeans with a black belt through the loops, a
12 pair of royal blue synthetic boxer shorts, a pair of black
13 and red low cut Nikki athletic shoes and a pair of white
14 socks. He also had on a beaded necklace and bracelet and a
15 silver colored earring with a clear stone in the setting in
16 one of his ears. And he had name tags present on his left
17 wrist and left ankle.

18 The clothing was blood soaked. And on examination it
19 had three defects in the front of the shirt and two along
20 the neck and shoulder seam on the left.

21 Q When you say defect, what do you mean?

22 A They were consistent with incised or stab wounds,
23 beneath which on the chest there were defects in the body
24 itself.

25 Q Now, Dr. Wren, you performed an autopsy and you made

Dr. John David Wren
Direct examination by Mr. Bulsa

1 notes, and you actually made a diagram of the wounds. And
2 you've reviewed that and prepared additional diagrams for
3 the Court, is that correct?

4 A Crude diagrams, yes. I'm not an artist. I might add
5 there are several that are hard to depict on the diagram
6 that are not absolutely shown.

7 Q Okay. I'm going to publish these hopefully in a
8 minute. Let me show you what's been marked State's
9 Exhibits 26 and 27. Are those diagrams that you prepared?

10 A Yes, they are.

11 Q Do they depict most of the injuries that you noted on
12 Mr. Kelly?

13 A Specifically, the major injuries, yes.

14 MR. BULSA: Your Honor, we would offer these into
15 evidence.

16 MR. POOLE: No objection.

17 THE COURT: They're admitted.

18 (Diagram marked State's Exhibit No. 26; diagram marked
19 State's Exhibit No. 27.)

20 Q And you commented specifically the major injuries.
21 What do you consider the major injuries?

22 A Basically, incised wounds, stab wounds or a
23 combination of incised and stab wounds. And then I put
24 some of the larger abrasions on there.

25 Q Where did the -- where was most of the -- where were

Dr. John David Wren
Direct examination by Mr. Bulsa

1 most of his wounds? I'll ask it that way.

2 A From his nipple line of his chest there were three in
3 the chest, and then he had considerable wounds about his
4 neck and face.

5 Q Did he have any wounds to his hands or arms?

6 A Yes.

7 Q In your opinion how might he have obtained those
8 wounds?

9 A Well, there was an in-and-out stab wound to, I
10 believe, his left hand, which is consistent with a defense
11 type wound. Then he had some on his arms that were also
12 defense type wounds.

13 Q When you comment, defense type wounds, what does that
14 mean?

15 A When someone's under attack they classically will
16 throw their hands up or try to grab weapons and they -- if
17 they aren't successful or even if they are successful,
18 depending on your interpretation, they sustain wounds.

19 Q Okay. Now, you didn't go to the crime scene, did you?

20 A No.

21 Q Okay. Is there any way from the wounds you can
22 testify as to the position his body would have been in when
23 he sustained those wounds?

24 A No, not specifically, no. He was facing the
25 assailant.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q Okay. Could he have obtained these wounds if he were
2 seated in some sort of vehicle?

3 A Yes, he could have.

4 Q Okay. Let's go over these wounds, and I want to start
5 with State's Exhibit 26, which you have the face and head
6 area. If you need to step down, let me know. Sometimes
7 that microphone gets in the way.

8 A I probably, I probably can see here.

9 The -- by far the worst wounds were to the left side
10 of his face where there was a gapping incised stab wound
11 that actually communicated with this wound on his neck
12 which extended almost from the midline all the way to
13 behind the -- almost to the back of the neck. And then
14 there was a laceration type maybe where the tip of a weapon
15 hit just behind there.

16 There was a large irregular abrasion extending from
17 just in front of his ear all up to the hairline. And then
18 his nose had an abrasion. His upper lip had an abrasion.
19 There was a -- several of his teeth were missing connected
20 with the injuries. And he actually had a piercing wound
21 through his lower lip that probably was when the lip hit up
22 against the tooth or the teeth -- were missing.

23 He had an abrasion that was undermined and avulsed in
24 his right temporal region and a superficial stab wound to
25 his right temporal region. These were pretty closely

Dr. John David Wren
Direct examination by Mr. Bulsa

1 approximated.

2 Q So he actually had wounds on both sides of his head?

3 A Yes, not further back but basically in the forehead,
4 yes.

5 Q Does that suggest he was trying to move his head?

6 A Yes. The one on -- the ones on the left were by far
7 the major wounds.

8 Q Okay. And that would be the side of a person's body
9 if they were seated in the driver's side of a car.

10 A That's correct.

11 Q In that car. Now, some of the abrasions on the face,
12 could those have been caused by him falling into a house
13 and onto a block?

14 A They're, they're scratch type abrasions that were --
15 would be from falling against a rough surface, yes,
16 particularly the nose.

17 Q Okay.

18 A It was -- had vertically oriented abrasion. And the
19 one on the side of the face, it was slightly, pretty much
20 vertically oriented, but it was irregular.

21 Q You used the term incised. What does that actually
22 mean?

23 A Well, wounds that are inflicted with sharp objects
24 come under several categories. There's a stab wound which
25 is actually an in-and-out wound from a knife or similar

Dr. John David Wren
Direct examination by Mr. Bulsa

1 sharp object that has sharp edges on it, whereas an incised
2 wound is more like a slash type wound from the, from the
3 edge of a sharp object.

4 Then there are lacerations which are not stab or
5 incised wounds. Lacerations are wounds that occur when the
6 tissue is torn.

7 If one fell against an object and actually lacerated
8 the skin, looking into that wound one can tell that it is a
9 laceration simply because this tissue bridging inside the,
10 the wound, it doesn't make a clean cut like an incised or a
11 stab wound would, whereas a laceration, slash, abrasion can
12 be inflicted by stabbing someone and then pulling the
13 weapon, not going in and out but pulling the weapon, and
14 causing a laceration along with the stab, I mean, an
15 incised wound along with a stab.

16 Q Okay. You also made -- used the term communicated.
17 You said the wound to the jaw communicated with the wound
18 to the neck. What does that mean?

19 A That means that when one probes from this area to that
20 area beneath the skin one can probe easily through that
21 area to show that they communicate.

22 It doesn't actually mean for sure that they were made
23 by the same blow or procedure, but nevertheless there is an
24 indication that they may have occurred with the same -- at
25 the same time.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q Does that suggest that each wound is deep enough that
2 the wounds actually meet?

3 A Yes.

4 Q Do you have a measurement as to how deep those wounds
5 were?

6 A Well, one can't tell very much with this because, but
7 I did have a wound on the chest that was a definite stab
8 wound. It had a -- one sharp edge and one blunt edge, and
9 it extended into the chest. And by that wound you can get
10 a rough estimate that the weapon was at least 4 inches
11 long.

12 Q Okay. We're going to show that diagram in a minute.
13 From what I'm hearing it's difficult to tell the depth of
14 these wounds?

15 A Well --

16 Q Or am I using the wrong word?

17 A Well, the length of the weapon, you mean, rather than
18 the depth of the wound?

19 Q I just want the jury to have a good picture as to how
20 deep his throat was cut.

21 A Oh, the depth, these are not very deep as such.
22 They're -- expose the muscle under there. And in this case
23 the muscle was shown and slightly frayed or incised. But
24 from this area to that area was at least 4 inches. But,
25 like I said, one cannot be sure that both of those occurred

Dr. John David Wren
Direct examination by Mr. Bulsa

1 with the same blow.

2 Q What caused the great loss of blood?

3 A His internal jugular vein on the left was lacerated.
4 His carotid artery was not. I mean, I'm sorry. His
5 external jugular vein was cut. And one bleeds freely from
6 that. And then there were small vessels, arteries and
7 other vessels that were lacerated by these wounds.

8 Q Okay. Let me show you State's Exhibit 27. Describe
9 those wounds for us.

10 A Well, once again, there was the large laceration in
11 the side of the neck, and then there was stab wounds across
12 the chest and in the neck on the right.

13 I'll have to look it up, but one of these wounds is a
14 very clean wound that goes all the way into the chest.
15 Then he had a gaping stab incised wound on his left
16 forearm. He had an in-and-out wound on the, on the left
17 hand shown by the stab on the, on the dorsal surface or the
18 back of the hand on this side, and a sharp wound in the
19 palm of his hand extending from near his, his ring finger,
20 almost in the webbing between the ring finger and the
21 middle finger, back toward the palm of the hand. That
22 wound was probably the end -- well, you really can't tell.

23 The, the dorsal surface may have been the way the
24 weapon went into the hand, and then it did a sharp, clean
25 wound on the opposite side.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Then he had a sla -- a wide -- two wide wounds on the
2 left forearm, I mean, the right forearm also. And he had
3 abrasions on the back of his right hand.

4 Q Did you notice some abrasions to the back as well?

5 A Yes. Those could have been when he fell and his hand,
6 you know, went down too.

7 Q How many wounds did you, did you encounter -- wounds?

8 A Well, I encountered at least 13 wounds that I
9 specifically addressed on the body. I did not number them,
10 but any one I can pretty much describe. I might add that
11 he had two abrasions and contusions on his back as shown in
12 these two areas.

13 Q And you noted that you probed the depth of the chest
14 wounds. What was that depth again?

15 A That was the best preserved and the best depicted
16 wound showing that it was from a single-edge weapon. And
17 that wound was -- that weapon is at least 4 inches long,
18 and it had one sharp edge.

19 And the, the width of that wound was -- which would
20 indicate the width of the blade, not the thickness of the
21 blade, was around -- I'll have to find it -- was 1.1 inch
22 in length indicating the blade was -- now, when you measure
23 a -- translating from the skin of a person to the actual
24 width of the blade and the thickness of the blade one has
25 to allow for the skin stretching and contracting, depending

Dr. John David Wren
Direct examination by Mr. Bulsa

1 on how the position of the skin -- how tense the skin was
2 versus the way that it looks when one examines it.

3 So as a rule of thumb if a weapon -- if a width of a
4 wound on a person -- or the length of the wound rather,
5 rather than the width -- is 1 inch then that -- the object
6 that inflicted that could be plus or minus 25 percent of
7 that.

8 So if, if one measures the wound as 1 inch, then it
9 could be .75 or three-quarters of an inch, could be as
10 narrow as that. If the skin had been stretched when the
11 wound occurred and then it contracted, it could have been
12 1.25 inches, whereas if it was loose and then you stretched
13 it later, if one was leaned over and the skin was
14 relatively lax, and then when it was examined the person
15 was -- the skin was more, more, more normally tense, then
16 it could be, it could have been .75 or three-quarters of an
17 inch, whereas when you measure it it was 1 inch. I hope I
18 didn't confuse everybody.

19 Q And in your opinion, Dr. Wren, what type of weapon was
20 used to inflict these wounds?

21 A A knife, a single-edge at least 4 inches long, between
22 three-quarters and one and a quarter inch blade width from
23 the blunt edge to the narrow edge and about somewhere
24 around 5 one-hundredths of an inch blade thickness, meaning
25 the -- along the blunt edge of the weapon it would have

Dr. John David Wren
Direct examination by Mr. Bulsa

1 been -- measured about 5 one-hundredths of an inch.

2 Q We don't have the knife, but we have a sheath. Could
3 the weapon that inflicted those wounds have fit into that
4 sheath?

5 A Yes, yes, it would be consistent with that.

6 MR. BULSA: And for the record, that's State's Exhibit
7 No. 24.

8 A I forgot to mention one thing about knives.

9 When we examine wounds on the body we look for what
10 are called hilt marks. In other words, if someone sticks a
11 weapon in someone and it goes all the way up to the hilt of
12 the weapon, depending on the way the blade ends at the, at
13 the handle, then one can see little nicks in the skin or
14 one can see an abrasion around the wound where the handle
15 actually hit up against it.

16 In this case I didn't see any, so it could have been
17 much longer than 4 inches. It just meant it was at least 4
18 inches.

19 Q Yes, sir. And ultimately, Dr. Wren, what was the
20 cause of death of Mr. Kelly?

21 A I attributed the cause of death in Mr. Kelly as
22 exsanguination, which means he bled to death, secondary to
23 multiple stab and incised wounds to the head and body.

24 Q Thank you, Dr. Wren. Answer any questions Mr. Poole
25 may have.

Marcus Wright
Direct examination by Mr. Bulsa

1 MR. POOLE: We have no questions of Dr. Wren.

2 THE COURT: All right. You may step down. Thank you.

3 MR. BULSA: The next witness is Marcus Wright.

4 MARCUS WRIGHT, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Good afternoon, Mr. Wright. Would you introduce
8 yourself to the jury?

9 A My name is Marcus Wright.

10 Q Slide a little bit closer. Make sure you're heard.

11 A Marcus Wright.

12 Q How old are you, Mr. Wright?

13 A Twenty-two.

14 Q And where do you live?

15 A On _____ in Wellford, South Carolina.

16 Q Do you live with anybody there?

17 A Yeah, my mother and my father.

18 Q Okay. And did you work back in 2009?

19 A No, no.

20 Q Did you often drive your mother's vehicle, a Chrysler
21 Sebring?

22 A Yeah.

23 Q Do you know the defendant, Supreme Ackbar?

24 A Yeah.

25 Q How do you know him, sir?

Marcus Wright
Direct examination by Mr. Bulsa

- 1 A I guess occasional friends.
- 2 Q Did you know the Burnside family?
- 3 A Yes, sir.
- 4 Q How well did you know them?
- 5 A I knew them for a long time.
- 6 Q Did you grow up with any of them?
- 7 A Yes.
- 8 Q Who?
- 9 A Danny Burnside.
- 10 Q And also known as D.J.?
- 11 A Yeah.
- 12 Q All right. Did you visit them often?
- 13 A Yeah.
- 14 Q How about Ricky Kelly? Did you know him?
- 15 A Yeah.
- 16 Q How long had you known him?
- 17 A For like seven months.
- 18 Q How is it that you -- how did you get to know him?
- 19 A Through D.J.
- 20 Q Okay. Do you recall the day of his death?
- 21 A Huh?
- 22 Q Do you recall the day of Mr. Kelly's death?
- 23 A Was I called?
- 24 Q Do you recall it?
- 25 A Yes, sir.

Marcus Wright
Direct examination by Mr. Bulsa

- 1 Q Do you remember it? Where were you when he died?
- 2 A At, at the house where it happened.
- 3 Q How did you come to be there, sir?
- 4 A I was gonna to go to the store for my mother, but I
- 5 stopped by D.J. house.
- 6 Q So were you driving your mother's car?
- 7 A Yeah.
- 8 Q You stopped by D.J.'s house. And what was going on
- 9 when you got there?
- 10 A They was outside just chilling and talking.
- 11 Q Who is they?
- 12 A Rick, D.J. and Travis.
- 13 Q All right. And where did you park in the yard?
- 14 A Like by the telephone pole, near the telephone pole.
- 15 Q Okay. And what did you do when you parked?
- 16 A I got out and walked over there where they was at.
- 17 Q Okay. And whereabouts were they?
- 18 A Right beside the car.
- 19 Q Okay. There's some pictures that'll help. Let's
- 20 start with this view, State's Exhibit No. 4. If you would,
- 21 look up there. We see the house on the left-hand side and
- 22 the cars in the driveway. Would you have been parked
- 23 somewhere near about where that police car is?
- 24 A Yeah.
- 25 Q All right. And was this the car that everybody was

Marcus Wright
Direct examination by Mr. Bulsa

1 sort of congregating around?

2 A Yeah.

3 Q All right. Showing you a couple of more views,
4 State's Exhibit No. 2. Do you recall whether the door was
5 opened when they were talking?

6 A Yeah. It was.

7 Q All right. So you walked up there. How close to the
8 car did you get?

9 A I was leaning against the car.

10 Q All right. About how long were the four of y'all
11 outside?

12 A For like three full minutes.

13 Q Okay. And then what happened?

14 A Travis and D.J. went in the house.

15 Q Okay. So that left you and Rick still talking at his
16 car? You got to answer yes or no.

17 A Yeah.

18 Q And then what happened?

19 A When I went to go walk in the house, that's when I
20 heard Rick yell. And I turned around and looked, and I
21 seen Mr. Ackbar over him punching him or whatever. And
22 then when I really looked I seen blood. So, you know, I
23 just, I ran to the car and tried to leave so I wouldn't
24 have nothing to do with it.

25 Q Okay. You said that you had backed away from Rick and

Marcus Wright
Direct examination by Mr. Bulsa

- 1 were starting to walk towards the house.
- 2 A Yeah.
- 3 Q Was Rick fixing to leave?
- 4 A No. He was still sitting there smoking.
- 5 Q Okay. How far away did you get before you saw
- 6 Mr. Ackbar?
- 7 A I was almost at the tree.
- 8 Q Okay. Did you actually see Mr. Ackbar?
- 9 A No.
- 10 Q What drew your attention back to the car?
- 11 A When I heard Rick yelling.
- 12 Q All right. And when you turned and looked and saw
- 13 what you saw, what did you do?
- 14 A I ran to get in the car to leave the scene.
- 15 Q Okay. Let's go back to State's Exhibit No. 4. You
- 16 said you would have been close to the tree and you would
- 17 have looked back. And what did you actually see Mr. Ackbar
- 18 doing?
- 19 A Standing over the top of him swinging.
- 20 Q Where was Rick positioned?
- 21 A Inside the car where he was sitting at when I walked
- 22 away.
- 23 Q Was he in the driver's seat?
- 24 A Yeah.
- 25 Q Okay. Could you tell if Mr. Ackbar had anything on

Marcus Wright
Direct examination by Mr. Bulsa

- 1 his hands?
- 2 A I mean, yeah, some gloves.
- 3 Q Okay. What kind of gloves?
- 4 A Latex gloves, I guess.
- 5 Q Okay. And you saw him making punching motions at him?
- 6 Did you actually see the knife at that point?
- 7 A No.
- 8 Q But you saw blood.
- 9 A Yeah.
- 10 Q And what did you think was going on?
- 11 A I mean, the way he was screaming I knowed he wasn't
- 12 just punching 'im. So I was already about to leave though.
- 13 Q Okay. You said first you were going to the house and
- 14 then you heard and saw this and then you went to your car.
- 15 Okay. And did you make it to your car?
- 16 A Yeah.
- 17 Q And what was going on when you got there?
- 18 A I don't know. I got ready to back out and leave.
- 19 Q All right. And then what happened?
- 20 A He hopped in the car with me.
- 21 Q Who hopped in the car with you?
- 22 A Mr. Ackbar.
- 23 Q Hopped in which door?
- 24 A The passenger side.
- 25 Q Front passenger side? And did he have anything with

Marcus Wright
Direct examination by Mr. Bulsa

- 1 him?
- 2 A Yeah.
- 3 Q What?
- 4 A The gloves and knife he had on.
- 5 Q Okay. What kind of knife was it?
- 6 A I can't exactly describe it, but it was kind of a big
- 7 knife.
- 8 Q All right. Did he say anything when he got into the
- 9 car?
- 10 A No. He just like pull off.
- 11 Q And what did you do?
- 12 A I hesitated for a second, but then I pulled off.
- 13 Q And what happened after you pulled off?
- 14 A I ended up dropping him off at a Dollar General, where
- 15 he get outta the car and left.
- 16 Q Okay. So you drove from [redacted] to the Dollar
- 17 General. About how far was that?
- 18 A About a mile or two, I guess.
- 19 Q Did he tell you where to go?
- 20 A Yeah.
- 21 Q How did he tell you? Did he say go to the Dollar
- 22 General, or what did he say?
- 23 A Yeah.
- 24 Q All right. What did he tell you?
- 25 A He was telling me this way to go, and then ended up

Marcus Wright
Direct examination by Mr. Bulsa

- 1 going to the Dollar General.
- 2 Q He actually gave you directions to turn?
- 3 A I mean, not really, know what I'm saying. I'm, I'm
- 4 familiar with the area.
- 5 Q What was special about the Dollar General?
- 6 A I don't know.
- 7 Q Was that close to where he lived?
- 8 A Not really, but it wasn't far-far.
- 9 Q Okay. Did he take anything with him when he left your
- 10 car?
- 11 A The only thing he had that was on him.
- 12 Q Did he take the gloves off while he was in your car?
- 13 A No.
- 14 Q Did he set the knife down?
- 15 A No. I didn't really pay him no attention.
- 16 Q Why not?
- 17 A Because I was kind of in shock what I just seen.
- 18 Q Where did you go after you dropped him off?
- 19 A I went back home.
- 20 Q When did you learn of Ricky's death?
- 21 A When everybody was calling me. Then the police came
- 22 and questioned me.
- 23 Q Okay. The police questioned you when?
- 24 A The same night.
- 25 Q The same night. Okay. Were you arrested that night?

Marcus Wright
Direct examination by Mr. Bulsa

- 1 A No, sir.
- 2 Q Okay. Did the police tell you Ricky had died, or
3 somebody else?
- 4 A Somebody else.
- 5 Q Did you know he had died when the police got there to
6 see you?
- 7 A I mean, from everybody else telling me, I guess so,
8 yeah.
- 9 Q Okay. And they questioned you about the death?
- 10 A Yeah.
- 11 Q And what did you tell them at that time?
- 12 A That I didn't, I didn't know anything.
- 13 Q And why did you tell them that?
- 14 A I don't know. I guess I just didn't want to seem to
15 be labeled a snitch or whatever because I'm in the streets
16 or whatever.
- 17 Q You didn't want to tell on Mr. Ackbar?
- 18 A Yeah.
- 19 Q Were you afraid in any way?
- 20 A Kinda, but not really.
- 21 Q Okay. All right. And then the police, did they take
22 a written statement from you at that point?
- 23 A No.
- 24 Q They just interviewed you.
- 25 A Yeah.

Marcus Wright
Direct examination by Mr. Bulsa

- 1 Q Okay. Did they leave you at your mama's house?
- 2 A Yes.
- 3 Q Did you wind up talking to the police again?
- 4 A No, not until I turned myself in.
- 5 Q Okay. So explain to us why you turned yourself in.
- 6 A Because they put me as, labeled me as, a murderer.
- 7 And my family talked to me like I need to turn myself in.
- 8 I was already out on probation, I mean, on my bond for
- 9 armed robbery. So, you know what I'm saying, they like if
- 10 you don't turn yourself in, the house going to get took and
- 11 all of this. So I --
- 12 Q So word got to you that they had a warrant for you.
- 13 A Yeah. I mean, it was on the news and newspaper.
- 14 Q How long did it take you before you turned yourself
- 15 in?
- 16 A Like two or three days.
- 17 Q Were you hiding from the police?
- 18 A No.
- 19 Q All right. You turned yourself in. Did the police
- 20 talk to you again?
- 21 A Yeah.
- 22 Q What did you tell them this time?
- 23 A I told them what happened.
- 24 Q Okay. Do you remember how many written statements you
- 25 gave to the police?

Marcus Wright
Direct examination by Mr. Bulsa

- 1 A Yeah.
- 2 Q How many?
- 3 A Two.
- 4 Q All right. And the first one, what did you tell them?
- 5 A A lie.
- 6 Q Basically, what you told them the first time, you
- 7 didn't know.
- 8 A Yeah.
- 9 Q All right. And what made you change your mind?
- 10 A I mean, that was like, well, Mr. Ackbar is like you
- 11 the one that done it, right now you're labeled as the
- 12 murderer, and this and that, and the third.
- 13 Q Then you told them what you've testified to today in
- 14 your second statement?
- 15 A Yes, sir.
- 16 Q Did you have anything against Mr. Ackbar?
- 17 A No.
- 18 Q Do you have any reason to lie against him?
- 19 A No.
- 20 Q Did he kill Ricky Kelly?
- 21 A Yes, I guess so, yeah.
- 22 Q Do you know what he did with the knife?
- 23 A No.
- 24 Q Did you go by his house at any time after this
- 25 incident?

Marcus Wright
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q Do you remember about when?
- 3 A The day he was supposed to have turned hisself in.
- 4 Q Okay. And why did you go by his house?
- 5 A To grab a bag out of his house.
- 6 Q Did somebody instruct you to go by the house?
- 7 A Yes.
- 8 Q Who?
- 9 A Smallbar, Mr. Ackbar.
- 10 Q And how did he tell you to go by the house?
- 11 A He was like I need you to go grab this outta the house
- 12 for me.
- 13 Q Did he describe what to get?
- 14 A No.
- 15 Q What did he tell you?
- 16 A It was a bag.
- 17 Q Told you to go get a bag? Where was the bag supposed
- 18 to be?
- 19 A It was inside the house.
- 20 Q Did you ever look inside the bag?
- 21 A No.
- 22 Q Why not?
- 23 A I ain't think I had no need to.
- 24 Q How did you get over to the house to get that bag?
- 25 A I had somebody take me over there.

Marcus Wright
Direct examination by Mr. Bulsa

- 1 Q A young lady?
- 2 A Yeah.
- 3 Q What was her name?
- 4 A Lindsey Bridges.
- 5 Q Did she know what was going on?
- 6 A No.
- 7 Q You just asked her to take you by Supreme's house.
- 8 A Yeah.
- 9 Q All right. You got the bag, and what did you do with
- 10 it?
- 11 A I threw it away.
- 12 Q Did you tell the police that also?
- 13 A Yeah.
- 14 Q Did you consider Mr. Ackbar a friend?
- 15 A Yeah.
- 16 Q How often did you see him before this happened?
- 17 A Probably two or three times a week.
- 18 Q What was your relationship with Mr. Kelly like?
- 19 A I seen him every day of the week.
- 20 Q Was he your friend also?
- 21 (No response.)
- 22 Q All right. Mr. Wright, answer any questions Mr. Poole
- 23 has for you.
- 24
- 25

Marcus Wright
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q Mr. Wright, you testified a moment ago that you were
4 going to go to the store for your mother on this date of
5 September 9, I believe, is that right?

6 A Yes, sir.

7 Q What store were you going to?

8 A The Ingles.

9 Q Okay. And you decided just to stop over on
10 or at this location right here --

11 A Yeah.

12 Q -- on the way. And nobody called you.

13 A No. I -- before I left I called D.J., because I's
14 going to stop by there and smoke with 'im.

15 Q Smoke what?

16 A Marijuana.

17 Q Okay. And then I believe you testified that it was
18 you, Rick, D.J. and Travis, were around talking.

19 A Yeah.

20 Q Okay. Now, when you turned yourself in was that on
21 the 26th of September?

22 A Yes, sir.

23 Q And you gave -- by that time you had already given a
24 prior oral statement to the police, had you not?

25 A No.

Marcus Wright
Cross-examination by Mr. Poole

1 Q Had you not spoken with the police on the day of
2 September 20th?

3 A Yeah, when I turned myself in.

4 Q Okay. Well, didn't you talk to them? When they came
5 around asking questions right after this occurred, you
6 spoke with the police, right?

7 A Yeah.

8 Q Didn't you testify to that?

9 A Yes, sir.

10 Q You testified that you lied.

11 A Yeah. I told 'em I didn't know anything.

12 Q All right. And then when you turned yourself in,
13 okay, on September 26th of 2009 you gave a written
14 statement, didn't you?

15 A Yes, sir.

16 Q And that first statement was a lie.

17 A Yeah.

18 Q A total lie.

19 A Yeah.

20 Q Didn't you state that you were at your mother's house
21 Sunday all day spending time with her and your little
22 cousin watching D.V.D.s?

23 A Yeah. That part is true.

24 Q Okay. Then you stated that you left and went to the
25 Dollar General. "And while in Dollar General my home-girl

Marcus Wright
Cross-examination by Mr. Poole

1 calls and asks for a ride."

2 MR. BULSA: I object to him reading the statement. He
3 can ask him questions, Your Honor. He's already admitted
4 that it's a lie anyway.

5 MR. POOLE: Cross-examination.

6 THE COURT: You can ask him questions.

7 MR. POOLE: May I approach the witness?

8 THE COURT: You may.

9 BY MR. POOLE

10 Q Is that your signature right there?

11 A Yes, sir.

12 Q Is it dated September the 26th?

13 A Yes, sir.

14 Q Within that statement did you state that you went to
15 Dollar General?

16 A Yes, sir.

17 Q And that you stated that while in Dollar General your
18 home-girl --

19 MR. BULSA: I object. He's just going through the
20 statement. He's not asking questions.

21 THE COURT: Let me see y'all just a minute.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 BY MR. POOLE

25 Q In your statement did you not tell law enforcement

Marcus Wright
Cross-examination by Mr. Poole

1 that your home-girl called and asked for a ride from
2 Greenville?

3 A Yes.

4 Q And then in that statement did you not go on to say
5 that, "I went to pick her up"?

6 A Yeah.

7 Q And then did you not say that you came home from
8 Greenville?

9 MR. BULSA: Your Honor, this is the same thing.

10 THE COURT: Let me see y'all just a minute.

11 MR. POOLE: I'll withdraw the question.

12 THE COURT: Okay.

13 BY MR. POOLE

14 Q Then you gave a second statement on September 26th, is
15 that right?

16 A Yeah.

17 Q And it's your testimony that what you said in that
18 statement is true, and what you testified to today, is that
19 right?

20 A Yes.

21 Q Okay. And then you mentioned this bag that you went
22 to pick up, is that right?

23 A Yes.

24 Q And you told the police about that on September the
25 26th.

Marcus Wright
Cross-examination by Mr. Poole

1 A Yes.

2 Q But in your testimony you say that you just go pick up
3 a bag at Mr. Ackbar's request and not knowing what the
4 contents were, right?

5 A Yes.

6 Q And it's your testimony you don't know what the
7 contents were.

8 A No.

9 Q Okay. But you further testified that you were at the
10 time that this occurred, you were scared, and that's why
11 you sped off.

12 A No. I never said that.

13 Q Okay. Did you speed off?

14 A I never said that.

15 Q Did you?

16 A I pulled off.

17 Q Did you speed out almost hitting a wire or something
18 near a telephone pole?

19 A No.

20 Q You just casually drove off?

21 A I mean, I sped off, but I ain't -- cause to almost hit
22 nothing.

23 Q So did you speed away?

24 A Sorta.

25 Q Sort of?

Marcus Wright
Cross-examination by Mr. Poole

- 1 A Yeah.
- 2 Q Mr. Wright, do you believe this, this -- are you
3 asking this jury to believe that you didn't know what was
4 going on --
- 5 A I didn't.
- 6 Q -- at this scene on September 9, 2009 --
- 7 A Yes, sir.
- 8 Q -- when you got there?
- 9 A Yes, sir.
- 10 Q You're asking them to believe that.
- 11 A Yes, sir.
- 12 Q Okay. And you say you're not really afraid of
13 Mr. Ackbar, right?
- 14 A I mean, I didn't have no reason to be.
- 15 Q Okay. Well, you testified that you see Mr. Ackbar
16 commit this horrible crime and yet you're not afraid of
17 him, right? Is that what you're telling us?
- 18 A I mean, because I don't have no reason to feel like I
19 should be on him.
- 20 Q Okay. Well, the fact is he got into your car, didn't
21 he?
- 22 A Yeah.
- 23 Q And you left the scene, right?
- 24 A Yes, sir.
- 25 Q And, and it wasn't just like a pulling off like you

Marcus Wright
Cross-examination by Mr. Poole

- 1 were normally pulling out of a driveway, was it?
- 2 A No.
- 3 Q And then where did you go then?
- 4 A Well, he told me to go to the Dollar General.
- 5 Q Again we hear Dollar General, right? Dollar General.
- 6 A Yeah.
- 7 Q Now, Mr. Wright, is your birthdate ?
- 8 A Yes, sir.
- 9 Q Did you not plead guilty or were found guilty of grand
- 10 larceny greater than \$1,000 but less than \$5,000 on
- 11 February 5th of 2007?
- 12 A Yes, sir.
- 13 Q Did you not plead guilty or were found guilty of grand
- 14 larceny greater than \$1,000 but less than \$5,000 on
- 15 June 23, 2008?
- 16 A Yes, sir.
- 17 Q And are you not charged with murder in this case?
- 18 A Yes, sir.
- 19 Q And isn't it your understanding that you will be
- 20 allowed to plead to accessory after the fact of murder in
- 21 this case?
- 22 A Yes, sir.
- 23 Q So you have cut a deal?
- 24 A No. The deal was offered.
- 25 Q The deal was offered. You accepted it?

Marcus Wright
Cross-examination by Mr. Poole

- 1 A Nothing's been accepted.
- 2 Q Your intention is to plead to accessory after the fact
3 of murder, isn't it?
- 4 A Yes, sir.
- 5 Q And you're charged with murder at this point in time.
- 6 A Yes, sir.
- 7 Q And you understand that your exposure to prison time
8 is less on an accessory after the fact than it is to the
9 principal charge of murder.
- 10 A Yes, sir.
- 11 Q A sizable difference.
- 12 A Yes, sir.
- 13 Q So you're motivated to testify this way, aren't you?
- 14 A No. I was told to testify.
- 15 Q You were told to testify? Who told you to testify?
- 16 A Mr. Ackbar.
- 17 Q Did he help you cut a deal?
- 18 A No.
- 19 Q Now, let me ask you this. He's not your lawyer, is
20 he?
- 21 A No, sir.
- 22 Q And you don't follow the advice of anybody in your
23 case other than your lawyer, do you?
- 24 A This was before I had my lawyer.
- 25 Q Okay. But the situation is the same. After you're

Marcus Wright
Redirect examination by Mr. Bulsa

1 charged with murder you're going to be allowed to plead to
2 accessory after the fact, aren't you?

3 A Yes, sir.

4 Q And you know that if you didn't testify you would not
5 be given that deal, don't you?

6 A Yes, sir.

7 Q So that's why you're here today, isn't it?

8 A Yes, sir.

9 MR. POOLE: No further questions.

10 REDIRECT EXAMINATION

11 BY MR. BULSA

12 Q Mr. Wright, what do you mean -- Mr. Ackbar told you to
13 testify?

14 A He wrote telling me in a letter that he's not mad with
15 what happened, it's happened, he feels I shouldn't be in
16 this situation.

17 MR. POOLE: Objection, Your Honor. I object to a
18 letter being mentioned to, about, or anything regarding the
19 contents of the letter.

20 THE COURT: Overruled.

21 BY MR. BULSA

22 Q Wrote you a letter while you were in the jail?

23 A Yes, sir.

24 Q Is he in the jail also?

25 A Yes, sir.

Marcus Wright
Redirect examination by Mr. Bulsa

- 1 Q So it got sent from the jail to you at the jail.
- 2 A He got it sent from somewhere else, by him though.
- 3 Q Okay. And what was he telling you?
- 4 A That he wanted me to tell what happened.
- 5 Q Mr. Wright, did you have any prior knowledge that this
- 6 was going to happen?
- 7 A No, sir.
- 8 Q Were you surprised at what happened?
- 9 A Yes, sir.
- 10 Q Did you want to be involved with it?
- 11 A No.
- 12 Q Did you invite Mr. Ackbar to get in your car with you?
- 13 A No.
- 14 Q Why did you go get the bag at his request from his
- 15 house?
- 16 A I mean, just something, one of the wrong things that I
- 17 done.
- 18 Q Did you think it had something to do with the murder?
- 19 A No.
- 20 Q Did you think you were getting rid of something for
- 21 him?
- 22 A I mean, that's what I done.
- 23 Q Did you have any animosity towards Ricky?
- 24 A No.
- 25 Q Did you have any towards Mr. Ackbar?

Marcus Wright
Recross-examination by Mr. Poole

1 A No.

2 Q Have you told the truth today?

3 A Yes, sir.

4 Q You're getting a reduced plea offer, correct?

5 A Yes, sir.

6 Q Is that because what you did has helped him get away?

7 A No.

8 Q Did you help Ackbar get away from the scene?

9 A Not intentionally.

10 Q But you drove him off.

11 A Yeah.

12 Q You lied to the police. You went and got a bag for
13 him.

14 A Yeah.

15 Q You got rid of the bag.

16 A Yeah.

17 Q All of what you did was after Ricky died, is that
18 right?

19 A Yeah.

20 Q Thank you.

21 MR. BULSA: That's all.

22 MR. POOLE: Just a couple of questions, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. POOLE

25 Q Mr. Wright, you said you were, you were surprised by

Marcus Wright
Recross-examination by Mr. Poole

1 what happened right here on September 9th.

2 A Yes, sir.

3 Q Yet you allowed a man with gloves and a knife to get
4 in your car, right?

5 A Yes, sir.

6 Q And you escorted him to a destination that he asked
7 you to drop him off at, right?

8 A Yes, sir.

9 Q And you just testified that you didn't intentionally
10 help Mr. Ackbar. You just said that. What do you mean
11 by that?

12 A You would've pulled off too if you'd a-seen what
13 happened when he hopped in the car.

14 Q I'm asking you the question. You intentionally helped
15 him get to a Dollar General, didn't you?

16 A Not intentionally.

17 Q How far is Dollar General from this place?

18 A About a mile or two.

19 Q So he's in your car for a mile or two.

20 A Yeah. It doesn't take but about five minutes to get
21 there.

22 Q Okay. So you were unintentional for five minutes?

23 A Yeah.

24 Q Thank you.

25 MR. BULSA: Nothing further.

1 THE COURT: You may step down. You can step down.

2 MR. BULSA: Your Honor, that's the state's case.

3 THE COURT: All right. Ladies and gentlemen, that is
4 all of the testimony or other evidence to be offered by the
5 state, at least in their case in chief.

6 Before we can continue I've got some matters I'll need
7 to address. It should take only a few moments, and then
8 I'll bring you back to continue with the trial.

9 So please go to your jury room, but do not yet discuss
10 the case in any fashion.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Any motions or other matters to address
14 before we continue?

15 MR. POOLE: Your Honor, at this time I would renew the
16 previous motion for a mistrial in this case. This motion
17 is based on my previous motion that's already on the
18 record, which was based upon the recordation of the jurors'
19 testimony in Your Honor's chambers and what was said in the
20 courtroom. It's simply a renewal of our motion for a
21 mistrial based on the reasons already given.

22 THE COURT: All right. That motion is denied.

23 MR. POOLE: Second point is that I have spoken with
24 Mr. Ackbar on his right to testify, and he has chosen not
25 to.

1 THE COURT: All right. Mr. Ackbar, your lawyer has
2 just told me that you and he have discussed it and that you
3 have made a decision not to testify in the trial of this
4 case. Is that true?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And have you had plenty of time to discuss
7 your right to testify, as well as not testify, with your
8 lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand that when you're
11 charged with a crime nobody can require that you take the
12 witness stand and testify, because you always have an
13 absolute right to remain silent and to require the state to
14 come into court with sufficient evidence to establish your
15 guilt to the satisfaction of this jury beyond a reasonable
16 doubt. And you never need to assist them in their efforts
17 by you taking the witness stand and answering questions
18 that might tend to prove your own guilt.

19 So you do have an absolute right to remain silent, but
20 at the same time you only have one opportunity to testify
21 and present any further evidence before this jury. And now
22 is that time.

23 The state has rested in their presentation. You now
24 have an opportunity to testify, and even if you don't
25 testify you can call other witnesses or introduce other

1 evidence if you wish to.

2 You do understand your right to remain silent?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you also understand that you have a
5 right to testify if you wish to?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand it's your decision, only
8 you get to make that decision?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you and Mr. Poole discussed the
11 advantages and disadvantages of testifying, as well as not
12 testifying?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you appreciate what those
15 advantages and disadvantages are?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And have you had time to reflect upon your
18 decision as to whether or not you will testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And have you made a decision in that
21 regard?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And what is your decision?

24 THE DEFENDANT: Not to testify.

25 THE COURT: And is that a decision that you made of

1 your own free will and accord?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone forced you into it?

4 THE DEFENDANT: No, sir.

5 THE COURT: Anyone pressured you into it?

6 THE DEFENDANT: No, sir.

7 THE COURT: Did anybody suggest that that's what you
8 need to do in this case?

9 THE DEFENDANT: No, sir.

10 THE COURT: You made that decision on your own?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you're satisfied with it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Thank you.

15 Mr. Poole, do you intend to call any other witnesses?

16 MR. POOLE: No, sir.

17 THE COURT: All right. Let me see y'all just a
18 minute.

19 (Bench conference held off the record.)

20 THE COURT: All right. Bring the jury in, please,
21 sir.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: All right. Ladies and gentlemen, as you
25 know, the state has concluded in their presentation. So

1 we'll now proceed with any additional to be offered by the
2 defense.

3 Mr. Poole.

4 MR. POOLE: There is no additional evidence in this
5 matter.

6 THE COURT: Does the defense rest?

7 MR. POOLE: That's right.

8 THE COURT: All right. Ladies and gentlemen, that's
9 all of the testimony or other evidence to be offered in the
10 trial of the case. And therefore what remains to be done
11 are the lawyers' final summations, after which I'll
12 instruct you on the law that's applicable in the case. And
13 then you'll begin with your deliberations.

14 Now, we're not going to be able to do that this
15 afternoon because I've got to be out of town at
16 6:00 o'clock. So we'll conclude in the morning beginning
17 at 9:30 with the final summations and my instruction and
18 then your deliberations.

19 So in the meantime during the overnight recess keep in
20 mind that you are still not to discuss this case in any
21 fashion whatsoever with any person whatsoever.

22 Do not permit anyone to discuss it with you. Don't
23 conduct any research; don't do your own investigation into
24 any issue; and do not permit yourselves to be exposed to
25 any type of media coverage that might relate to the case.

1 Do have a good evening, and please report to your jury
2 room at 9:30 in the morning, 9:30 in the morning. Have a
3 good afternoon.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Do either of you have requests for
7 instructions?

8 MR. BULSA: Nothing additional, Your Honor.

9 MR. POOLE: Just your standard instructions, Your
10 Honor.

11 THE COURT: All right. Court is in recess until
12 9:30 in the morning.

13 END OF PROCEEDINGS FEBRUARY 8, 2011

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Closing arguments

1 (Proceedings February 9, 2011)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters that need to be
5 addressed before the jury is brought in?

6 MR. BULSA: Not from the state, Your Honor.

7 MR. POOLE: None from the defense.

8 THE COURT: Okay. Bring them in, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday the evidence
13 had all been presented, and what remained to be done were
14 the lawyers' final summations, after which I'll instruct
15 you on the law. And then you can begin with your
16 deliberations in the case.

17 So please give the lawyers your attention now as they
18 give you their final summations.

19 Mr. Bulsa.

20 MR. BULSA: Thank you, Your Honor.

21 Ladies and gentlemen, on September 20th of 2009, as
22 you heard throughout this trial, Ricky Kelly suffered a
23 tragic death. He was brutally killed. He had multiple
24 wounds as Dr. Wren described to you.

25 We couldn't show you his picture; we couldn't show you

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1 the blood; we couldn't show you the wounds. We had to rely
2 on the words and the diagram to describe what happened to
3 him.

4 He was a 19-year-old young man living at home with his
5 mother. He worked at Pizza Hut. He had good friends,
6 friends that he visited often. And as you've heard, on
7 September the 20th he was visiting some of those friends
8 when he died at their doorstep.

9 This case is about Supreme Ackbar killing Ricky Kelly,
10 cutting his throat, stabbing him to the depth of at least
11 4 inches.

12 We presented multiple witnesses, eye witnesses, to
13 this crime. You've heard from the police, the
14 investigation. And I submit to you your job is simple.
15 You decide the credibility of that testimony and evidence
16 and decide if it meets the elements of the crime that the
17 judge will charge you.

18 And that is murder. Murder is the unlawful killing of
19 another human being with malice aforethought. This is
20 clearly malicious.

21 Ladies and gentlemen, let's go back over the case. We
22 have , home of Kendra Burnside. She lived
23 there with her son at the time. Her daughter had moved out
24 because she was married -- Octavious. Octavious was
25 married to the defendant. She had at least one child and

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1 another one on the way.

2 Kendra Burnside as we've heard had some physical
3 ailments. She was requiring surgery. In fact, she was
4 going on a trip the next day. Her daughter came over to
5 visit to help out. Her son was there, D.J., had some
6 friends visiting watching football, a typical Sunday
7 afternoon. Those friends testified that they often came
8 over.

9 Ricky Kelly was a regular visitor to the home. He
10 lived in the area. Marcus Wright stopped by often. As
11 probably most any other Sunday, Ricky came over on the way
12 home from work and brought him some chicken. He was
13 thinking of his friends.

14 He went in and visited for a short while and then was
15 leaving to go home. While he was outside he visited with
16 D.J. and Travis. And then Marcus comes up, and Marcus
17 visits with him as well while Ricky's seated in his car.

18 We know that the defendant had arrived there because
19 Octavious gave him a ride. But what did Supreme Ackbar do
20 on that occasion? He stayed in the back of the truck. He
21 didn't go in to visit with his mother-in-law or his
22 brother-in-law. He stayed in the truck.

23 And what did he do? He didn't even get out to go get
24 a drink. He had to call for a drink. So Octavious brought
25 him a drink. And remember when Octavious was coming back

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1 from the truck after giving Mr. Ackbar the drink S.K. was
2 leaving. That's the young man who was the second witness.
3 He's the student at Byrnes High School.

4 S.K. knew Mr. Ackbar from the Burnside residence. He
5 lived in the neighborhood. S.K. was a friend of D.J.'s.
6 His brother was a friend of D.J.'s.

7 S.K. stops to visit with the defendant in the truck.
8 And what happens? Gets an invitation to kill his friend.

9 You judge his credibility. You judge any bias he has.
10 What does he have to gain in this case? He ran for his
11 life. He was afraid. And when the police learned that he
12 was there he did what he needed to do. He told the truth.

13 He came and testified and told you that this man
14 pulled gloves out of that bag in the truck, put them on,
15 pulled a knife out, said he was going to kill Rick. And he
16 gets out of the car and S.K. hears Rick screaming, and he
17 realizes he's doing what he said he was going to do. So he
18 does what any 15-year-old boy probably would do. He got
19 out of Dodge.

20 Then we have Marcus Wright who'd been visiting with
21 Rick at his car. He pulled in and parked his car, saw his
22 friend Rick, talked with him a moment, was going into the
23 house. When he hears Rick screaming he turns and sees
24 what's going on and sees the blood. He's a little older.
25 Perhaps he should have went inside and perhaps he should

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1 have went and helped, but he decided to leave also. And
2 then the defendant jumps in his car.

3 There's something that Octavious Burnside told y'all,
4 and I don't know if you remember it. She said that Supreme
5 told her that he was waiting on a ride. We don't know if
6 that was true or not, but we know he was sitting in that
7 car with weapons at his disposal, and gloves, and it's as
8 if he was lying in wait waiting to see if the opportunity
9 presented itself to kill Ricky Kelly.

10 Now, it's human nature to wonder why this happened and
11 why is it not an element of the offense. It's not
12 necessary for you to understand why because oftentimes you
13 never do know why something like this happens. The fact is
14 that it did happen.

15 This defendant was what appears to be lying in wait.
16 He was prepared for the opportunity to present itself. He
17 saw Marcus pull up. And Marcus unfortunately unknowingly
18 became his right way, because the defendant jumped in
19 Marcus' car and told him to leave. And Marcus was already
20 leaving. Then the defendant told him where to go, and he
21 jumps out and leaves.

22 The defense through their questions seems to be
23 suggesting that Marcus is this killer. He asked officers
24 about fingerprints, Marcus' fingerprint. Yeah. It was on
25 the driver's side of the car because he was visiting with

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1 Rick.

2 He talks. He talked to the officer about blood in
3 Marcus' car. Yeah, there were some drops of blood on the
4 passenger side suggesting transfer from when somebody's
5 getting into that side. There was no blood on the driver's
6 side. It corroborates what Marcus tells you.

7 Ladies and gentlemen, the evidence is clear from the
8 eye witness testimony that this man killed Ricky Kelly.
9 You can just look at the physical evidence as well. You
10 saw the pictures of the truck. You saw the pictures of the
11 bag.

12 You see the sheath that was left in the baby's seat.
13 We don't have the murder weapon. We've got the next best
14 thing. We've got the sheath it came out of. We don't have
15 the murder weapon, because I submit to you he told Marcus
16 to go get the bag and get rid of it and Marcus did. Marcus
17 helped him.

18 Marcus was charged with murder because the initial
19 investigation put him at the scene, puts him leaving the
20 scene. But when everything comes out you see that what
21 Marcus did is, in essence, he helped him get away, he
22 helped him dispose of the items involved in the crime. But
23 the killer is sitting right here. And that's for you to
24 decide.

25 You've already heard about Ricky Kelly because, as I

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1 said, we couldn't show you his picture. His family has
2 been here. His supporters have been here. We're asking
3 for justice for them in the death of their son and their
4 friend.

5 The judge will charge you on the law. Please listen
6 closely to it. It's not that complicated. I couldn't put
7 a picture of those wounds to Ricky Kelly to show you,
8 because that's a picture of malice.

9 Somebody was angry at him for some reason. We know
10 that somebody is Supreme Ackbar. We don't need to know
11 why. We know he acted on that and killed a young
12 19-year-old boy. Please do your duty. Please find him
13 guilty. Thank you.

14 MR. POOLE: May it please the Court.

15 THE COURT: Mr. Poole.

16 MR. POOLE: Mr. Foreman, ladies and gentlemen, I want
17 to thank you for the attention that you have shown
18 throughout this case. It's not been a long case, but
19 nevertheless it has been important, and for both sides.
20 And thank you for your attention to everything that's been
21 said and done.

22 This is a horrible crime. It's awful that a
23 19-year-old man met his death like this. It's terrible.
24 There's nothing I can say. I'm not even going to try to
25 say anything less than that.

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1 However I want you to -- I want to talk to you about
2 the same thing that the solicitor has talked to you about,
3 and that's the credibility of their witnesses and what the
4 state has brought before you asking you to make a
5 conviction, and that conviction of guilty.

6 By my count there were about ten witnesses. And the
7 state did a good job in interspersing law enforcement with
8 lay witnesses. There were witnesses that were there,
9 witnesses that knew something about some aspect of the case
10 that were not in law enforcement. And so that was a good
11 alternation, and I think that is a fine job of presenting
12 the case. But if you put it all together I think that you
13 will still find that there is plenty of room for reasonable
14 doubt.

15 Now, let me again -- and I have to bring my pad up
16 here because I was taking notes, and I make notes when
17 witnesses testify and I make notes that I want to mention
18 to you at the end of the case like right now. And I've
19 written down the best way I could what witnesses said. And
20 I want to go over not the entire testimony but some of the
21 testimony and ask you to consider these things and put it
22 in the context of credibility, believability and
23 opportunity to observe what was going on.

24 You have 12 recollections, you have 12 minds, you have
25 12 memories. I only have one. So when you start talking

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1 about what you yourself heard, whatever you hear, if I say
2 something that you say doesn't jive, then use your own
3 recollection because I could have been mistaken.

4 But the very first thing I want to say to you about a
5 witness is to begin at the beginning with Officer
6 Hullinger. He came in. He was basically the crime --
7 first on the crime scene, cordoned off the area, separated
8 the witnesses, talked to them, got them separated. He
9 kept -- all of this back. That's pretty straightforward.

10 Then we have the second witness. That was S.K. .
11 The solicitor has gone over what he thinks to be the
12 important parts of S.K.'s testimony, but I made a note that
13 he testified he did not see Mr. Ackbar stab Rick Kelly.
14 Now, as I understand it, they're not related, although they
15 have the same last name. But he did not see that happen.

16 The second witness after that was Ms. Kendra Burnside
17 who was at his home. And she testified that she didn't
18 know that Rick had been in the house. But obviously he had
19 been. And she testified further that sometime after that
20 there was a car, this gray car that was driven by Marcus
21 Wright, turned around in the middle of their yard.

22 I think she may have been the witness that said
23 pointing up to this photo of the front of the yard, she
24 said this yard is bigger than where -- the way it looks
25 right here, and he turned around in the middle of the yard,

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1 sped away and almost hit a wire in the meantime.

2 And there was other testimony. I don't know if it was
3 this Ms. Burnside or not that said that most of these
4 people were out here in the middle of the yard talking with
5 one another, hanging out, just talking, these young men.
6 Some went in the house and some came out, but most of it
7 was happening in the middle of the yard.

8 And she testified that she saw the car drive away at a
9 fast rate of speed and she did not see who was in it.

10 Then Mr. Danny Burnside testified that he saw Marcus
11 Wright, pulled up in that very same car, and that Marcus
12 Wright was basically standing by his car, standing by his
13 car, that is Marcus Wright's car. And he says he was not
14 there very long, probably less than ten minutes. Marcus
15 Wright just happens to come up at that particular point in
16 time that I will get to in just a minute.

17 Investigator or Deputy Hogsed, he testified that there
18 was no weapons found, there were no bloody gloves found.
19 What is presented and what is not presented is important in
20 and of itself. Take that into consideration. There has
21 been no weapon that has been found or produced.

22 Then Ms. Burnside, Octavious Burnside, who is the wife
23 of Mr. Ackbar -- they have two children together -- said he
24 was a good father, good provider, said that he was, in
25 fact, in the truck and that it was not unusual for him to

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1 go inside and it was not unusual for him to not go inside
2 the house.

3 And she further testified that she did not know how or
4 when Mr. Ackbar left the residence. She
5 testified that she did not notice that he had a knife with
6 him.

7 She further testified that she did not know that he
8 was going to be lying in wait or looking for Ricky Kelly.
9 He never said anything threatening about Ricky Kelly. And
10 she testified further that she didn't see Marcus Wright
11 that day. She was inside doing her thing.

12 And then later on she testified that -- and this was a
13 different day, I do believe -- that she saw Marcus Wright
14 go to the back of the house and get this bag, whatever this
15 bag business was all about. Got a bag, went to the back
16 and got a bag, and then came out and left.

17 Now, the next to the last witness was the chief
18 investigative officer, okay. That was Investigator Lorin
19 Williams. And he testified that he spoke with Mr. Wright
20 on the day of September the 20th of 2009. Mr. Wright
21 denied any involvement.

22 He further testified that later on, about six days
23 later on September 26th -- I think I've got the date
24 right -- that he talked to him in the sheriff's department
25 and that he gave another statement and that he denied

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1 involvement in that second statement. And then after
2 talking to him further he gives a third statement in which
3 he admits some involvement.

4 Okay. An important piece of evidence that was
5 elicited from Investigator Williams is that a fingerprint
6 was found on Ricky Kelly's car, driver's door, and that
7 fingerprint belonged to Marcus Wright.

8 So that brings us to the state's primary witness,
9 Mr. Marcus Wright. Y'all saw him. Y'all had an
10 opportunity to observe him. You saw how he answered the
11 questions.

12 He stated that he knew Mr. Ackbar, that they were
13 occasional friends. He testified that he just happened to
14 show up on that day on his way to the store. I don't know
15 if it's Dollar General or whatever. But on the way. I
16 think he said it's Ingles. That's right. But he just
17 happened to stop by at a particular time, some critical
18 time. He stopped.

19 Now, and then he, he goes on and testifies that he was
20 in shock about -- and he's the only one that claims that he
21 saw Mr. Ackbar attack Mr. Kelly. Okay. And then he's in
22 shock. All right. He shows up. He's in shock.

23 And he lets Mr. Ackbar get in his car with bloody
24 gloves and a knife. And Mr. Ackbar says take me to Dollar
25 General. That's about the weirdest, weirdest thing I've

Jury charge

1 heard in a long time. And he was in shook, and he did not
2 intentionally help him get to Dollar General, which was
3 five minutes away. And I asked him so you were
4 unintentional for five minutes. He said got additional for
5 five minutes.

6 Now, come on. Mr. Wright is an admitted thief. He is
7 an admitted liar. And he has his deal cut. He is going to
8 be allowed to plead to accessory after the fact to murder.

9 Mr. Wright knows which side of bread the butter is,
10 and he comes in here as the state's main witness, a liar, a
11 thief, with testimony tailormade to fit into his story.

12 Ladies and gentlemen, when you put all of these things
13 together it adds up to more than reasonable doubt. This
14 case is about all of that.

15 Judge Cole instructed you what reasonable doubt is.
16 But the evidence that's been brought in yesterday and the
17 day before and shown to you, I submit to you, is not enough
18 to hold Mr. Ackbar guilty of murder, not when you have the
19 testimony of these witnesses and not when you have the
20 state bringing a star witness in like Mr. Marcus Wright.
21 Thank you.

22 THE COURT: Ladies and gentlemen of the jury, of
23 course you've heard and seen all the evidence and now the
24 final summations of the lawyers; and therefore it now
25 becomes my duty and obligation to instruct you on the law

Jury charge

1 that's applicable in the case. And then you'll be asked to
2 go back and begin with your deliberations. And through
3 this process you will examine all of the evidence, decide
4 the facts, apply the law and arrive at a fair and just
5 decision, whatever that decision may be.

6 It is your exclusive duty to determine what the facts
7 are. You do that through your own common sense examination
8 and evaluation of all of the testimony and other evidence
9 received during the trial of this case.

10 You 12 jurors alone will decide what weight, value and
11 effect to give to any particular witness' testimony, or
12 even portions of that testimony. Your sole obligation and
13 duty in this case is to reach the truth in the matter. And
14 by doing that you will have fulfilled your obligations as
15 jurors, and that is to simply give both the state and the
16 defendant a fair and impartial trial.

17 Now, in this case, as you know, the defendant, Supreme
18 Ackbar, has been accused by the state with having committed
19 the crime of murder.

20 The allegations setting forth that charge are set
21 forth in that document which I referred to earlier, the
22 indictment. And by way of that indictment the state
23 alleges that Mr. Ackbar did here in Spartanburg County on
24 or about September the 20th of 2009 wilfully and with
25 malice aforethought kill one Ricky Kelly, Jr. by stabbing

Jury charge

1 him and that he died as a proximate result of those wounds
2 received.

3 The indictment is not evidence of anything. It's not
4 proof of anything. It does not establish anything. It's
5 simply the means by which any person who is accused of a
6 crime and brought into this court to stand trial is
7 formally put on notice as to what crime the state claims
8 that they committed.

9 The indictment will be in the jury room, but, Mr.
10 Foreman, the purpose of the indictment being there is
11 solely to serve as the verdict form. So you'll have the
12 indictment there because it's going to be on the back of
13 this indictment that you will indicate the jury's unanimous
14 decision, whatever that decision might be. But other than
15 serving as the verdict form the indictment serves no
16 purpose so far as you jurors are concerned.

17 Now, as to the allegations contained in the indictment
18 and as to the charge brought against the defendant the
19 defendant, Mr. Ackbar, has entered a plea of not guilty.
20 That plea of not guilty has therefore placed upon the state
21 the burden of proving the allegation that they have set
22 forth in that indictment, the burden of proving each of the
23 essential elements of the crime of murder; and therefore
24 the burden is upon the state to establish the defendant's
25 guilt to the satisfaction of you 12 jurors beyond a

Jury charge

1 reasonable doubt before any verdict of guilty could be
2 returned.

3 The burden is never upon a defendant or a person
4 accused of a crime to prove that they are not guilty or to
5 prove that they are innocent because in some cases that
6 might not even be possible.

7 You are instructed that it is a vital, important and
8 cardinal rule of law that every defendant in a criminal
9 trial, no matter how serious might be the offense for which
10 that person stands charged, that person shall always be
11 presumed innocent of that charge.

12 That presumption of innocence remains with any
13 defendant, as it does with this defendant, from the time
14 that he is placed under arrest and throughout the course of
15 the criminal process and even throughout the actual trial
16 in the case.

17 As I believe I told you, that presumption of innocence
18 will be with Mr. Ackbar even as you go back to begin with
19 your deliberations after I instruct you on the law.

20 That presumption of innocence will be with him in your
21 jury room, and it'll with him forever unless you 12 jurors
22 determine that he is no longer entitled to that presumption
23 of innocence.

24 In other words, after you've carefully considered all
25 the evidence in the case, and from that evidence you have

Jury charge

1 determined what you believe to be the true facts as they
2 relate to these allegations, and upon deciding those facts
3 after you have applied the law that I will have provided
4 you, if you 12 jurors unanimously determine that his guilt
5 has been proven beyond a reasonable doubt, then he would no
6 longer be entitled to that presumption of innocence. But
7 it's only if, unless and until you are satisfied of his
8 guilt beyond a reasonable doubt that the presumption of
9 innocence would no longer be applicable.

10 Now, while the state does have to prove the
11 defendant's guilt to your satisfaction beyond a reasonable
12 doubt, that doesn't mean that the state has to prove his
13 guilt beyond all doubt or beyond any possible doubt. But
14 it does require the state to prove his guilt to your
15 satisfaction beyond a reasonable doubt.

16 The term reasonable doubt should be given its plain
17 and ordinary meaning. A reasonable doubt is the kind of
18 doubt that would cause a reasonable person to hesitate to
19 act upon the information provided.

20 A defendant in a criminal trial is entitled to any
21 reasonable doubt that arises from the evidence or lack of
22 evidence in a case. And if upon any factual issue
23 essential to a finding of a verdict of guilty you have some
24 reasonable doubt as to how that issue should be resolved,
25 it would be your duty to resolve that reasonable doubt in

Jury charge

1 favor of the defendant.

2 Therefore if upon your consideration of the whole case
3 you have a reasonable doubt as to his guilt you must
4 resolve that doubt in his favor and return a verdict of not
5 guilty. And at the same time after you've considered all
6 the evidence in the case if you have no reasonable doubt as
7 to his guilt, then it would your corresponding duty to find
8 him guilty of the crime where it has been proven beyond a
9 reasonable doubt.

10 Now, the same law that provides that you are the
11 judges of the facts also provides that I am the judge of
12 the law, and that simply means that nobody is going to tell
13 you how to arrive at your determination of fact in this
14 case. You do that through the exercise of good judgment
15 and common sense conscientiously applied to the testimony
16 and evidence received during the trial.

17 You must however under your oath as a juror accept the
18 law as I provide it to you as being the law that you are to
19 apply in the case. In other words, you're never to concern
20 yourself with what you thought the law was before you came
21 to serve as a juror this week or what you think the law
22 ought to be.

23 Under your oath as a juror you must simply accept the
24 law as I provide it to you as being the law that you are to
25 apply in the case. And then you simply take that law and

Jury charge

1 you apply it to the facts as you 12 jurors have determined
2 those facts to be based upon your common-sense examination
3 and evaluation of all of the evidence in the case.

4 Now, because you are sole judges of the facts you are
5 therefore necessarily the sole judges of the credibility
6 and the believability of each witness that has testified
7 during the course of this trial.

8 You 12 jurors alone will decide what weight, value and
9 effect to give to any particular witness' testimony, or
10 even portions of that testimony. But there are a number of
11 factors which you must take into consideration in arriving
12 at your assessment as to a particular witness' credibility.

13 You should consider the demeanor of the witness, that
14 is how the witness appeared to you when the witness
15 testified from the witness stand. Was the witness
16 straightforward in responding to questions, or was the
17 witness hesitant or evasive in responding to questions that
18 were asked of that witness.

19 Simply put, did the witness appear to you to be
20 telling the truth and to have knowledge of the facts to
21 which that witness has testified.

22 You should consider whether or not the testimony of a
23 witness is consistent, or is it inconsistent with that
24 witness' testimony provided here in court or in contrast to
25 statements made by that same witness outside of court. And

Jury charge

1 you should consider whether or not the testimony of a
2 witness is consistent or inconsistent with other witnesses'
3 testimony or other evidence received during the trial.

4 You should also consider how the witness came to know
5 the facts to which a particular witness has testified. In
6 other words, what was that witness' opportunity and ability
7 to perceive the existence of those facts to which that
8 witness has testified to, and then what is that witness'
9 ability to be able to come into court and to accurately
10 recollect to you as to what they have previously perceived.

11 You should consider any bias or prejudice or interest
12 that a witness might have with respect to a case. In other
13 words, do you find some reason that a particular witness
14 would come into court and would testify one way or another
15 to help or to hurt one side or the other. And you may
16 consider any interest that a witness might have in the
17 outcome of a case if you determine that a witness does have
18 such an interest and you find that that interest would bear
19 upon that witness' credibility.

20 And you should also consider whether or not the
21 testimony a witness is strengthened, or is it weakened by
22 other testimony or other evidence received during the trial
23 of the case.

24 Now, during the course of this trial you heard certain
25 testimony from a witness regarding his having previous

Jury charge

1 convictions for certain types of criminal offenses.

2 Ordinarily a witness' prior convictions for a criminal
3 offense are not allowed to be introduced during the trial
4 of the case because it's not relevant to any issue that the
5 jury has to decide. However, where a witness has
6 convictions for particular types of criminal offenses
7 evidence of those convictions may be introduced when that
8 witness is testifying.

9 The purpose of the admission of that testimony is for
10 the jury to consider it if you deem it probative and
11 appropriate to do so as it relates to the credibility of
12 that particular witness' testimony.

13 In other words, you can consider it in your assessment
14 as to a particular witness' credibility and believability
15 if you determine that those convictions would bear upon
16 that particular question. But you only consider it where
17 you find it probative and appropriate to do so.

18 Now, you as the finders of the fact and you as the
19 judges of the credibility of each witness that has
20 testified during the course of this trial are permitted to
21 believe as much or as little of what a witness has
22 testified to as you deem is appropriate.

23 And therefore you may believe everything that a
24 witness testified to. You may choose to believe none of
25 it. You may believe some portion of a witness' testimony

Jury charge

1 and reject some other portion of that same witness'
2 testimony.

3 In a given case you may believe one witness as opposed
4 to several, or several as opposed to one. But whatever
5 your good judgment and common sense tells you is the most
6 believable and credible testimony is the testimony that you
7 should accept, and you should reject any testimony or other
8 evidence that you find not to be credible or believable.

9 Again, your sole objective is to simply reach the
10 truth in the matter, and by doing that you will have
11 fulfilled your obligations as jurors in the case.

12 Now, while there are various forms of evidence such as
13 testimony, photographs, documents, charts and other types
14 of physical exhibits, there are really only two types of
15 evidence, and either or both of those types of evidence may
16 be used to prove any fact that's in issue. But the two
17 types of evidence are direct evidence and circumstantial
18 evidence.

19 Now, direct evidence is the testimony of a person who
20 testifies from actual knowledge of the fact. It is
21 testimony by a person who has perceived the existence of
22 some fact by means of his or her senses and then they come
23 into court and they testify as to what they have previously
24 seen or heard, or felt for that matter.

25 Circumstantial evidence, on the other hand, is the

Jury charge

1 proof of some other fact or set of facts which taken either
2 singly or collectively may prove the existence of a fact in
3 question as a necessary consequence, that is through an
4 inference. And an inference is simply a deduction of fact
5 that may logically and reasonably be drawn from the proof
6 of some other fact or set of facts.

7 In other words, it's not a fact proven by the direct
8 testimony of a person based upon personal perception, but
9 it is a conclusion which might reasonably be drawn from the
10 proof of other facts.

11 In other words, you may infer that a particular event
12 occurred or that a particular fact exists based upon the
13 proof of sufficient factual circumstances which would
14 reasonably warrant your arriving at a particular
15 conclusion.

16 The law however makes absolutely no distinction
17 between the weight or value to be given to either direct
18 evidence as opposed to circumstantial evidence, nor is a
19 greater degree of certainty required of circumstantial
20 evidence as opposed to direct evidence.

21 Whatever the type of evidence used to prove any fact
22 in issue, you should consider all of the evidence presented
23 during the trial of this case. And after carefully
24 considering that evidence and weighing it in your minds if
25 you are convinced of the guilt of the defendant beyond a

Jury charge

1 reasonable doubt, then you must resolve that doubt in his
2 favor and return a verdict of not guilty.

3 Now, in this case, as you know, the defendant is
4 charged with the crime of murder. And murder is a
5 statutory offense. And that just simply means that the
6 legislature defines what the offense is.

7 There are certain statutory offenses codified and put
8 in the code of laws by the legislature. There are other
9 offenses which are common law offenses, and they're not
10 necessarily found in a particular statute.

11 The statute that the defendant is charged with having
12 violated and which defines the crime of murder is set forth
13 in Section 16-3-10. And that particular code section
14 provides that murder is defined as the killing of any
15 person with malice aforethought, either expressed or
16 implied.

17 Now, in order for the defendant to be found guilty of
18 the crime of murder it would be necessary that the evidence
19 in this case has established to your satisfaction beyond a
20 reasonable doubt that the defendant did commit some act or
21 acts which proximately caused, that is directly caused, the
22 death of Ricky Kelly, Jr., the person alleged to be the
23 decedent by way of the indictment, and that that killing
24 took place with malice aforethought. Malice aforethought
25 is an essential element of the crime of murder.

Jury charge

1 So what is malice? Well, malice as an essential
2 element of the crime of murder is a state of mind connoting
3 an ill will and having the intent to do harm.

4 The term intent refers to a state of mind which
5 directs a person's actions towards a specific object or
6 goal. And intent would include those consequences which
7 represent the very purpose for which an act is done, as
8 well as those consequences which are known to be
9 substantially certain to result whether actually intended
10 or not.

11 The term malice is a technical term importing
12 wickedness and excluding just cause or legal excuse. It is
13 something which springs from depravity, from a heart devoid
14 of social duty and fatally bent on mischief. It is a state
15 of mind indicating an extreme disregard for or an extreme
16 indifference to human life.

17 Malice may be likewise defined as a state of mind
18 which indicates a formed purpose and design to do a
19 wrongful act under circumstances that exclude any legal
20 right to do it.

21 The words expressed or implied malice do not mean
22 different kinds of malice but merely the manner in which
23 malice may be shown to have existed, that is to say either
24 by direct evidence or by circumstantial evidence from which
25 the existence of malice might be reasonably inferred. And,

Jury charge

1 as I've stated, an inference is simply a deduction of fact
2 which may logically and reasonably be drawn from the proof
3 of some other fact or set of facts.

4 Malice may be expressed malice as where there is an
5 expressed threat to kill or a lying in wait or where the
6 circumstances show directly that an intent to kill was
7 entertained by the killer.

8 Malice may be inferred, though no expressed intent to
9 kill is proven by direct evidence, where the facts and
10 circumstances which have been proven by the evidence in the
11 case satisfy you beyond a reasonable doubt that malice was
12 present in the mind of the killer at the time any killing
13 took place.

14 And the existence of malice may be inferred from the
15 acts, declarations and conduct of the killer, as well as
16 from any other circumstances shown to have existed at the
17 time of the event from which you might reasonably infer the
18 existence of malice, as often the state of a person's mind
19 can only be proven by circumstantial evidence.

20 Malice as an essential element of the crime of murder
21 does not necessarily require proof of an actual or a
22 specific intent to take human life, although such an intent
23 may be proven by the evidence in the case. But rather it
24 refers to a state of mind accompanying conduct signifying a
25 general malignant recklessness and an extreme disregard for

Jury charge

1 or an extreme indifference to human life.

2 And even if the facts proven are sufficient to give
3 rise to some inference of malice such an inference is
4 simply an evidentiary fact to be taken into consideration
5 by you 12 jurors. And you shall give them such weight, if
6 any, that you determine they should receive, if any.

7 The state is required to prove malice, just as it must
8 prove any other essential of the crime of murder, and it is
9 for you 12 jurors to determine whether or not the evidence
10 in this case does establish malice beyond a reasonable
11 doubt.

12 It's also essential that there exist not only malice
13 but that it be malice aforethought. The law does not
14 require that malice must exist for any appreciable length
15 of time before the commission of an act which proximately
16 causes a fatal result.

17 Indeed, it may be conceived at the very moment that
18 the fatal act is committed. It is sufficient in the law so
19 long as the state does prove beyond a reasonable doubt both
20 the existence of malice and the commission of an act or
21 acts by this defendant which proximately caused the death
22 of Ricky Kelly.

23 You must determine whether or not malice aforethought
24 exists based upon your consideration of all of the evidence
25 produced during the trial of the case and any reasonable

Jury charge

1 inferences that might be drawn from that evidence.

2 You are further instructed that while the state must
3 prove beyond a reasonable doubt that a killing did occur
4 accompanied by the element of malice aforethought in order
5 to establish the crime of murder, it is not necessary that
6 the state prove any motive for the killing. Motive is not
7 an essential element of the crime of murder which must be
8 proven, although there may be evidence relating to such a
9 fact introduced during the trial of the case.

10 You are also further instructed, and I emphasize to
11 you, that the fact that a defendant does not take the
12 witness stand and testify during the trial of the case is
13 not a circumstance that may be considered by the jury in
14 any way whatsoever in your deliberations or in your
15 determination as to whether or not the defendant's guilt
16 has been proven beyond a reasonable doubt. You may not
17 permit that fact to weigh in the slightest degree against a
18 defendant.

19 As I've already told you, the burden is always upon
20 the state because they have brought the charge against the
21 defendant to establish his guilt beyond a reasonable doubt.

22 The burden is never upon a defendant to prove that he
23 is not guilty or to prove that he is innocent because in
24 some cases that might not be possible. And therefore you
25 are not to draw any inference nor reach any conclusion from

Jury charge

1 the fact that a defendant does not testify during the trial
2 of the case, nor may that fact even be discussed by you
3 while you are engaged in your deliberations.

4 Now, Mr. Foreman and ladies and gentlemen of the jury,
5 I am not in any way concerned with what your decision is,
6 but, as I have indicated to you, your decision must be
7 unanimous. All 12 of you must be in agreement.

8 Now, in this case you have two potential verdict
9 forms. Those two potential forms are guilty and not
10 guilty.

11 So, Mr. Foreman, you're going to be called upon to
12 preside over the deliberations in the jury room simply to
13 ensure that those deliberations are carried out in some
14 orderly fashion. But all jurors are expected to
15 participate in those deliberations, because, as I have
16 stated, the verdict is a consensus of all 12, and the
17 decision must be unanimous.

18 So, Mr. Foreman, you'll have the indictment and the
19 verdict -- the indictment in the jury room as I told you
20 earlier. It will serve as the verdict form. That's its
21 sole purpose.

22 On the back of the indictment in the lower left-hand
23 corner you'll see the word verdict. And it's beneath that
24 word that you'll indicate the jury's unanimous decision,
25 whatever that decision might be.

Jury charge

1 There's also a space for you to sign your name as the
2 foreperson. You are the only juror that needs to sign the
3 verdict form. And there's also a place for the appropriate
4 date.

5 Now, during your deliberations there may come a time
6 where you have some questions about the evidence in the
7 case or the testimony that was received. You might even
8 wonder if there's something else that you can have that
9 might assist you in coming to a resolution of the case.

10 All of the evidence that's going to be introduced in
11 this case has been introduced. Now that you're going back
12 to begin with your deliberations no additional evidence may
13 be received. So even if there's something out there that
14 you think might help you and it does exist, you can't have
15 it because the evidence is closed and you're now going to
16 begin deliberations.

17 I am never permitted to answer questions that relate
18 to issues of fact or the evidence in the case, and I cannot
19 provide you with any additional evidence even if it should
20 exist. So if you have a question about the facts or the
21 evidence in the case, you've got to resolve that among
22 yourselves through your deliberations.

23 If you have a question about testimony and you think
24 that that question can be answered by having testimony
25 replayed in whole or in part, we can bring you back into

Jury charge

1 the courtroom to have testimony replayed.

2 I do not have transcripts of a witness' testimony to
3 send back, but if you would like to have a testimony --
4 have the testimony of a witness replayed, we can bring you
5 back into the courtroom. You just have to inform the
6 bailiff that you need to hear something. And he'll let me
7 know and we'll bring you back and make those arrangements.

8 If at any time you have a question about the law that
9 you are to apply in the case, I am permitted to answer
10 those questions. So if you need for me to reinstruct you
11 on the law, if you need an additional explanation or a
12 clarification, let me know. I am permitted to provide that
13 additional instruction or clarification.

14 So, Mr. Foreman, if at any time you need to address
15 some matter to me if you will just simply write it on -- if
16 you have a question or whatever, write it on a piece of
17 paper. Give it to the bailiff. He'll provide it to me,
18 and I'll respond accordingly.

19 After you and your fellow jurors have reached the
20 decision and you've indicated it on the verdict form,
21 notify the bailiff that you've reached a decision. You'll
22 maintain possession of the verdict form. I'll receive it
23 once you come into the courtroom. But you just notify the
24 bailiff that you do have a decision, and he'll bring you
25 back into the courtroom for us to receive that verdict.

Jury charge

1 Now, I've got a couple of matters I'll probably need
2 to address with the lawyers. So while I am going to ask
3 you to go back into your jury room, do not begin your
4 deliberations until I send you word to do so.

5 Once I address those matters with the lawyers if I
6 don't need to bring you back I'll send word by way of the
7 bailiff that you can begin with your deliberations. In the
8 event he'll bring all of the exhibits to the jury room.

9 And to you, Mr. Foreman, he'll also bring the
10 indictment which will serve as the verdict form.

11 So please retire to your jury room, but await my
12 instruction as to when to begin deliberations.

13 (Whereupon, the jury retired to deliberate at
14 10:27 a.m.)

15 THE COURT: Are there any exceptions taken or requests
16 for additions to the instruction by the state?

17 MR. BULSA: No, Your Honor.

18 THE COURT: By the defendant?

19 MR. POOLE: No, sir.

20 THE COURT: Let me ask y'all to verify the exhibits,
21 please, before they go back.

22 (Pause.)

23 THE COURT: Okay. All of the exhibits are accounted
24 for?

25 MR. BULSA: Yes, sir.

Verdict

1 MR. POOLE: Yes, sir.

2 THE COURT: All right. Send them back and tell the
3 jury to begin deliberations and notify us when they have
4 concluded.

5 We will be at ease for a few minutes while the jury is
6 deliberating.

7 (Whereupon, the exhibits submitted to the jury at
8 10:29 a.m.)

9 THE COURT: All right. I understand the jury has
10 reached a decision. Are we ready to receive the verdict?

11 MR. BULSA: Yes, sir.

12 THE COURT: Okay. Bring them in.

13 (Whereupon, the jury returned to the courtroom at
14 11:05 a.m. to report its verdict.)

15 THE COURT: Mr. Foreman, have you and your fellow
16 jurors reached a unanimous decision?

17 THE FOREMAN: We have, Your Honor.

18 THE COURT: And have you indicated that decision on
19 the back of the indictment as requested?

20 THE FOREMAN: Yes, I have.

21 THE COURT: And did you sign your name and date it?

22 THE FOREMAN: Yes, sir.

23 THE COURT: If you will, please hand that form up by
24 way of the bailiff.

25 You may publish the verdict.

Verdict

1 THE CLERK: State of South Carolina, County of
2 Spartanburg, Court of General Sessions, Indictment No.
3 2009-GS-42-5943, the State vs. Supreme Ackbar, indictment
4 for murder, the jury finds Supreme Ackbar guilty. Signed
5 by the foreperson, Richard Osman, and today's date, 2/9/11.

6 Ladies and gentlemen of the jury, is this your verdict
7 and still your verdict? If so, please raise your right
8 hand?

9 (Whereupon, all jurors responded in the affirmative.)

10 THE CLERK: So say you all.

11 THE COURT: Does the defendant wish to have the jury
12 polled?

13 MR. POOLE: Yes, sir.

14 THE COURT: All right. Poll the jury, please, ma'am.

15 THE CLERK: Ladies and gentlemen of the jury, I will
16 be asking you a question, and that question is is this your
17 verdict and still your verdict. When I call your name and
18 juror number, if you would, answer yes or no.

19 Juror No. 42, Kathy Deshields.

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 80, James Kelley.

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 16, Jeffrey Brewington.

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 45, Frances Dilworth.

Verdict

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 19, Frankie Brown.

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 119, Richard Osman.

5 THE JUROR: Yes.

6 THE CLERK: Juror No. 116, Nancy Nix.

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 139, Kasey Shippy.

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 138, Linda Shehan.

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 12, Josh (sic) Blythe.

13 THE JUROR: Yes.

14 THE CLERK: Juror 110, James Moryl.

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 81, Virginia Lawing.

17 THE JUROR: Yes.

18 THE CLERK: The jury has been polled.

19 THE COURT: All right. Any other matters that need to

20 be addressed with the jury present?

21 MR. BULSA: No, sir.

22 MR. POOLE: None.

23 THE COURT: All right. Let me ask the bailiff to -- I

24 think we've got the wrong year on there -- excuse me -- Mr.

25 Foreman, if you'll indicate that properly.

Sentence

1 (Whereupon, the verdict form was corrected.)

2 THE COURT: All right. The correct date is noted.

3 Any other matters we need to address with the jury
4 present?

5 MR. BULSA: No, sir.

6 MR. POOLE: None.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: All right. Any other matters to address
9 prior to the imposition of sentence?

10 MR. POOLE: Yes, Your Honor.

11 At this time we would renew our motion for a mistrial
12 that was made earlier on in this case based upon the
13 grounds originally stated, and we would move for a new
14 trial.

15 THE COURT: All right. Each of those motions are
16 denied.

17 Anything further on behalf of the state?

18 MR. BULSA: Yes, sir, Your Honor. We have his
19 criminal history, and I believe the mother wants to speak.

20 THE COURT: Okay.

21 MR. BULSA: In 1994, conviction for possession of
22 crack cocaine; 1995, assault and battery of a high and
23 aggravated nature, two counts of assault and battery of a
24 high and aggravated nature in 1995; another drug
25 conviction, 1996; assault and battery of a high and

Sentence

1 aggravated nature in 2001. Those are his convictions, Your
2 Honor.

3 THE COURT: All right.

4 PAMELA NOBLE: My name is Pamela Noble. I'm Ricky
5 Kelly's mother.

6 He showed no mercy to my son, and I hope you show none
7 toward him. I know it won't bring Ricky back, but I would
8 just hate to see another family have to go through what we
9 go through.

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

11 All right. Mr. Poole.

12 MR. POOLE: May it please the Court, Your Honor.

13 Mr. Ackbar is 35 years of age. He was raised in
14 Laurens County. He's been in Spartanburg County for about
15 five years.

16 The Court knows that he is married, that he is a
17 father. And primarily his work history most recently has
18 been that of a cook. And basically his fate is in your
19 hands at this time.

20 THE COURT: All right. Mr. Ackbar, is there anything
21 you would like to add to what your lawyer has told me?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. On Indictment 2009-5943, an
24 indictment for murder, wherein you have been found guilty
25 by the jury of that offense, the Sentence of the Court is

Sentence

1 that you, Supreme Raheem Ackbar, be confined to the South
2 Carolina Department of Corrections for the period of your
3 natural life.

4 Mr. Ackbar, you have a right to appeal the verdict of
5 the jury and the Sentence of the Court. You must file any
6 notice of your intentions to appeal those decisions within
7 ten days of today's date. Mr. Poole can instruct you in
8 that respect.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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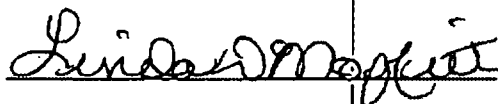
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 27th day of January and the 7th, 8th and 9th days of February 2011.

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

June 30, 2011



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Spartanburg)Supreme Behrem Ackbar 175886)

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Corr. Inst.
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) Marcus Allen Wright
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-42-5943 Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 9, 2011 life without parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The court of appeal of South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 12, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

2012-CP-42-4187
FILED
FEB 12 2013
CLERK OF COURT

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached Memorandum In Support of Applicant's Post conviction
- (b) relief.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Memorandum In Support of Applicant's Post conviction relief.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for rehearing
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The Court of Appeals of South Carolina
- ii. _____
- iii. _____
- iv. _____

2012-CP-42-4987

(c) the disposition thereof:

- i. Rehearing denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. October 17, 2012
- ii. _____
- iii. _____
- iv. _____

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

- i. Unpublished
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

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

(a) which grounds have been presented:

- i. See (E) Delaware v. Van Arsdal Section inside Argument
- ii. See (F)
- iii. These grounds was raised and are inside attached Memorandum

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

- i. Direct appeal inside the Court of appeal
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? Roger Poole Esq.
 (c) your sentencing? Roger Poole Esq.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Katharine H. Hudgins Esq.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Roger Poole Esq. 306 North Church Street Suite 3000 Spartanburg, S.C. 29303

ii. Katharine H. Hudgins Esq. P.O. Box 11589 Columbia S.C. 29211

iii. _____

(b) the proceedings at which each such attorney represented you:

i. General Session

ii. Direct appeal

iii. _____

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 CLERK OF COURT
 SPARTANBURG, S.C.

19. State clearly the relief you seek in filing this application:

Sentence remanded, reversed and a New trial expeditiously

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

No

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Debra L. Sines (Ronald Sines)

SWORN to and subscribed before me this

day of

28

2012

Debra Sines

(L.S.)

Notary Public

My Commission Expires:

11-4-2015

RECEIVED
CLERK OF COURT
JAN 2 2013

2012-CP-42-4987

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

I, Supreme R. Akbar, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Supreme R. Akbar (Ronald Long)
Applicant

SWORN or affirmed to and subscribed before me this

28 day of Nov, 2012.

Delana Sures
Notary Public

My Commission Expires: 11-4-2015

2012-CP-42-4987
 RECEIVED
 CLERK OF COURT
 DISTRICT OF COLUMBIA

2012-CP-42-⁴¹⁹⁸⁷
November 2012

Supreme Raheem Ackbar, d15886

Lee Court, Trist.

990 Wisacky Hwy

Bishopville, SC 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

Post Office Box 3483

Spartanburg, South Carolina 29304-3483

Re: Ackbar v. State, 2009-GS-42-5943

Dear MS. BLACKLEY,

Please find enclosed for filing in your Court the original of my
MEMORANDUM IN SUPPORT OF AMENDED APPLICATION FOR POST
CONVICTION RELIEF, with a CERTIFICATE OF SERVICE attached
for showing compliance with the rules of service, as mandated
by SCRPC.

Will you please be so kind and courteous as to inform me
by letter when the filing of the aforementioned MEMORANDUM
has been accomplished?

Thank you for your assistance in this matter

S/ Supreme R. Ackbar

Supreme R. Ackbar

Applicant

cc: Office of the Attorney General

File copy

2012 DEC -4 PM 2:53
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Civil Action 2012-CP-42-LP87

Supreme R. Ackbar

S.C.D.C. 375886

Applicant

VS.

State of South Carolina

Respondent

MEMORANDUM IN SUPPORT OF
AMEND APPLICATION FOR
POST CONVICTION RELIEF

On February 9, 2011 applicant was convicted of murder and sentence to confinement for life without parole. The sentence however, was invalid. The state engaged in intrinsic fraud, they failed to supply applicant with arrest warrant for murder, they failed to serve applicant a notice of intent to seek life without parole, they failed to supply the evidence of the offense charged, they failed to correct perjured evidence and they also engaged with illegal hearsay irrelevant illegally seized evidence and they also improperly detained applicant.

Applicant's trial counsel was ineffective because he neither investigated any of the circumstances or mitigated the surroundings of the case, nor did trial counsel prevail in his unfettered attempt to advocate applicant's case.

Trial counsel's assisting failures throughout applicant's case resulted in the state of South Carolina (the state) pursuing, and applicant, receiving, and invalid sentence. As such, applicant entitled to post conviction relief.

PROCEDURAL HISTORY

In November of 2009 the Spartanburg County Grand Jury indicted applicant for murder indictment # 2009-BS-42-5943, on June 4, 2010 applicant appeared before Chief Justice Judge Couch on a motion to relieve counsel and to request additional

evidence. The Motion was granted as well as the requested evidence. In early January of 2011 applicant appeared before Chief Justice Judge Couch on a Motion For bond. The Motion was denied. On January 27, 2011 applicant appeared on a Motion to relieve counsel before the Honorable J. Derham Cole. The Motion was denied. On Feb. 7, 2011 applicant proceeded to Jury trial with the very same J. Derham Cole Presiding. The Jury returned a verdict of guilty on Feb. 9, 2011 and Judge Cole Sentence applicant to life imprisonment without parole. A timely Notice of Intent to appeal was served on February 17, 2011. The unpublished appeal was denied September 12, 2012. Applicant filed a Petition for rehearing and the petition was denied on October 17, 2012.

Applicant timely applies for Post conviction relief this day of November ~~28~~, 2012, on the grounds that trial counsel was ineffective in failing to insert the court with the truth regarding the date that applicant was (wrongfully) charged with armed robbery and the alleged Murder, in failing to fully disclose ~~Ready~~ Material, in failing to object to the indictment and to move the court to quash the indictment, in failing to object to perjury while knowing prior to trial that it would be submitted, in failing to object to the trial judge for not being impartial while in the performance of his judicial duties, in failing to object to improper jury instructions and in failing to file a motion to suppress evidence for illegal search and seizure and in failing to object to applicant being improperly detained.

STATEMENT OF FACT

A. Trial counsel deprived applicant of his Sixth amendment right to effective assistance of counsel by engaging in intrinsic fraud with the state.

while during the criminal process of applicant the prosecution for the state filed to supply applicant with a notice of intent to pursue a sentence of life without parole. On January 27, 2011 trial counsel submitted that he was in receipt reception of

the requested evidence (C.O. recordings) that was granted by Chief Justice Judge Couch on June 4, 2010 tr. P. 8 lines 7-12, tr. P. 12 lines 13-21. Trial counsel failed to fully disclose the request evidence before trial, during trial, and after trial and the record will reflect this affirmed fact.

On February 7, 2011 the Perpetrating trial counsel was in the chambers with the trial Judge and the Prosecution whittling things down regarding the protectory of this case tr. P. 49 lines 4, 7, 8. At tr. P. 52 lines 20-22 trial counsel bolsters his position as the perpetrator as he stealthily failed to object to the indictment and to move the court to quash the indictment before the jury was sworn in. At tr. P. 65 lines 12-14 trial counsel submitted that he knew that certain particular witnesses would be inconsistent while perhaps motivated. As trial counsel continued his perpetrating role he can clearly be seen assisting in the confusion that twisted up the Juries perception as the ^{stare} admitted their perverse photos into evidence. Trial counsel gave absolutely no objection to there usage at tr. P. 95 lines 3-8 and at tr. P. 161 lines 10-16 and again at tr. P. 215 lines 9-16. Trial counsel knew via indictment that the admitted evidence ('photos') should have been the purported "LARGE FIXED BLADE HUNTING KNIFE", but counsel rather choose the tug-on-his-hot-to-do-his job theory instead and abandoned applicant at a very critical stage and decided to engage with the trial Judge and the Prosecution in several 'friendly hench conferences' off the record at tr. P. 115 lines 24, 25 - tr. P. 116 line 1, tr. P. 165 lines 18-25 - tr. P. 166 line 1, tr. P. 168 lines 15-18, tr. P. 193 lines 10-12, and at tr. P. 240 lines 21-23. At tr. P. 193 lines 20-25 the boisterous trial counsel engaged with the solicitation of testimony that lead to applicant being stigmatized and characterized as the purported passenger of the Chrysler Sebring at tr. P. 195 lines 3-9. Trial counsel knew that there was exculpatory evidence that unequivocally identified Marcus Wright. See Spartanburg County Sheriff's Office Law Supplemental Narrative 00329 lines 4, 5, 6 just as trial counsel knew that certain particular witnesses such as Shaquille Kelly, Danny Burnside Jr, Octavius Burnside, Lorine Williams,

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and Marcus Wright had lied and that the evidence was not enough to hold applicant guilty of this tragic Murder tr.P. 265 lines 15-20, Trial Counsel failed to object to the Jury charge and to move the court to quash the indictment and or to request additional instructions when warranted by the evidence tr.P. 268 lines 22-25 - tr.P. 287 line 19.

Applicant reiterated that the prosecution submitted that they were in the chambers whittling down their projection of this case tr.P. 49 lines 4-78.

ARGUMENT

Intrinsic fraud is a fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud Judgment Key 373. See also Judgment Key 374 where allegations of perjury, failure to produce requested discovery amounts only to intrinsic fraud. See e.g. Strickland v. Washington, 466 U.S. at 686; United States v. Chronicle, 466 U.S. 648, 655-657 (1984) In order to prevail applicant must show both Counsel's representation fell below and objective standard of reasonableness. Strickland Supra at 688, and that there exist a reasonable probability that but for counsel's errors, the result of the proceedings would have been different.

Counsel's unprofessional errors throughout the above mention statement of fact so upset the adversarial balance between the defense and the ~~prosecution~~ that trial was rendered unfair and the verdict suspect E.g. Gideon v. Wainwright 372 U.S. 335, 344, 83 S. Ct. 792, 1966 (1963) See also United States v. Olano, 507 U.S. 725, 730, 113 S. Ct. 1170, 123 L. Ed. 2d 508 (1993) Rule 59(b) provides that plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT OF FACT

8. Trial Counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to object to applicant not being served.

Properly for the charge of Murder.

On September 20, 2007 Rocky Kelly Jr. was brutally murdered in Spartanburg County via indictment with a "LARGE FIXED BLADE HUNTING KNIFE". On Sept. 21, 2009 at approx. 2:00 P.M. applicant appeared in the lobby of Spartanburg County's Sheriff's office and was later booked into the county jail on armed robbery warrants Spartanburg Investigative Report 0025 Paragraph 10 line 1 and Paragraph 14. On Sept. 25th, 2009 applicant was transported from the detention facility back over to the Sheriff's office where applicant was later asked by the media, "Did you do it?" The State Purported via news that applicant was charged with Murder on the 25th of Sept. 2009. The Perpetrating trial counsel ~~Submitted~~ in early January of 2011 at applicant's first bond hearing that applicant was charged with armed robbery and Murder on the 25th of September 2009. After reviewing Spartanburg Investigative reports 00126, 00127, applicant bombards with a Juggernaut of conviction to which is a fact that these reports will reveal the exemption of the 25th of September of 2009. Review Warrant # M-089645. Applicant continues bombarding the relentless aforesaid fact that ~~Its~~ Plain and obvious that a copy of the warrant was never delivered to applicant.

ARGUMENT

Trial counsel was clearly ineffective and the Prejudice is Plain and obvious because the gist and gravamen of discovery rules mandate full and fair disclosure to prevent trial from becoming guessing game or one of ambush for either party Pretrial

Procedure key 14.1. See Kimmelman v Morrison, 477 U.S. 363, 106 S.Ct. 2574 (1986)

Where the United States Supreme Court reiterated that the right to counsel is a fundamental right of criminal defendants, it assures the fairness and thus the legitimacy of our adversary process. And there is a plethora of cases in other circuits as well as South Carolina where trial counsel have been found ineffective for failing to file pretrial motions to suppress evidence. See Cobbs v. State, 305 S.C.

299, 408 S.E.2d 223 (1991) Counsel was ineffective for failing to investigate possible defense; Cochran v State, 414 S.E.2d 511 (Ga., 1992) Trial counsel ineffective in murder case for failing to prepare and in spite of short term appointment, made no written motions for continuances and made no pretrial motions. Also see People v Butterfield, 484 N.Y.S. 2d 946 (1985) Trial counsel ineffective for failing to request hearing to seek suppression of evidence.

In State v. Ross, 951 F.2d 236 (1997) it is noted that if an attorney does not investigate clearly relevant laws therein/she objectively has failed to provide effective assistance.

STATEMENT OF FACT

C. Trial Counsel deprived applicant of his Sixth amendment right to effective assistance of counsel in failing to fully disclose Brady material.

On January 27, 2011 applicant appeared on a motion to relieve counsel before the Honorable J. Derham Cole Ex. P. 7 Lines 3-6. While during the motion applicant informed the trial judge that he was having technical difficulty obtaining vital evidence that was granted by Chief Justice Judge Couch on June 4, 2010 Ex. P. 8 Lines 7-12. Trial counsel submitted that he was in recent possession of the C.D. that contains threshold showings of recorded phone colloquies Ex. P. 12 Lines 13-21.

ARGUMENT

Where a defendant makes a threshold showing that undisclosed evidence he sought contained exculpatory material or impeachment evidence and thus, shows that the evidence was material within meaning of Brady and rules of criminal procedure, the trial judges should conduct a hearing Criminal Law Key 700 (8). And in determining the materiality of undisclosed evidence under Brady, the appellate court should not consider the sufficiency of the evidence, rather, the court's function is to determine whether the applicant's right to a fair trial has been impaired Criminal Law Key 700 (2.1), Appellate

assaults with the fact that he has never enjoyed the Sixth amendment effective privileged to hear or see the threshold showing C.D. that's submerged with recorded conversations and neither did the jury and the trial record was silent to that fact. Trial counsel's fraudulent intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

D. Trial Counsel deprived applicant of his Sixth amendment right to effective assistance of trial counsel in failing to object and to move the court to quash the indictment.

On Feb. 7, 2011 at tr.P. 52 lines, 20-22 trial counsel is unequivocally seen failing to object to the indictment pursuant to S.C. Code of Laws 19-19-90 and to move to court to quash the indictment. The error is plain and obvious because the trial judge submitted via misreading the indictment that it was a knife that caused the proximate death of Ricky Kelly, Jr. tr.P. 53 lines, 23-25 - tr.P. 54 lines, 1-2. The prosecution submitted that the evidence would reveal that applicant was the butcher that savagely back into Mr. Kelly's throat, cut him in the face, and stabbed him in the chest tr.P. 61 lines, 17-19. Applicant now teleports us all forward for a quick review of the counterintuitively objected evidence at tr.P. 105 lines, 16, 17, 18, 23 to which reveals a "Probu" of a Kel-tec 9mm handgun.

ARGUMENT

Applicant thrashes and smashes that the obscenity of **perverseNESS** clearly constitutes unfair prejudice Criminal law Key 438 (7) because there is "No Way" that any credible, reputable, unflinched minded jury could or would perceive with perceptibility that a "Probu" that has absolutely none of the victim's DNA, can it be used as a "LARGE FIXED BLADE HUNTING KNIFE" to perform Savage butchery.

Trial Counsel was ineffective in failing to object to the indictment and to move the

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the court to quash the indictment. This failure clearly prejudice applicant. And the failure shows that counsel was deficient and there is a reasonable probability that for counsel's deficiency, proper representation of the indictment to include a sufficient challenge could have resulted in acquittal of the case. This error by trial counsel establishes both error and prejudice. And the verdict in applicant's case is grossly inadequate, excessive and it should shock the conscience of the court because the substituted perverted evidence clearly is an indication that the figure reached was the result of passion, caprice, partiality, corruption or some other improper motive and the failure of the trial judge to grant a new trial in this situation amounts to an abuse of discretion and on appeal the court of appeals will grant a new trial absolute Stevens v. Allen, 336 S.C. 439, 520 S.E. 2d 685 rehearing denied certiorari granted, affirmed 342 S.C. 417 536 S.E. 633; See State v. McCormbs 308 S.C. 489, 629 S.E. 2d 301. A defendant is entitled to a direct verdict when the state fails to produce evidence of the offense charge. See also U.S. v. Russell, 411 U.S. 423, 432 (1973) courts will dismiss indictment for government misconduct outside the indictment process on due process grounds if such conduct is so outrageous that it violates fundamental fairness or is shocking to the universal sense of justice.

STATEMENT OF FACT

E. Trial counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to object to perjury.

Trial counsel submitted that he was cognizant that there would be turbulence of inconsistencies concerning some of the state's key witnesses who was probably motivated by some hidden motive to testify the way they would tr. p. 68 lines 12-16, At tr. p. 67 lines 16, 17 Shaquille Kelly submitted that he did not see applicant stab Mr. Kelly, when Shaquille Kelly was at Spartanburg investigation report 06126 paragraph 9 lines 7, 8 he claimed that applicant stabbed Ricky Kelly Jr. twice before he ran home. When

Shaquille Kelly was at his Voluntary Statement 00105 lines 13-15 he claimed that applicant jumped out of the truck and then shot Ricky Kelly Jr.

Denny Burnside Jr. submitted that he wasn't outside when Marcus Wright pulled up tr. P. 147 lines 5, 6, 9, 10 then shortly after he submits that him and Marcus had talked before he and Marcus went in the house tr. P. 148 lines 1-4.

Octavious Burnside informed the investigator that it had been several days since she had last seen applicant Spartanburg investigation report 00124 paragraph 7 lines 3, 4 but after the investigator and Mr. Davis (who is Ms. Burnside's grandfather) disengaged from their discussion, Mr. Davis was asked and allowed to speak with Ms. Burnside and after that conversation with Mr. Davis, Ms. Burnside exclaimed that she had seen applicant Spartanburg investigation report 00125 paragraph 5 and paragraph 6 line 1. At tr. P. 182 lines 17, 18 Ms.

Burnside purport that applicant rode with her to her mother's house, "however applicants Perpetrating trial counsel submitted through a objection that was overruled in violation of applicant's sixth amendment right to confront his accuser that there was no evidence to support Octavious Burnside's testimony tr. P. 184 lines 7-10. At tr. P. 192 lines 12-14 Ms. Burnside submitted that she didn't see applicant at home on Sept. 30, 2009 but in her Voluntary Statement 00085 lines 15-17 she purports that she got applicant's daughter and some other stuff and dropped applicant off at home.

Kevin Williams committed subornation constituting perjury when he submitted that Shaquille Kelly's testimony was consistent with his statement at tr. P. 201 lines 16-18. Marcus Wright submitted that he was only testifying to receive consideration from the state tr. P. 246 lines 4-8.

Trial counsel submitted that this case is more than reasonable doubt and that the perverted evidence and these perfidious witnesses are not enough to hold applicant for this tragic murder tr. P. 268 lines 12-14, 16-20. Thank you

ARGUMENT

Trial counsel was ineffective in his performance in failing to object to the perjury of

Some of the states witnesses while knowing that witness important witnesses for the state, gives misleading testimony and there's a reasonable probability that had the evidence been brought to the attention of the jury the result of the criminal proceedings would have been different. U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985) Counsel's failure to engage some of applicant's adversaries perjured testimony resulted in a adversarial breakdown. U.S. v. Chronic, 466 U.S. 648 (1984) 104 S.Ct. 2039, 80 L.Ed. 2d 657. While a criminal trial is not a game in which the participants are expected to enter the arena with a near match in skills, neither is it a sacrifice of an unarmed unknown warrior to gladiator's. See Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed. 2d 674, 684 (1986) where the United States Supreme Court stated, A criminal defendant states a violation of the confrontation clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby "expose to the jury the facts from which the jurors could appropriately draw inferences relating to the reliability of the witness".

See tr. P. 182 lines 17, 18 again and note Ms. Burnside claiming that applicant rode with her to her mother's house. See also again tr. P. 184 lines 7-10 where trial counsel submits that there is no evidence to support Ms. Burnside testimony.

The Van Arsdall court stated: [W]hether such an error is harmless in a particular case depends upon a host of factors. The factors include the importance of the witness testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the over all strength of the prosecution case. Id. Trial counsel was ineffective in failing to object to the trial judge for ~~violating~~ applicant's sixth amendment right to confront his accuser.

Trial counsel was further ineffective by knowing that it was a denial of applicant's due process rights when a witness like Marcus Wright submits to falsely testifying

to receive consideration from the State Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 and he elected to abdicate his responsibility to confront the accuser. And when the State fails to correct such falsities reversal is required Riddle v. Ortiz, 364 S.Ct. 39, 681 S.E.2d 70.

Applicant reiterates that trial counsel's fraudulent intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

F. Trial counsel was ineffective in failing to object to the trial judge for not being impartial with the findings of facts and conclusion of laws.

At Tr. P. 105 Lines, 18, 23 trial counsel objected contemptuously to the perverted evidence, however our trial judge didn't provide applicant with the necessary provision of facts and findings that could, should, and would have provide applicant with the required projectory of conclusions of laws.

ARGUMENT

Under App Ct rule 501, code Jud. conduct, Canon 3(c) a Judge should disqualify himself if his impartiality might reasonably be questioned. And while the Supreme Court accords great weight to the trial judge's assurance of his own impartiality, a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record Ellis v. Procter and Gamble Distributing Co. (S.C. 1993) 315 S.C. 283, 483 S.E.2d 850, rehearing denied

Counsel's failure to object to the trial judge for not being impartial with the findings of facts and conclusion of laws deprived applicant of sixth amendment right to effective assistance of counsel because there's a reasonable fundamental elemental probability that the shocking objection would have motivated the trial judge to declare a mistrial. Trial counsel was aware of this probability because counsel knows that a trial judge must

act with absolute impartiality while in the performance of judicial duties State v. Pace, 316 S.C. 71, 441 S.E. 2d 186. This speckled error of intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

G. Trial Counsel deprive applicant of his Sixth amendment right to effective assistance of counsel in failing to object to the jury charge and in failing to move the court for a direct verdict.

Indictment, "LARGE FIXED BLADE HUNTING KNIFE"

VS,

Evidence, "Photos" at tr. P. 95 lines 3-8, tr. P. 101 lines 10-16

tr. P. 165 line 16 and tr. P. 215 lines 9-16

There's no way that these photos constitutes a murder weapon, therefore the jury charge instructions are improper tr. P. 208 lines 22-25 - tr. P. 287 line 12.

ARGUMENT

Trial counsel was ineffective in failing to object to the jury charge instructions and in failing to move the court to quash the indictment. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) Trial counsel was ineffective for not requesting additional jury instructions when warranted by the evidence which clearly prejudice applicant's defense State v. Starnes, 340 S.C. 312, 531 S.E. 2d 907; Battle v. State, 305 S.C. 460, 489 S.E. 2d Failure to tailor jury instruction to adequately reflect facts and theories presented by applicant constitutes reversible error State v. Day, 341 S.C. 410, 535 S.E. 2d 431. Counsel's failure to move the court for a direct verdict and failure to give the requested jury charged instruction was both erroneous and prejudicial State v. Neels, 333 S.C. 134, 508 S.E. 2d 557 See Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497, 53

L.Ed. 2d 594 (1977) Henderson v. Kibbe, 431 U.S. 145, 154, 97 S.Ct. 1730, 1736, 52 L. Ed. 2d 203 (1977) In Wainwright v. Sykes the court refrained from giving "Precise content" to the term "Prejudice" expressly leaving to future cases elaboration of the significance of that term. Id. at 91, 97 S.Ct. at 2508. While the import of the term in other situations thus remains an open question, however the past decisions nevertheless eliminate any doubt about its meaning for a defendant who has failed to object to jury instructions at trial because the burden some burden of demonstrating that an erroneous instruction is so prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment. Henderson v. Kibbe, Trial Counsel was aware that the evidence at trial determines the charge jury instructions Criminal Law Key 814 (2) and if a jury instruction is provided to the jury that doesn't fit the facts of the case it may confuse the jury Criminal Law Key 814 (1). The trial judge and defense counsel should remain conscious and unanimity of their purpose and high goal of insuring that the jury be informed fully, instructed properly and permitted to render a fair and unbiased verdict.

As our Supreme court has stated, request to charge a correct statement of law on a issue raised by the indictment and the evidence presented at trial should not be refused State v. Austin, 299 S.C. 456, 385 S.E.2d 830, 831. A reasonable hypothesis instruction imparts specific meaning to the concept of reasonable doubt when applied to illogical irrelevant evidence. It does not increase the states burden of proof, it simply makes the burden clearer. This sharper clarity is not inappropriate when the difference between a conviction and acquittal turns upon the appropriate inferences a jury choose to draw. This prejudice is also plain and obvious.

STATEMENT OF FACT

H. Trial Counsel deprived applicant of his sixth amendment right to effective counsel in failing to file a motion to suppress evidence for illegal search and seizure.

On 9-21-09 the investigators had county roll back come and tow the truck that belong to

Octavious Burns, de known as To Spartanburg Investigative report 00125 paragraph 8. On 9-23-09 investigator W.R. Foster types the following, We went back and towed the 200 Silver F-150 that belong to Octavious. I obtain a SW for it back at the County Shop Spartanburg Investigative report 00139 lines 8, 10. A review of the search warrant ~~at~~ Spartanburg Investigative report 00107 reveals that the search warrant is dated 9-21-09. At Spartanburg Investigative report 00208 inside the description of premises (Person, Place, or thing) to be searched, the vehicle to be searched was already at the Fleet Services Shop therefore the State didn't have a warrant before they seized the truck. And its plain and obvious that the date 9-21-09 on the search warrant is a lie type by investigator W.R. Foster.

ARGUMENT

Evidence obtain by search and seizure in violation of the fourth amendment is inadmissible in state and federal criminal trials Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S.Ct. 1034 (1961) See S.C. App. 1985 Automobiles found parked at place used for residential purposes, temporary or otherwise is protected from warrantless searches by 4th amendment U.S.C. Const. amend 4 State v. Cox 335 S.E. 2d 809, 281 S.C. 206 certiorari granted in part 343 S.E. 2d 632, 288 S.C. 484 affirmed in part reversed in part 351 S.E. 2d 570, 290 S.C. 489. As a African American who is privileged to know, there are deep rooted feeling in our (American) Society of unassailable human values that not only suggest but also promotes that police must obey the law while enforcing the law because in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals, as from the actual criminals themselves, Spence v. New York, 360 U.S. 315, 320-321, 79 S.Ct. 1203, 1205-1206, 3 L. Ed. 1205. Trial counsel's prejudice is plain and obvious.

STATEMENT OF FACT

I. Trial counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to raise a meritorious fourth amendment claim that applicant was improperly detained where the only illogical irrelevant evidence of applicant's

guilt was discovered as a result of the unlawful detention.

On January 29, 2011 applicant appeared before the trial judge on a Motion to relieve counsel Ex. P. 7 Lines 3-6. During the Motion applicant displayed frustration with trial counsel's lack of listening at not producing the requested evidence that was granted by Chief Justice Judge Couch on June 4, 2010 Ex. P. 8 Lines 7-15. Applicant informed the trial judge that he had been pointing out several facts to counsel but trial counsel openly disregarded applicant's every effort to actively assist in his defense and that trial counsel would not listen, nor respond to applicant's efforts. Applicant informed the trial judge that although trial counsel did not state verbally his intentions, trial counsel's attitude spoke clearly of his indifference to applicant's representation. Applicant informed the trial judge that he was assisting the capital offense charges, but he could not successfully get trial counsel to show any positive signs of effectively presenting a defense in applicant's behalf. Applicant complained to the trial judge that counsel at most was only going through the motions in a pretended facade as applicant's trial counsel Ex. P. 10 Lines 1-22. Applicant informed the trial judge that he had not received the Greer Supplemental Police reports regarding armed robbery Ex. P. 10 Lines 18, 19 and the reason that applicant requested this particular evidence was because the description of the suspects was first reported by someone at the check cashing business in Greer Ex. P. 14 Lines 24-25 - Ex. P. 15 Lines 1-3. Trial counsel submitted that he was going to produce the requested evidence Ex. P. 15 Line 21. Unfortunately applicant has never received the requested evidence. Based upon the information that applicant provided to the trial judge, the trial judge drew an inference that if applicant didn't hire a lawyer, applicant probably wouldn't have someone that would represent him. Ex. P. 19 Lines 5-10.

ARGUMENT

On Sept. 30, 2009 at approx. 2:00 p.m. applicant appeared in the lobby of the Spartanburg Sheriff's office and was later booked into the county jail on armed robbery warrants. Spartanburg Investigative report 00125 Paragraph 10 Line 1 and Paragraph 14. See Warrant

"M-11626 Review; Incident report Supplemental case #090953. Applicant's Point is, the Subject that entered the business should have matched the description of officer's C. Miller's Suspects.

A review of officer's C. Miller's Suspects through Voluntary Statements 0005 and 0007 reveals a man with a grey hoodie and shades at 0005 Lines 2,3 and a second guy in black and red at Line 12. In Statement 0007 there is no accurate description of any suspect. The witnesses in the aforementioned statements never identified a green in color hoodie coming to the crime scene or fleeing from it.

There's no provided information or reports suggesting that the subject who entered the check cashing business in green was brandishing a gun or wearing a grey hoodie and shades or black and red, wearing a mask.

The suspected subject that should have matched officer's C. Miller's description after the S.C. log EJC-525 was checked should have been "Nathaniel Everett" Not Ricky Kelly Jr. See Document obtained from DMV website report 0002. Applicant believes in good faith that there was no probable cause to question Ricky Kelly Jr.

Upon review of Ricky Kelly Jr.'s Voluntary Statements 0008 and 0009 Sgt. C.L. Miller is identified by two different I.D.'s 0128 and 0543. And upon closer observation, the signatures of the person making the Voluntary Statements upon 0008 and 0009 are starkly different, "However the signature of Ricky Kelly Jr. and Sgt. C.L. Miller upon 0008 are starkly similar."

Applicant has good faith in capitulating that there was no probable cause to issue a warrant for his arrest for armed robbery, therefore trial counsel was ineffective in failing to raise a Meritorious fourth amendment claim that applicant was improperly detained where the only illogical irrelevant evidence was obtained as a result of the unlawful detention See State, 448 S.E.2d 560 (S.C. 1994).

CONCLUSION

Applicant received ineffective assistance of trial counsel because (1) counsel's performance

"was deficient and unreasonable" under prevailing professional norms" that counsel elected to abdicate counsels duty to advocate a fellow american of African Royal Blood quest for freedom, justice and equality.

Applicant is guaranteed fairness by the powers of equal protection that are the sequences of due process to which is the Law. There's a reasonable probability but for counsels errors throughout applicants trial, applicant would be here fulfilling his duties as a father of civilization. As such applicant is entitle to an acquittal or a new trial expeditiously.

SUPREME P. ACKBAR

Supreme P. Ackbar

Supreme P Ackbar 275886

Lee Corr. Inst,

990 Wilsacky Hwy,

Bishopville S.C. 29616

November 28, 2012

2012 DEC -4 PM 3:00
CLERK OF COURT
BISHOPVILLE

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

CIVIL ACTION 2012-CP-42-4987

Supreme R. Ackbar

S.C.D.C. 275886

Applicant

VS.

State of South Carolina

Respondent

MEMORANDUM IN SUPPORT OFAMEND APPLICATION FORPOST CONVICTION RELIEF

On February 9, 2011 applicant was convicted of murder and sentence to confinement for life without parole. The sentence however, was invalid. The state engaged in intrinsic fraud, they failed to supply applicant with arrest warrant for murder, they failed to serve applicant a notice of intent to seek life without parole, they failed to supply the evidence of the offense charged, they failed to correct perjured evidence and they also engaged with illogical hearsay irrelevant illegally seized evidence and they also improperly detained applicant.

Applicant's trial counsel was ineffective because he neither investigated any of the circumstances or mitigated the surroundings of the case, nor did trial counsel prevail in his infirmed attempt to advocate applicant's case.

Trial counsel's assisting failures throughout applicant's case resulted in the state of South Carolina (the state) pursuing, and applicant, receiving, and invalid sentence. As such, applicant is entitled to post conviction relief.

PROCEDURAL HISTORY

In November of 2009 the Spartanburg County Grand Jury indicted applicant for murder indictment # 2009-BS-42-5943, on June 4, 2010 applicant appeared before Chief Justice Judge Couch on a motion to relieve counsel and to request additional

evidence. The motion was granted as well as the requested evidence. In early January of 2011 applicant appeared before Chief Justice Judge Couch on a motion for bond. The motion was denied. On January 27, 2011 applicant appeared on a motion to relieve counsel before the Honorable J. Derham Cole. The motion was denied. On Feb. 7, 2011 applicant proceeded to jury trial with the very same J. Derham Cole presiding. The jury returned a verdict of guilty on Feb. 9, 2011 and Judge Cole sentenced applicant to life imprisonment without parole. A timely notice of intent to appeal was served on February 17, 2011. The unpublished appeal was denied September 12, 2012. Applicant filed a petition for rehearing and the petition was denied on October 17, 2012.

Applicant timely applies for post conviction relief this day of November ~~28~~, 2012, on the grounds that trial counsel was ineffective in failing to insert the court with the truth regarding the date that applicant was (wrongfully) charged with armed robbery and the alleged murder, in failing to fully disclose ~~Reedy~~ material, in failing to object to the indictment and to move the court to quash the indictment, in failing to object to perjury while knowing prior to trial that it would be submitted, in failing to object to the trial judge for not being impartial while in the performance of his judicial duties, in failing to object to improper jury instructions and in failing to file a motion to suppress evidence for illegal search and seizure and in failing to object to applicant being improperly detained.

STATEMENT OF FACT

A. Trial counsel deprived applicant of his Sixth amendment right to effective assistance of counsel by engaging in intrinsic fraud with the state.

while during the criminal process of applicant the prosecution for the state filed to supply applicant with a notice of intent to pursue a sentence of life without parole. On January 27, 2011 trial counsel submitted that he was in receipt reception of

the requested evidence (C.O. recordings) that was granted by Chief Justice Judge Couch on June 4, 2010 tr.P. 8 lines 7-12, tr.P. 12 lines 13-21. Trial Counsel failed to fully disclose the requested evidence before trial, during trial, and after trial and the record will reflect this affirmed fact.

On February 7, 2011 the perpetrating trial counsel was in the chambers with the trial judge and the prosecution whittling things down regarding the protectory of this case tr.P. 49 lines 4, 7, 8. At tr.P. 52 lines 20-22 trial counsel bolsters his position as the perpetrator as he stealthily failed to object to the indictment and to move the court to quash the indictment before the jury was sworn in. At tr.P. 65 lines 12-14 trial counsel submitted that he knew that certain particular witnesses would be inconsistent while perhaps motivated. As trial counsel continued his perpetrating role he can clearly be seen assisting in the confusion that twisted up the jury's perception as the ^{state} admitted their perverse photos into evidence. Trial counsel gave absolutely no objection to their usage at tr.P. 95 lines 3-8 and at tr.P. 161 lines 10-16 and again at tr.P. 215 lines 9-16. Trial counsel knew via indictment that the admitted evidence (photos) should have been the purported "LARGE FIXED BLADE HUNTING KNIFE", but counsel rather choose the tug-on-his-hot-to-do-his job theory instead and abandoned applicant at a very critical stage and decided to engage with the trial judge and the prosecution in several friendly bench conferences off the record at tr.P. 115 lines 24, 25 - tr.P. 116 line 1, tr.P. 165 lines 18-25 - tr.P. 166 line 1, tr.P. 168 lines 15-18, tr.P. 193 lines 10-12, and at tr.P. 240 lines 21-23. At tr.P. 173 lines 20-25 the boisterous trial counsel engaged with the solicitation of testimony that lead to applicant being stigmatized and characterized as the purported passenger of the Chrysler seating at tr.P. 175 lines 3-9. Trial counsel knew that there was exculpatory evidence that unequivocally identified Marcus Wright. See Spokane County Sheriff's Office Law Supplemental Narrative 00229 lines 4, 5, 6 just as trial counsel knew that certain particular witnesses such as Shaquille Kelly, Danny Burnside Jr. Octavious Burnside, Lorine Williams,

and Marcus Wright had lied and that the evidence was not enough to hold applicant guilty of this tragic murder tr.P. 265 lines 15-20, Trial Counsel failed to object to the jury charge and to move the court to quash the indictment and/or to request additional instructions when warranted by the evidence tr.P. 268 lines 22-25 - tr.P. 287 line 19.

Applicant reiterated that the prosecution submitted that they were in the chambers whittling down their projection of this case tr.P. 49 lines 4, 7, 8.

ARGUMENT

Intrinsic fraud is a fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud Judgment Key 373. See also Judgment Key 374 where allegations of perjury, failure to produce requested discovery amounts only to intrinsic fraud. See e.g. Strickland v. Washington, 466 U.S. at 686; United States v. Chronic, 466 U.S. 648, 655-657 (1984). In order to prevail applicant must show both counsel's representation fell below an objective standard of reasonableness. Strickland supra at 688, and that there exist a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different.

Counsel's unprofessional errors throughout the above mentioned statement of fact so upset the adversarial balance between the defense and the ~~prosecution~~ that trial was rendered unfair and the verdict suspect. E.g. Gideon v. Wainwright 372 U.S. 335, 344, 83 S. Ct. 792, 796 (1963) see also United States v. Olano, 507 U.S. 725, 730, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993). Rule 59(b) provides that plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT OF FACT

8. Trial Counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to object to applicant not being served.

Properly for the charge of Murder:

On September 20, 2007 Rocky Kelly Jr. was brutally murdered in Spartanburg County via indictment with a "LARGE FIXED BLADE HUNTING KNIFE". On Sept. 21, 2009 at approx. 2:00 P.M. applicant appeared in the lobby of Spartanburg County's Sheriff's office and was later booked into the county jail on armed Robbery warrants Spartanburg Investigative report 00125 paragraph 10 line 1 and paragraph 14. On Sept. 25th, 2009 applicant was transported from the detention facility back over to the Sheriff's office where applicant was later asked by the media, "Did you do it?" The State Purported via news that applicant was charged with Murder on the 25th of Sept. 2009. The Perpetrating trial counsel ~~Submitted~~ in early January of 2011 at applicant's first bond hearing that applicant was charged with armed robbery and murder on the 25th of September 2009. After reviewing Spartanburg Investigative reports 00126, 00127, applicant bombards with a Juggernaut of concretions to which is a fact that these reports will reveal the exemption of the 25th of September of 2009. Review Warrant # M-089045. Applicant continues bombarding the relentless aforesaid fact that ~~Its~~ Plain and obvious that a copy of the warrant was never delivered to applicant.

ARGUMENT

Trial counsel was clearly ineffective and the Prejudice is plain and obvious because the gist and gravamen of discovery rules mandate full and fair disclosure to prevent trial from becoming guessing game or one of ambush for either party Pretrial

Procedure key 14.1. See Kimmelman v. Morrison, 477 U.S. 363, 106 S.Ct. 2574 (1986)

Where the United States Supreme Court reiterated that the right to counsel is a fundamental right of criminal defendants; it assures the fairness and thus the legitimacy of our adversary process. And there is a plethora of cases in other circuits as well as South Carolina where trial counsel have been found ineffective for failing to file pretrial motions to suppress evidence. See Cobbs v. State, 305 S.C.

299, 408 S.E. 2d 223 (1991) Counsel was ineffective for failing to investigate possible defense; Cochran v. State, 414 S.E. 2d 511 (Ga., 1992) Trial Counsel ineffective in murder case for failing to prepare and in spite of short term appointment, made no written motions for continuances and made no pretrial motions. Also see People v. Butterfield, 484 N.Y.S. 2d 946 (1985) Trial Counsel ineffective for failing to request hearing to seek suppression of evidence.

In State v. Ross, 951 F.2d 236 (1997) it is noted that if an attorney does not investigate clearly relevant laws therein/she objectively has failed to provide effective assistance.

STATEMENT OF FACT

C. Trial Counsel deprived applicant of his Sixth Amendment right to effective assistance of counsel in failing to fully disclose Brady material.

On January 27, 2011 applicant appeared on a motion to relieve counsel before the Honorable J. Derham Cole tr. P. 7 lines, 3-6. While during the motion applicant informed the trial judge that he was having technical difficulty obtaining vital evidence that was granted by Chief Justice Judge Couch on June 4, 2010 tr. P. 8 lines, 7-12. Trial Counsel submitted that he was in recent possession of the C.D. that contains threshold showings of recorded phone colloquies tr. P. 12 lines, 13-21.

ARGUMENT

Where a defendant makes a threshold showing that undisclosed evidence he sought contained exculpatory material or impeachment evidence and thus, shows that the evidence was material within meaning of Brady and rules of criminal procedure, the trial judges should conduct a hearing Criminal Law Key 700 (8). And in determining the materiality of undisclosed evidence under Brady, the appellate court should not consider the sufficiency of the evidence, rather, the court's function is to determine whether the applicant's right to a fair trial has been impaired Criminal Law Key 700 (2.13), App. Court's

assaults with the fact that he has never enjoyed the Sixth amendment effective privileged to hear or see the threshold showing C.D. that's submerged with recorded conversations and neither did the jury and the trial record will attest to that fact. Trial counsel's fraudulent intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

D. Trial Counsel deprived applicant of his Sixth amendment right to effective assistance of trial counsel in failing to object and to move the court to quash the indictment.

On Feb. 7, 2011 at tr.P. 52 lines 20-22 trial counsel is unequivocally seen failing to object to the indictment pursuant to 9.C. Code of Laws 17-19-90 and to move to court to quash the indictment. The error is plain and obvious because the trial judge submitted via misreading the indictment that it was a knife that caused the proximate death of Ricky Kelly Jr. tr.P. 53 lines 23-25 - tr.P. 54 lines 1, 2. The prosecution submitted that the evidence would reveal that applicant was the butcher that savagely back into Mr. Kelly's throat, cut him in the face, and stabbed him in the chest tr.P. 61 lines 17-19. Applicant now teleports us all forward for a quick review of the counterpoised objected evidence at tr.P. 105 lines 16, 17, 18, 23 to which reveals a "photo" of a Kel-tec "mini magnum".

ARGUMENT

Applicant thrashes and smashes that the obscenity of **perverse** clearly constitutes unfair prejudice Criminal law Key 438 (7) because there is "No way" that any creditable, reputable, unprejudiced minded jury could or would perceive with perceptibility that as "photo" that has absolutely none of the victim's DNA, until could be used as a **"LARGE FIXED BLADE HUNTING KNIFE"** to perform Savage butchery.

Trial counsel was ineffective in failing to object to the indictment and to move the

the court to quash the indictment. This failure clearly prejudice applicant. And the failure shows that counsel was deficient and there is a reasonable probability that for counsel's deficiency, proper representation of the indictment to include a sufficient challenge could have resulted in acquittal of the case. This error by trial counsel establishes both error and prejudice. And the verdict in applicant's case is grossly inadequate, excessive and it should shock the conscience of the court because the substituted perverted evidence clearly is an indication that the figure reached was the result of passion, caprice, partiality, corruption or some other improper motive and the failure of the trial judge to grant a new trial in this situation amounts to an abuse of discretion and on appeal the court of appeals will grant a new trial absolute Stevens V. ALLEN, 336 S.C. 439, 520 S.E. 2d 625 rehearing denied certiorari granted, affirmed 342 S.C. 417 536 S.E. 633; See State V. McCorrals 308 S.C. 489, 629 S.E. 2d 201. A defendant is entitled to a direct Verdict when the state fails to produce evidence of the offense charge. See also U.S. V. Russell, 411 U.S. 423, 432 (1973) courts will dismiss indictment for government misconduct outside the indictment process on due process grounds if such conduct is so outrageous that it violates fundamental fairness or is shocking to the universal sense of justice.

STATEMENT OF FACT

E. Trial counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to object to perjury.

Trial counsel submitted that he was cognizant that there would be turbulence of inconsistencies concerning some of the state's key witnesses who was probably motivated by some hidden motive to testify the way they would tr. 68 lines 12-16. At tr. 12-17 lines 16, 17 Shaquille Kelly submitted that he did not see applicant stab M. Kelly when Shaquille Kelly was at Spartanburg investigation report 00126 Paragraph 9 lines 7, 8 he claimed that applicant stabbed Ricky Kelly Jr. twice before he ran home. When

Shaquille Kelly was at his Voluntary Statement 00105 lines 13-15 he claimed that applicant jumped out of the truck and then shot Ricky Kelly Jr.

Denny Burnside Jr. submitted that he wasn't outside when Marcus Wright pulled up tr. p. 149 lines 5, 6, 9, 10 then shortly after he submits that him and Marcus had talked before he and Marcus went in the house tr. p. 148 lines 1-4.

Octavious Burnside informed the investigator that it had been several days since she had last seen applicant Spartanburg investigation report 00124 Paragraph 7 lines 3, 4 but after the investigator and Mr. Davis (who is Ms. Burnside's grandfather) disengaged from their discussion, Mr. Davis was asked and allowed to speak with Ms. Burnside and after that conversation with Mr. Davis, Ms. Burnside exclaimed that she had seen applicant Spartanburg investigation report 00125 Paragraph 5 and Paragraph 6 line 1. At tr. p. 152 lines 17, 18 Ms.

Burnside Purport that applicant rode with her to her Mother's house, "however applicants Perpetrating trial counsel submitted through a objection that was overruled in violation of applicant's sixth amendment right to confront his accuser that there was no evidence to support Octavious Burnside's testimony tr. p. 184 lines 7-10. At tr. p. 192 lines 12-14 Ms. Burnside submitted that she didn't see applicant at home on Sept. 30, 2009 but in her Voluntary Statement 00085 lines 15-17 she purports that she got applicant's daughter and some other stuff and dropped applicant off at home.

Terrell Williams committed Subornation constituting perjury when he submitted that Shaquille Kelly's testimony was consistent with his statement at tr. p. 201 lines 16-18.

Marcus Wright submitted that he was only testifying to receive consideration from the state tr. p. 246 lines 4-8

Trial counsel submitted that this case is more than reasonable doubt and that the Perverted evidence and these perfidious witnesses are not enough to hold applicant for this tragic murder tr. p. 268 lines 12-14, 16-20 Thank you

ARGUMENT

Trial counsel was ineffective in his performance in failing to object to the perjury of

Some of the states witnesses while knowing that witness important witnesses for the state, gives misleading testimony and there's a reasonable probability that had the evidence been brought to the attention of the jury the result of the criminal proceedings would have been different. U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985) Counsel's failure to engage some of applicant's adversaries perjured testimony resulted in a adversarial breakdown. U.S. v. Chin, 466 U.S. 648 (1984) 104 S.Ct. 2039, 80 L.Ed. 2d 657. While a criminal trial is not a game in which the participants are expected to enter the arena with a near match in skills, neither is it a sacrifice of an unarmed unknown warrior to gladiator's. See Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed. 2d 674, 684 (1986) where the United States Supreme Court stated, A criminal defendant states a violation of the confrontation clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby "expose to the jury the facts from which the jurors could appropriately draw inferences relating to the reliability of the witness".

See Tr. P. 182 lines 17, 18 again and note Ms. Burnside claiming that applicant rode with her to her mother's house. See also again Tr. P. 184 lines 7-10 where trial counsel submits that there is no evidence to support Ms. Burnside testimony.

The Van Arsdall court stated: [W]hether such an error is harmless in a particular case depends upon a host of factors. The factors include the importance of the witness testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the over all strength of the prosecution case. Trial counsel was ineffective in failing to object to the trial judge for ~~violating~~ applicant's sixth amendment right to confront his accuser.

Trial counsel was further ineffective by knowing that it was a denial of applicant's due process right's when a witness like Marcus Wright submits to falsly testifying

to receive consideration from the State Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 and he elected to abdicate his responsibility to confront the accuser. And when the state fails to correct such falsities reversal is required Riddle v. Ortiz, 364 S.Ct. 34, 681 S.E.2d 70.

Applicant reiterates that trial counsel's fraudulent intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

F. Trial counsel was ineffective in failing to object to the trial judge for not being impartial with the findings of facts and conclusion of laws.

At tr. p. 165 lines, 18, 23 trial counsel objected contemptuously to the perverted evidence, however our trial judge didn't provide applicant with the necessary provision of facts and findings that could, should, and would have provide applicant with the required projectory of conclusions of laws.

ARGUMENT

Under App Ct rule 501, code Jud. conduct, Canon 3(c) a Judge should disqualify himself if his impartiality might reasonably be questioned. And while the Supreme Court accords great weight to the trial judge's assurance of his own impartiality, a Judge's impartiality might reasonably be questioned when his factual findings are not supported by the record Ellis v. Procter and Gamble Distributing Co. (S.C. 1993) 315 S.C. 283, 483 S.E.2d 850, rehearing denied.

Counsel's failure to object to the trial judge for not being impartial with the findings of facts and conclusion of laws deprived applicant of sixth amendment right to effective assistance of counsel because there's a reasonable fundamental elemental probability that the shocking objection would have motivated the trial judge to declare a mistrial. Trial counsel was aware of this probability because counsel knows that a trial judge must

act with absolute impartiality while in the performance of judicial duties State v. Pace, 316 S.C. 71, 441 S.E. 2d 186. This speckled error of intrinsic prejudice is plain and obvious.

STATEMENT OF FACT

G. Trial Counsel deprive applicant of his Sixth amendment right to effective assistance of counsel in failing to object to the jury charge and in failing to move the court for a direct verdict.

Indictment, "LARGE FIXED BLADE HUNTING KNIFE"

VS,

Evidence, "Photos" at tr. P. 95 lines 3-8, tr. P. 161 lines 10-16

tr. P. 165 line 16 and tr. P. 215 lines 9-16

There's no way that these photos constitutes a murder weapon, therefore the jury charge instructions are improper tr. P. 208 lines 22-25 - tr. P. 287 line 12.

ARGUMENT

Trial counsel was ineffective in failing to object to the jury charge instructions and in failing to move the court to quash the indictment. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) Trial counsel was ineffective for not requesting additional jury instructions which warranted by the evidence which clearly prejudice applicant's defense State v. Skyles, 340 S.C. 312, 531 S.E. 2d 907; Battle v. State, 305 S.C. 460, 489 S.E. 2d Failure to tailor jury instruction to adequately reflect facts and theories presented by applicant constitutes reversible error State v. Day, 341 S.C. 410, 535 S.E. 2d 431. Counsel's failure to move the court for a direct verdict and failure to give the requested jury charged instruction was both erroneous and prejudicial. State v. News, 333 S.C. 134, 508 S.E. 2d 557 See Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497, 53

L. Ed. 2d 594 (1977) Henderson v. Kibbe, 431 U.S. 145, 154, 97 S.Ct. 1730, 1736, 52 L. Ed. 2d 203 (1977) In Wainwright v. Sykes the court refrained from giving "Precise content" to the term "Prejudice" expressly leaving to future cases elaboration of the significance of that term Id at 91, 97 S.Ct. at 2508. While the import of the term in other situations thus remain an open question, however the past decisions nevertheless eliminate any doubt about its meaning for a defendant who has failed to object to jury instructions at trial because the burden some burden of demonstrating that an erroneous instructions is so prejudicial that it will support a collateral attack on the constitutional validity of a state courts judgment Henderson v. Kibbe, Trial Counsel was aware that the evidence at trial determines the charge jury instructions Criminal Law Key 814(2) and if a jury instruction is provided to the jury that doesn't fit the facts of the case it may confuse the jury Criminal Law Key 814(1). The trial judge and defense counsel should remain conscious and unanimity of their purpose and high goal of insuring that the jury be informed fully, instructed properly and permitted to render a fair and unbiased verdict.

As our Supreme court has stated, request to charge a correct statement of law on a issue raised by the indictment and the evidence presented at trial should not be refused State v. Austin, 299 S.C. 450, 385 S.E.2d 830, 831. A reasonable hypothesis instruction imparts specific meaning to the concept of reasonable doubt when applied to ^{illogical} irrelevant evidence. It does not increase the states burden of proof, it simply makes the burden clearer. This sharpened clarity is not inappropriate when the difference between a conviction and acquittal turns upon the appropriate inferences a jury choose to draw. This prejudice is also plain and obvious.

STATEMENT OF FACT

H. Trial Counsel deprived applicant of his sixth amendment right to effective counsel in failing to file a motion to suppress evidence for illegal search and seizure.

On 9-21-09 the investigators had county roll back come and tow the truck that belong to

Octavious Burns, de known as To Spartanburg Investigative report 00125 paragraph 8. On 9-23-09 investigator W.R. Foster types the following: We went back and towed the 900 Silver F-150 that belong to Octavious. I obtain a SW for it back at the County Shop Spartanburg Investigative report 00139 lines 8, 10. A review of the search warrant at Spartanburg Investigative report 00207 reveals that the search warrant is dated 9-21-09. At Spartanburg Investigative report 00208 inside the description of premises (Person, place, or thing) to be searched, the vehicle to be searched was already at the Fleet Services Shop therefore the State didn't have a warrant before they seized the truck. And its plain and obvious that the date 9-21-09 on the search warrant is a lie type by investigator W.R. Foster.

ARGUMENT

Evidence obtain by search and seizure in violation of the fourth amendment is inadmissible in state and federal criminal trials Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S.Ct. 1034 (1961) See S.C. App. 1985 Automobiles found parked at place used for residential purposes, temporary or otherwise is protected from warrantless searches by 4th amendment U.S.C. Const. amend 4 State v. Cox 335 S.E. 2d 809, 281 S.C. 200 certiorari granted in part 343 S.E. 2d 632, 388 S.C. 484 affirmed in part reversed in part 351 S.E. 2d 570, 290 S.C. 489. As a African American who is privileged to know, there are deep rooted feeling in our (American) Society of unassailable human values that not only suggest but also promotes that police must obey the law while enforcing the law because in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves, Spence v. New York, 360 U.S. 315, 320-321, 1949 S.Ct. 1202, 1205-1206, 3 L. Ed. 1205. Trial counsel's prejudice is plain and obvious.

STATEMENT OF FACT

I. Trial counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to raise a meritorious fourth amendment claim that applicant was improperly detained where the only illogical irrelevant evidence of applicant's

guilt was discovered as a result of the unlawful detention.

On January 27, 2011 applicant appeared before the trial judge on a Motion to relieve counsel tr. p. 7 lines 3-6. During the Motion applicant displayed frustration with trial counsel's lack of listening at not producing the requested evidence that was granted by Chief Justice Judge Couch on June 4, 2010 tr. p. 8 lines 7-15. Applicant informed the trial judge that he had been pointing out several facts to counsel but trial counsel openly disregarded applicant's every effort to actively assist in his defense and that trial counsel would not listen, nor respond to applicant's efforts. Applicant informed the trial judge that although trial counsel did not state verbally his intentions, trial counsel's attitude spoke clearly of his indifference to applicant's representation. Applicant informed the trial judge that he was assailing the capital offense charges, but he could not successfully get trial counsel to show any positive signs of effectively presenting a defense in applicant's behalf. Applicant complained to the trial judge that counsel at most was only going through the Motion in a pretended facade as applicant's trial counsel tr. p. 10 lines 1-22. Applicant informed the trial judge that he had not received the Greer Supplemental Police reports regarding armed robbery tr. p. 10 lines 18, 19 and the reason that applicant requested this particular evidence was because the description of the suspects was first reported by someone at the check cashing business in Greer tr. p. 14 lines 24-25 - tr. p. 15 lines 1-8. Trial counsel submitted that he was going to produce the requested evidence tr. p. 15 line 21. Unfortunately applicant has never received the requested evidence. Based upon the information that applicant provided to the trial judge, the trial judge drew an inference that if applicant didn't hire a lawyer, applicant probably wouldn't have someone that would represent him. tr. p. 19 lines 5-10.

ARGUMENT

On Sept. 20, 2009 at approx. 2:00 p.m. applicant appeared in the lobby of the Spartanburg Sheriff's office and was later backed into the court jail on armed robbery warrants. Spartanburg Investigative report 00125 Paragraph 10 line 1 and Paragraph 14. See Warrant

"M-11626. Review; Incident report Supplemental coos case #0909053. Applicant's point is, the subject that entered the business should have matched the description of officer's C. Miller's suspects.

A review of officer's C. Miller's suspects through Voluntary statements coos and coos reveals a man with a grey hoodie and shades at coos lines 2,3 and a second guy in black and red at line 12. In statement coos there is no accurate description of any suspect. The witnesses in the aforementioned statements never identified a green in color, handwriting to the crime scene or fleeing from it.

There's no provided information or reports suggesting that the subject who entered the check cashing business in green was brandishing a gun or wearing a grey hoodie and shades or black and red, wearing a mask.

The suspected subject that should have matched officer's C. Miller's description after the S.C. log E30-525 was checked should have been "Nathaniel Everett" not Ricky Kelly Jr. See Document obtained from DMV website report coos. Applicant believes in good faith that there was no probable cause to question Ricky Kelly Jr.

Upon review of Ricky Kelly Jr.'s Voluntary statements coos and coos Sgt. C.L. Miller is identified by two different I.D.'s 0128 and 0543. And upon closer observation, the signatures of the person making the Voluntary statements upon coos and coos are starkly different, however the signature of Ricky Kelly Jr. and Sgt. C.L. Miller upon coos are starkly similar.

Applicant has good faith in capitulating that there was no probable cause to issue a warrant for his arrest for armed robbery, therefore trial counsel was ineffective in failing to raise a meritorious fourth amendment claim that applicant was improperly detained where the only illegal irrelevant evidence was obtained as a result of the unlawful detention Ske v State, 448 S.E.2d 560 (S.C. 1994).

CONCLUSION

Applicant received ineffective assistance of trial counsel because (1) counsel's performance

Was deficient and unreasonable" under prevailing Professional Norms and that counsel elected to abdicate counsel's duty to advocate a fellow american of African Royal Blood quest for freedom, justice and equality.

Applicant is guaranteed fairness by the powers of equal protection that are the sequences of due process to which is the "LAW." There's a reasonable probability not for counsel's errors throughout applicant's trial, applicant would be here fulfilling his duties as a father of civilization. As such applicant is entitled to an acquittal or a new trial expeditiously.

SUPREME P. ACKBAR

Supreme P. Ackbar

Supreme P Ackbar 295886

Lee Corr. Inst,

990 Wilsack Hwy.

Bishopville S.C. 29010

November 28, 2012

2012-CP-42-4987
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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Supreme R. Ackbar

S.E. D.C. 275886

Applicant

Vs.

State of South Carolina

Respondent

PCR

Civil Action No. 2012-CR-42-4987

MEMORANDUM IN SUPPORT OF
AMEND APPLICATION FOR
POST CONVICTION RELIEF

On February 9, 2011 applicant was convicted of murder and sentence to confinement for life without parole. The sentence however, was invalid. The state attacked with selective enforcement. Applicant's trial counsel was ineffective because he failed to file a pretrial motion requesting a Jackson v Deno hearing.

Appellate counsel was ineffective because she failed to raise a meritorious issue.

These counsel's failures throughout applicant's case resulted in the state of South Carolina (the state) pursuing, and applicant, receiving, and invalid sentence. As such applicant is entitled to post conviction relief.

PROCEDURAL HISTORY

In November of 2009 the Spartanburg County Grand Jury indicted applicant for murder indictment # 2009-CR-42-5943. On June 4, 2010 applicant appeared before Chief Justice Judge Couch on a motion to relieve counsel and to request additional evidence. The motion was granted as well as the requested evidence. In early January of 2011 applicant appeared before Chief Justice Judge Couch on a motion for bond. The motion was denied. On January 27, 2011 applicant appeared on a motion to relieve counsel before the honorable J. Derham Cole. The motion was denied. On Feb. 7, 2011 applicant proceeded to jury trial with the very same J. Derham Cole presiding. The jury returned a verdict of guilty on Feb. 9, 2011 and Judge Cole sentence applicant to life imprisonment without parole. A timely notice of intent to appeal was served on February 17, 2011. The unpublished was denied September 12, 2012. Applicant filed a petition for rehearing and the petition was denied.

September 12, 2012, Applicant filed a petition for rehearing and the petition was denied on October 17, 2012.

Applicant timely applies for post conviction relief this day of December —, 2012, on the grounds that trial counsel was ineffective in failing to file a pretrial motion requesting a Jackson v. Deno hearing, in failing to raise the claim that applicant was selected for prosecution, in failing to prepare a defense, and in failing to object to the sentence.

Appellate counsel was ineffective in failing to raise a meritorious issue.

STATEMENT OF FACT

V. Trial Counsel deprived applicant of his sixth amendment right to effective assistance of counsel in failing to file a pretrial motion requesting a Jackson v. Deno hearing.

The purpose of a Jackson v. Deno hearing is to determine whether a statement was freely and voluntarily given. If the court finds it is not, the court will not allow it to be introduced or published to the jury or referred to in some cases. In giving a statement, several constitutional rights must be waived, a statement is only admissible in evidence if it is freely and voluntarily made. Any evidence that a witness or accused was threatened, tricked or coaxed into waiving these rights will show that they did not voluntarily waive right to remain silent.

At this preordained time applicant launches the production elements of rain, hail, snow, and earthquakes. Please note that the record is obliterated of the production of a Jackson v. Deno hearing in regards to applicant's defense. Applicant reasonably states the fact that had this pretrial motion of hail freezing snow or seismicity rain been put into production, the components of selective enforcement could have, should have, and would have been unearthed.

Selective enforcement - is the practice of law officers who use wide or even unfettered discretion about what ~~and~~ where to carry out certain laws. ESP... the practice of singling a person out for prosecution or punishment under a statute or regulation because the person has exercised or is planning

to exercise a constitutional protected right. Also termed selective prosecution
 C.F. v. selective prosecution under prosecution. Black Law Dictionary

On Sept. 20, 2009 the leader of the "Willy Lynch" unit (IMV. Lorin Williams) exclaimed that he was already in reception of his pick, regarding who would take the fall for the slaughtering of Ricky Kelly Jr. Spartanburg IMV. report 00124 Paragraph 4.

While (DJ) Danny Burnside Jr. was disavowing any knowledge of Marcus Wright Paragraph 5 lines 1-4 Lorin Williams was being informed via Octavious Burnside that it had been several days since applicant graced her with his benevolent presence, IMV. Williams showed loathing disappointment by refusing to trust Ms. Burnside and instead had Ms. Burnside transported for further interview Paragraph 7 lines 3-6. While Ms. Burnside was in route or at the Sheriff's office, the unit of the Willy Lynch posse readjusted their hooded sheets and proceeded to raise a little hell at the residence of Marcus Wright.

While there, the scheming Lorin Williams quickly and unequivocally witness Marcus Wright prepare to defend his encampment. After careful observation, the Willy Lynch posse decided to observe, while Marcus Wright thanked God and went crying to his Momma Spartanburg IMV. report 00125 Paragraph 1 lines 6, 8, 9.

When the Notorious Posse of Willy Lynch finished their "Shindig of a Pow Wow", they loaded up and head across town to applicant's last known address and engaged in a 4th Amendment violation by illegally entering the home and illegally searching the home, with the assistance of Mr. Davis, who happens to be Ms. Burnside's grandfather Paragraph 3, 4.

That night the shrewd Mr. Davis and the leader of Willy Lynch's posse must have become such good friends because after Lorin Williams finished speaking what he had spoken to Mr. Davis, he then asked Mr. Davis if he would mind coming down to the Sheriff's office to speak to Ms. Burnside. Mr. Davis was proud to aid and assist the Willy Lynch posse. After Mr. Davis arrived and the developments of that collusion or colloquy was ablated, "Ms. Burnside then regurgitated her contents of mental conclusive coercion that she had witness the exterior of applicant's beloved apparition Paragraphs 5, 6. See; Prima Facie, adv. At first sight on first appearance but subject

to further evidence or information.

On 9-22-09 after conversing with the conspiring Ms. Burnside another conspirator (Danny Burnside Jr.) was fetched for further debriefing and while in the presence of the informed sneaky Willy Lynch posse member, Danny Burnside Jr. decided to perform an ancient Japanese ritual by eviscerating himself. As the entrails of Shaq and his brother spilled forward, "the process of his mind changed" and he exclaimed that he had witness Marcus Wright at the residence Spartanburg Inv. report 00126 paragraph 4

Note: There isn't any reference or indication that Octavius Burnside, Danny Burnside Jr., or Shaquille Kelly were cognizant of their 5th amendment right to remain silent.

On the same day of 9-22-09 the incoherent indignant Octavius Burnside gave a voluntary statement that she took applicant to the area where you go across the railroad tracks and it curves the road at the bottom of fairmount and that applicant dropped his stuff off. The tent and bag and back pack
Voluntary statement 0083 line 15-19.

Note: The above mention location is the last time Ms. Burnside mentions seeing these fabricated contraptions. Review; voluntary statements 0084-0087.

On 9-23-09 the Willy Lynch posse (the state) finally obtain a search warrant after two days and miraculously recovered a handgun, knife sheath, cell phone, and some latex gloves. Inv. report 00126 paragraph 5

Note: These illegally seized devices does not coexist with Ms. Burnside statement.

Note also: Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice; Unfair prejudice "means and undue tendency to suggest a decision on an improper basis, such as an emotional one." Criminal law
Key 338(7) SCRE Rule 403

Note also: A trial court's decision regarding comparative probative value versus prejudicial effect of evidence should be reversed only in exceptional circumstances
CRIMINAL LAW KEY 1153(1).

On 9-24-09 the perfidious Willy Lynch posse finally got off their slothling conspiring posterior's and decided it was time to bring in the culpable conspiring Shaquille Kelly. Upon arrival the children of Willy Lynch didn't give a "hoot" about proper procedure of due process. All they cared about was Shaquille Kelly writing a statement and saying, "I saw applicant do it". Once the posse of Willy Lynch (the state) got their statement they had no future questions.
Spartanburg Inv. report 00126 paragraph 9,

Approximate 31 days later on 9-26-09 the defrauder Marcus Wright proclaimed that he was the clueless to the slaying of Ricky Kelly Jr. but after meticulous surveillance of document^{the} facilitator (the state) let Mr. Wright in on the conspiracy by injecting Mr. Wright with "ALL" the evidence and witness that was on board to aid and assist in the conviction of applicant. And we can add to this, "It doesn't matter if you lie, we got everything covered", And we can add to this, "You just make sure you say, 'he was in that car with you'", And we can add to this, "Everything is already set up". And we can add to this, "Marcus Wright then knew what side of the bread was buttered. (quoting trial counsel tr. P. 268 line 9) Spartanburg Investigative report 00127 paragraph 5 lines 2-4, see more; Prima facie

At this time applicant brings forth the thunder and lightning of hail freezing combatting earthshaking rain hail snow, with the threshold showing of Actual Innocence to which transcends Withrow v. Williams's

In this case the party admitted to having knowledge ~~of~~ the killings after being threatened^{by} the Willy Lynch posse (the state).

The court ruled that the statement was made after being threatened and that the confession was made in violation of 5th Amendment right to remain silent, And the sentence was ~~affirmed~~ in part and reversed in part, and remanded.

In the present case the only thing that applicant surrendered was, "I haven't talked to anyone man, I told you that bitch is lying (counsel confirmed tr. P. 184 lines 7-10), Didn't I just tell you man that I aint seen no fucken Ta or been on no fucking Irby Rd, "What tha fuck is this", Armed Robbery, "Man what tha hell type of shit is this", "Tha fuck yall got going on here in Spartanburg Man?" "I aint rob no dam body". You dam skippy I'll put that in writting just as soon as I talk to me a lawyer cause, "I see now yall on some bullshit man." "Get me tha fuck outta here, Spartanburg INV. report 00125 paragraphs 11, 12, 13 (Profanity omitted)

In the present case ~~no~~ warrant was ever issued to applicant tr. P. 1 lines 10-12

In the present case applicant stood with a threshold showing requesting evidence that was withheld by trial counsel tr. P. 8 lines 11, 12, tr. P. 12 lines 20, 22. Then applicant stood affirmed in "God's" redoubtable spirit ~~and~~ told the state, "LET'S GET IT," but don't cheat, don't lie, and quit trying to trick me because I know counsel is gonna help you convict me, tr. P. 16 lines 1-9

In the present case the witnesses are linked in a conspiracy of coercion ~~by~~ ^{lead} by the willy lynch posse (the state) INV. report 00125 paragraphs 5, 6.

In the present case trial counsel failed to raise the claims of selective prosecution before trial pursuant to Fed. Cr. Proc. 12(h)(1), 18 U.S.C.A. and S.C.R.C.P. 60(b)(3) tr. P. 52 line 21

In the present case trial counsel failed to prepare a defense tr. P. 253 lines 15, 16,

Tr.P. 253 lines 24, 25, Tr.P. 254 lines 1-7

In the present case trial counsel failed to subject the court to a subjective objection to complete the objection that would bombard against the disproportionate sentence Tr.P. 293 lines 1-3. Nevertheless, an exception to the general rule of issue preservation exists authorizing the appellate court to consider and unpreserved issue in the interest of judicial economy under appropriate circumstances.

In the present case trial counsel failed to object to "vindictive" prosecution,

To establish prosecutorial vindictiveness, a defendant "must show, through objective evidence, that (1) Prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus". United States v. Wilson F.3d 305, 314 (4th Cir/2001) Citing State v. Goodwin, 457 U.S. 368, 380 N.12 (1982). Evidence of improper motive may be either direct or presumed upon a showing that the circumstances "Pose a realistic likelihood of vindictiveness" Id.

In State v. Goodwin, Supra, the appellant claims the prosecutor indicted him on additional charges when he refused to Plead guilty and demanded a jury trial. The U.S. Supreme Court noted that, because no evidence in the case would support a claim of actual vindictiveness, reversal was only available if a presumption of vindictiveness applied. In declining to apply the presumption, the court reasoned that the possibility that a prosecutor would respond to a defendant's pretrial for jury trial by bringing charges not in the public interest that could be explained only as penalty imposed on defendant is so unlikely that a presumption of vindictiveness certainly not warranted. 457 U.S. at 384 (emphasis in original)

In the present case the prosecution's deficient emotional warmth can clearly

be seen as applicant stood in the presence of a trial Judge who lacked subject matter jurisdiction without a valid indictment, ~~warrant~~, or a valid waiver thereof tr.P. 7 lines 7-12.

In the present case more of the prosecution's animus can be seen through trial counsel's submission of receiving the requested evidence very recently tr.P. 12 lines 21, 22. The trial was set for Feb. 7, 2011. The Motion to relieve counsel was held Jan. 27, 2011. The requested evidence was granted June 4, 2010. The prosecution withheld vital evidence from the defense until recently, prior to Jan. 27, 2011 while being in the possession of the evidence since SEPT. of 09 Spartanburg Inv. report 00127 Paragraph 3.

The prosecution in the present case submitted that the evidence would show that applicant brutally killed him, cut his throat, cut his face, stabbed him in the chest. Trial counsel showed his aversion for the evidence tr.P. 61 lines 17-19, tr.P. 165 lines 18, 23.

Note: A prosecutor may not express personal opinions without supportive facts about any defendant's guilt and should avoid making inflammatory, unfair, improper, misleading remarks about any defendant's guilt; U.S.C.A. Const. Amend. 14

The prosecution in the present case knew that the evidence was nugatory and that, "Lorin Williams, Octavious Burnside, Danny Burnside Jr., Shaquille Kelly, and the Star witness" had lied and failed to correct it. Trial counsel confirmed this fact tr.P. 268 lines 17-21

See Prima Facie case 2. A party's production of enough evidence to allow the fact trier to infer the fact at issue as a rule in the party's favor. Black Law Dictionary

Trial counsel's failure to file the pretrial motion requesting a Jackson V Dene hearing can not withstand the 6th amend. Scrutiny and ^{the} prejudice is cruel and unusual,

ARGUMENT

A conviction following trial base on confession extorted by mental coercion is invalid under Federal due process clause Herman V. Claudy. It is also the duty of the court to sustain allegedly inconsistent verdicts when a logical reason for reconciling them can be found.
Trial Key 33063

STATEMENT OF FACT

L. Appellate counsel deprived applicant of his Sixth amendment right to effective of appellate counsel in failing to raise a meritorious issue,

At tr. p. 165 lines 18, 23 trial counsel showed his repugnance for the states evidence and this error is plain and obvious,

ARGUMENT

To preserve an issue for appellate review a contemporaneous objection must be made when the evidence is offered. State v. Patterson, (S.C. App. 2006) 367 S.C. 219, 615 S.E. 2d 239

In this case the objection to the admission of a statement didn't meet the certiorari to warrant appellate review

In applicant's case the contemporaneous objection meets the requirement of S.C.R.E. Article 1 Rule 103 and appellate counsel failed to comply with the laws that governs the state of South Carolina and thus violating applicant's due process rights to effective assistance of counsel by failing to file a motion to test the sufficiency of the evidence,

CONCLUSION

LET the FREEDOM of PEACE ring so that the JUSTICE of Equality can show the LOVE of HAPPINESS. Behold, "He who is of GOD hears GOD's Words,

SUPREME R. ACKBAR

Expenses & Income

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Supreme R. Ackbar (Allah x)

S.C.D.C. 295886

Applicant

VS

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

NOTICE OF MOTION

AND MOTION

Civil Action no: 2009-BS-42-5943

TO: THE RESPONDENT NAMED ABOVE

You WILL PLEASE TAKE NOTICE that the Applicant, will move on the 7th day of February, 2013, at 11:00 o'clock am before the Honorable _____, in the Court of common Pleas Spartanburg County, Seventh Judicial Circuit, located at the Spartanburg County Courthouse, 130 Magnolia Street, Spartanburg, SC, for relief sought as the attached Complaint.

Supreme R. Ackbar

L.C.I

990 Wisacky Hwy

Bishopville SC 29010

2013 FEB -6 PM 3:52

January 29, 2013

SUPREME R. ACKBAR 215886

January 29, 2013

L.C.T.

990 Wisatky Hwy

Bishopvill S.C. 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

C.A. No: 2009-GS-42-5943

Dear MS. BLACKLEY

Please find enclosed for your filing in the Court of Common Pleas the following:

(1) AFFIDAVIT OF SERVICE and (2) MOTION SUMMONS AND COMPLAINT, (3) NOTICE OF MOTION AND MOTION

PLEASE NOTE that Applicant did send the respondent in this action the aforesaid documents but is a little late in his forthcoming with the documents for your filing and Applicant humbly request that the error be considered innocuous. PLEASE NOTE ALSO that I affirm by my signature that the contents of this letter are true.

2013 FEB -6 PM 3:52

Will you please be so kind and courteous as to inform me by letter when the filing of the enclosed material has been completed?

Thank you in Advance regarding this matter.

Supreme R. Ackbar~~Applicant~~ Applicant

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Supreme R. Ackbar (ALLAH)

S.C.D.C. 275886

Applicant

VS.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

MOTION SUMMONS
AND COMPLAINT

Civil Action No: 2009-GS-42-5943

TO: THE RESPONDENT NAME ABOVE:

You ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the complaint on the undersigned, at Lee Corr. Inst. 990 Wilsack Hwy Bishopville SC 29010, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you and the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Supreme R. Ackbar

L.C.I.

990 Wilsack Hwy
Bishopville S.C. 29010

2013 FEB -6 PM 3:52

January 29, 2013

SUPREME R. ACKBAR

January 25, 2013

S.C.D.C. 275886

L.C.I

990 Wilsack Hwy,

Bishopville, S.C. 29016

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

Post office Box 3463

Spartanburg, S.C. 29304-3483

RE: Ackbar v. State, 2012-CP-42-4987

Dear Ms. Blackley,

Please find enclosed for filing in your court the original of my third additional Memorandum in support of Amended Application for Post Conviction Relief, with a certificate of service attach for showing compliance with the rules of service as mandated by SCRPC, and also for your filing Applicant's Motion to ALTER or AMEND.

PLEASE NOTE that my third additional memorandum is the first to seek relief from entry of default judgement.

Will you please be so kind and courteous as to inform me by letter when the filing of the enclosed documents are completed?

Thank you for resplendent assistance in this matter.

cc: Office of the Attorney General

File copy

S/ Supreme R. Ackbar
 Supreme R. Ackbar
 Applicant

2013 FEB -6 PM 3:53

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Supreme R. Ackbar (LAWAHX)

S.C.D.C. #15886

Applicant

VS.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-42-4989

Applicant's Motion To

ALTER OR AMEND

Now comes forth the Applicant in the above caption action acting as a Pro-Se litigant respectfully moving this Court pursuant to Rules 55(c), 59(e), and 60(b)(3) of the South Carolina Rule of Civil Procedure (S.C.R.P.) to alter or amend the judgement of the State to default judgement. In support of this Motion Applicant would have this Honorable^{court} to review Applicant's attached Memorandums and those previously filed. For all just reasoning, Applicant now prays that this Honorable Court might grant relief and order that applicant is entitled to default judgement.

Respectfully Submitted

Supreme R. Ackbar

Supreme R. Ackbar

Applicant

2013 FEB -6 PM 3:53
MAILED - CLERK

January 25, 2013

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Suprem Raheem Ackbar (A11111 X)

S.C.O.C. 275886

Applicant

vs

State of South Carolina

Respondent

Civil Action No: 2012-CP-42-4989

MEMORANDUM IN SUPPORT OFAMEND APPLICATION FORPOST CONVICTION RELIEF FROMENTRY OF DEFAULT JUDGEMENT

On February 9, 2011 applicant was convicted of Murder and Sentence to confinement for life without parole. The sentence however, was invalid and currently is. The state engaged with the enforcement of selective intrinsic, fraud.

Applicant's trial counsel was ineffective in failing to prepare a meritorious defense. As such applicant received a fraudulent sentence and is entitled to relief from the states default judgement.

PRECEDURAL HISTORY

In November of 2009 the Spartanburg County Grand Jury indicted applicant for murder indictment #2009-03-42-5943. On June 4, 2010 applicant appeared before chief Justice on a Motion ~~for bond~~ to relieve counsel and to request additional evidence. The motion was granted as was the requested evidence.

In January of 2011 applicant appeared ~~appeared~~ before the very same chief Justice on a motion for bond.

The motion was denied. On January 27, 2011 appeared on a motion to relieve counsel before the Honorable J. Derham Cole. The Motion was denied. On February 7, 2011 applicant proceeded to jury trial with the ~~very~~ same J. Derham Cole presiding. The jury returned a verdict of guilty on February 9, 2011 and Judge Cole sentence applicant to life imprisonment without parole. A timely notice of intent to appeal was ~~sent~~ on February 17, 2011. The unpublished appeal was denied pursuant to Auders v California September 11, 2012. Applicant filed a petition for rehearing and the petition was denied October 17, 2012.

Applicant timely applied for post conviction relief in November 2012 and now timely apply for relief from default judgement on January 25, 2013 on the ground that trial counsel was constitutionally ineffective in failing to prepare a meritorious defense.

STATEMENT OF FACT

M. Trial counsel was constitutionally derelictively ineffective in failing to assert applicant's Sixth Amendment safeguarded protected right to equal protection of the law by failing to prepare a defense of extraordinary Meritoriousness.

On January 27, 2011 applicant appeared before the court on a motion to relieve counsel without a warrant or indictment tr. p. 1 lines, 4-6, 10-12 due to the fact that applicant had relentlessly pointed out extraterrestrial extraordinary facts to trial counsel tr. p. 10 lines, 11, 12 and nothing had been done with that foreign "exculpatory" information tr. p. 16 line 3.

The trial court of partiality responded by bombarding applicant with three choices. One was to proceed with the appointed lawyer, two was to hire a private lawyer and three was to proceed pro-se tr. p. 17 lines 8-10. Applicant infused the partial trial court that he didn't want trial counsel as his wretched lawyer because applicant knew that the trial would be inauspicious but the tyrannized trial court ablated applicant's free choice of "will" to which is his vested liberty and furtively bolstered trial counsel's derelict position as applicant's wretched counsel tr. p. 18 line 19. The despotic trial court submitted "they" were going forward and that applicant should get himself a lawyer that would defend applicant "quickly" because otherwise "Conce Hell or High Noon" applicant wouldn't have a lawyer as a defense tr. p. 19 lines, 3, 5, 9. After "they" finished whittling in the chamber's tr. p. 49 lines 4, 7, 8 trial counsel openly submitted that there would be a few fibbers who's testimony was enhanced by motivated reasoning tr. p. 65 lines 12-16. While being in reception of this extraordinary science trial counsel elected to do nothing with it by way of a defense and instead solicited testimony that barbarously characterized applicant as the alleged murdering passenger while knowing there was exculpatory evidence tr. p. 173 lines 23-25. Trial counsel also submitted that "they" didn't have a shred of evidence that applicant to the unlawful killing of another tr. p. 184 lines 7-9. Trial counsel also submitted that intentionally intended not to call any other witnesses tr. p. 283 lines 15, 16 nor did he offer any additional evidence and rested the defense when there was a extraordinary one available tr. p. 254 lines 4-7.

In closing trial counsel submitted that the fisherman's bait that the state was "sport fishing" with was too acidulous to attract applicant to it's slightly acidulated foretasted smell because

2013 FEB 6 PM 3:53

When you want to go fishing in "Good's" ocean "there in the deep in" you don't want to go there with cheap worms and certainly not one like the Sourly tawdry Marcus Wright. Thank you. tr. p. 218 lines 16-21

ARGUMENT

A default judgement may be set aside for good cause shown. Appeal And Error Key 957 (1); Judgement Key 139
 SERCP Rule 55(c), Rule 60(b) (3) See Schulp v. Delo 115 S.Ct. 951 (1995)

In Schulp v. Delo Schulp alleged constitutional error at his trial deprived the jury of critical evidence that would have established his innocence. The District Court declined and held that Schulp could not satisfy the threshold showing of "actual innocence", required by Jarvis v. Whiteley, 505 U.S. 333, 336, 112 S.Ct. 2517, 120 L.Ed. 2d 269, under which a redemptable warlord such as applicant will demonstrate by clear and convincing evidence that ~~but~~ for a constitutional error, "no reasonable juror would have found" him guilty.

In applicant's extraordinary case the constitutional error at trial did deprive the jury of critical evidence that would have established his innocence. Applicant's trial counsel solicited testimony that brutally characterized applicant as the purported murdering passenger of the Chrysler Sebring to which augmented the credibility of the state's Wormy Star witness "The adroit Marcus Wright" tr. p. 173 lines 23-25, tr. p. 174 lines 18, 19 tr. p. 175 lines 1, 3, 6.

Q. Did you also execute a search warrant to look inside of a silver colored chrysler sebring?

A. Yes I did.

Q. Would you tell us what you saw and where you saw it as it relates to what apparently was blood?

A. On that sill about the top center I located what actually turned out to be blood, and we also found one on the window. And this was on the passenger-side front. We also found some on -- a small amount also on that weather sill that's around your window

2013 FEB -6 PM 3:53
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 11/10/13

Where you roll your window down.

At Spartanburg County Sheriff's office law Supplemental Narrative 00229 lines 4,5,6 "It clearly reads Patent Print 007 from the Exterior Passenger's side front door above windows of the above vehicle identified as the #4 (right ring) finger Marcus Allen Wright Birt DOB 10/19/88 SID 9E01681648".

Applicant states the fact that had trial counsel utilized this exculpatory evidence to impeach Marcus Wright at trial no juror would have convicted applicant. True indeed the court today does not sow confusion in the law. Rather, it properly balances the dictates of Justice with the need to ensure that the actual innocence exception remains only a "safety valve" for the extraordinary case. Harris v. Reed (O'Connor, J. concurring) Trial counsel's dereliction in not disclosing the exculpatory evidence to the jury to impeach Marcus Wright during a critical stage of the proceedings was abhorrently prejudicial to the outcome of the trial Mickel v. Taylor. "WE" know that the Confrontation clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution in state as well as federal criminal proceedings, Pointer v. Texas "means more than being allowed to confront the witness physically Davis v. Alaska... Indeed, [t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination" Id., at 315-316, 94 S.Ct. at 1110 (quoting 5 J. Wigmore, Evidence § 1395, p. 123 (3d ed 1940) (emphasis in original)).

At Schulz's trial in December 1985, the state produced no physical evidence connecting Schulz to the killing and no witnesses other than Flowers, and Maylee testified to Schulz's involvement in the murder. And on October 15, 1993, the court of appeal denied Schulz the stay application and concluded that the evidence of Schulz's guilt had been adduced at trial foreclosed consideration of Schulz's constitutional claims.

At applicant's trial in February 2011, the state produced no physical or trace evidence connecting applicant to the killing and no witnesses other than those "freakish smelling fragrant worms" that trial counsel submitted are not reliable to continue this fishing campaign of a miscarriage of justice as such that it relies heavily on a poor quality of bail such as Marcus Wright. And on September 12, 2012 the court of appeal denied applicant's appeal in a unpublished opinion. The court of appeal also denied applicant's petition for rehearing on October 19, 2012.

NOTE: In our Society of Social equality there is concern about the injustice that results in the conviction of an innocent person has long been the core of our cultured criminal justice system. That noted concern is reflected, for example, in the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free". In re Winship, 397 U.S. 358, 392, 90 S.Ct. 1068, 1077, 25 L.Ed. 308 (1970) (Harlan J. Concurring). See T. Starkie, Evidence 756 (1824) ("The Maxim of law is ... that it is better that Ninety nine ----- offenders should escape, than that one innocent man should be condemned") See generally Newman Beyond "Reasonable Doubt", 68 N.Y.U. Rev. 979, 980-781 (1993)

NOTE ALSO: Trial Counsel Submitted to the people of the court that applicant's case is "Beyond" reasonable doubt tr. p. 268 line 13.

In Schulp v Delo the court explicitly tied the Miscarriage of Justice exception of Schulp's innocence and held that the standard of Murray v. Carrier which requires applicant to show that a 'constitutional violation has probably resulted in the conviction of one who is 'actually innocent', Id. at 496, 106 S.Ct. at 2649 - rather than the more stringent Sawyer standard.... True indeed in appropriate cases the principles of comity and finality that inform the concepts of cause and prejudice "must yield to the imperative of correcting a fundamentally unjust incarceration" quoting Engle v. Isaac see also Smith v. Murray.

In applicant's case the court should explicitly tie the meetings of the Merits required by Sawyer v. Whaley or the Miscarriage of Justice exception to applicant's case due to the facts that trial failed to fully disclose exculpatory evidence, trial counsel already knew before hand that the state's case was nothing more than a fishing expedition for those who suffer from mental retardation and also due to the fact that the trial court allowed the jury to convict on evidence that's not in the indictment tr. p. 268 lines 10-18. ... Indeed it is a paradigmatic abuse of discretion for a court to base its judgement on an erroneous view of the law, Cochran v. State. See Cochran v. State, where counsel was ineffective in failing to investigate a possible possible defense. In People v. Butterfield, trial counsel was ineffective in a murder case for failing

to prepare and in spite of short term appointments, made no written motions for continuances and, made no pretrial motions. If attorney does not investigate clearly relevant laws then he/she objectively has failed to provide effective assistance State v Ross, 851 F.2d 236 (1997). In Cobb v State, trial counsel was ineffective in failing to file pretrial motions to suppress evidence.

The essence of an ineffective assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and ~~prosecution~~ prosecution that trial was ~~rendered~~ nugatory and the verdict suspect.

E.g. Gideon v Wainwright

CONCLUSION

The due process clause of the Fourteenth Amendment provides that "no state" shall "deprive any person of life, liberty, or property, without due process of law". Applicant's Sixth Amendment right to have compulsory process of effective assistance of counsel for his defense was dismantled and the deconstruction acted as the crucible that ultimately decided the fate of the rest of applicant's life. As such applicant is entitled to the affirmed & acquitted to default judgment.

SUPREME R. ACKBAR (MIAHX)

Supreme R. Ackbar

L.C.I,

990 Wisacky Hwy

Bishopville S.C. 29010

2013 FEB -6 PM 3:53

January 25, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post conviction Relief From Spartanburg County
J. Durham Cole, Circuit Court Judge

Supreme R. Ackbar

Applicant

✓

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar, hereby affirms by his signature affixed to this document, that he has, this 25th day of January 2013, properly served the attorney for the respondent with a true copy of his third additional but first MEMORANDUM IN SUPPORT OF AMENDED APPLICATION FOR POST CONVICTION RELIEF FROM ENTRY OF DEFAULT JUDGEMENT, by depositing same in the U.S. Mail, through the mailroom at Lee, Corr. Inst. first class, postage paid, and address to the following:

Office of the Attorney General

Post Office Box 11549

Columbia, S.C. 29211

Applicant further affirms by his signature affixed to this document that he has served properly
1 of 2

2013 FEB -6 PM 3:53

the office of the Attorney General at P.O. Box 11549 Columbia S.C. 29211 with a notice of motion summons

* complaint and notice of motion and motion. 2012-02.

SURREME R. ACKBAR

Supreme R. Ackbar

L.C.I

990 Wilsack Hwy

Bishopville S.C. 29010

2013 FEB -6 PM 3:53
U.S. DISTRICT COURT
COLUMBIA, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Supreme Raheem Ackbar #275886

Plaintiff(s),

-vs-

South Carolina State Of,
Defendant(s).

IN THE COURT OF COMMON PLEAS
7th JUDICIAL CIRCUIT
CASE NO.: 2012CP4204987
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER

☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☐ Post-Conviction Relief (PCR)/habeas case
☐ SVP case
☐ Minor Name Change

- ☐ Adoption
☐ Custody and/or Visitation
☐ Other: Post Convict Rel 500

- ☐ Juvenile
☐ Abuse and Neglect

It appears Supreme Raheem Ackbar, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other: .

Therefore, it is ordered that **John Rucker**, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
February 15, 2013

M. Hope Blackley
☐ Circuit Judge ☒ Clerk of Court
Gail Moffitt, Asst. Clerk

Plaintiff Attorney:

John Rucker	
Attorney at Law	
522 North Church St.	
Greenville, S. C. 29601 (864) 271-9925	

Defendant Attorney:

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB 15 PM 3:32
M. HOPE BLACKLEY



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

January 18, 2013

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, South Carolina 29304-3483

RE: Eugene Rhinehart v. State
2012-CP-42-5340
Christopher Brough

Christina Hudson v. State
2012-CP-42-5133
Leah Moody

Mark Wingo v. State
2012-CP-42-5097
John Rucker

Addie Thilavanh v. State
2012-CP-42-4713
Christopher Brough

David C. Carson v. State
2012-CP-42-4880
Leah Moody

Jeffrey Eugene Bailey v. State
2012-CP-42-5273
John Rucker

Wille Anthony Stevens v. State
2012-CP-42-5155
Christopher Brough

Yolande D. Davis v. State
2012-CP-42-1632
Leah Moody

Supreme R. Ackbar aka Ronald Gary v. State
2012-CP-42-4987
John Rucker

Patrick Antoine Smith v. State
2012-CP-42-5031
Christopher Brough

Dear Ms. Blackley:

The above-referenced individuals have filed Applications for Post-Conviction Relief (PCR) in the Circuit Court and need to have attorneys appointed to represent them. If you will appoint attorneys and let me know their names, I will send each of them a copy of the applicable file.

Applicant Name

Eugene Rhinehart
Jeffrey Eugene Bailey
Willie Anthony Stevens
Christina Hudson
Mark Wingo
Yolande D. Davis

Attorney Listed on PCR Application

James Check, Matthew Shealy
Bill Lawson, Bill McGuire, Clay Allen
Michael Brown, James Check
Robert Hall
No attorney listed
William Bean

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

The Honorable M. Hope Blackley
January 18, 2013
Page 2

Applicant Name

Addie Thilavanh
Supreme Raheem Ackbar
David C. Carson
Patrick Antoine Smith

Attorney Listed on PCR Application

Richard H. Whelchel, Robert M. Dudek
J. Roger Poole, Kathrine H. Hudgins
Andrew J. Johnston, Elizabeth Franklin-Best
Robert B. Hall, James A. Cheek

If you have any questions with regard to this matter, please let me know.

Very truly yours,



Anne A. Mueller, Legal Assistant for
Suzanne H. White, Assistant Attorney General

/aam

cc: The Honorable Roger L. Couch, Seventh Circuit Administrative Judge

FILED
2013 JAN 24 AM 9:22
JANUARY 24 2013
M. HOPE BLACKLEY

April 7, 2013

Supreme R. Ackbar 275886

S.M.V. South # 120

L.C.I

990 W. Sacky Hwy

Bishopville S.C. 29610

John Rucker

Attorney at Law

522 North Church St.

Greenville, S.C. 29601

RE: Ackbar V State 2012-CF-42-4987

Dear Mr. Rucker

As I compose this letter I respectfully hope that you are in good health and spirits. Mr. Rucker are you familiar with Naeve V. People of State of Illinois, Supra, 260 U.S. at 264, 79 S.Ct. at 1177. Here the Court held that a conviction must fall under the 14th amend. when the Prosecution "although not soliciting false evidence allows it to go uncorrected when it appears". In my case Mr. Rucker the respondent suppressed favorable evidence (perjured testimony) to me that could have reasonably affected the outcome of the trial. This suppression of favorable evidence by the respondent is a 5th and 14th amend. constitutional violation according to Brady V Maryland, 373 U.S. 83, 83 S.Ct. 1194 10 L. Ed. 2d 215 (1963)

As we know Mr. Rucker the state's business is to try the case not the man. The respondent's obligation is not to convict, but to see that, so far as possible, the truth emerges. This is also the ultimate statement of its responsibility to provide a fair trial under due process of the 14th amend.

In Giles V State of Maryland, the Prosecution had been guilty of deliberately suppressing the use of perjured testimony. In my case Mr. Rucker the Prosecution should be guilty of deliberately suppressing the knowing use of perjured testimony with the assistance of trial counsel clearly involved in a scheme to suborn the perjured testimony of Shaquille Kelly, Octavious Burnside, Danny Burnside Jr, Lorn Williams, and Marcus Wright.

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SHARON J. JONES
2013 APR 23 AM 8:44
H. HOFER
REKLEY

Accordingly Mr. Rucker, "Rule 613, Prior Statements of Witnesses it unequivocally states that it is mandatory that a witness be permitted to admit, deny, or explain a prior inconsistent statement under rule providing that extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of substance of the statement, the time and place it was allegedly made, and the persons to whom it was made and given the opportunity to explain or deny the statement" Witnesses Key 388 (2.1)

Mr. Rucker after meticulously reviewing U.S. v. Van Metre 150 F.3d 331 (4th Cir. 1998) I unearthed that Van Metre confessed to Freehling that he was guilty of the rape of Yohe and the murder of Blake. However before each statement, Van Metre was again read his Miranda rights and he waived them each time.

In my case Mr. Rucker if you were to review Spartanburg Investigative report 00127 paragraph 5 you will see that Marcus Wright was given Miranda from a pre-interrogation waiver form and he signed and gave a statement that he had no knowledge of the homicide just as Van Metre did when first questioned by Keltula and Corporal Lester Freehling.

After reading Wright's statement investigator Lorin Williams told Wright of all the evidence and witnesses that they had in the case. Wright then asked if he could give another statement.

Unlike Freehling who read Van Metre his Miranda rights again before Van Metre gave a self incriminating statement, "Lorin Williams failed to give or read Marcus Wright his Miranda rights before he gave a self incriminating statement." See Withrow v Williams, 433 U.S. 356, 1977

Mr. Rucker as we know, the Appellate Court will reverse a conviction if the jury verdict could reasonably have been affected by the prosecutor's improper comment and the evidence against the defendant is not overwhelming. It's plain and obvious after you review all the Memorandums enclosed that my app'te appellate counsel Kathrine Hudgins was ineffective in failing to raise and obvious reversible error. Rule 8.4 (d) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. See Rule 8.4 (e) At current moment Mr. Rucker I respectfully assure by saying good day and could you please be courteous as to provide me with the phone recordings that trial counsel suppressed.

1-3, 21, 22. Thank you. Also Mr. Rucker I did file a Motion to alter or amend judgment pursuant to rules 55(c) 59(e) and 60(b)(3). I forwarded the respondent a copy along with a SUMMONS, Notice of Motion and Motion, Affidavit of Service and they have yet to respond,

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KIDWELL COUNTY
2017 APR 23 AM 9:46
MOORE BRADLEY

366 I would love to forward you a copy of the aforesaid Material but at the moment I'm unable to do so because the Material is locked up in ~~proper~~ Property control sealed in my assigned bag,

Supreme L. Adkins

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CLERK OF COURT
SPARTANBURG COUNTY
2013 APR 23 AM 8:44
M. HOPE BLACKLEY

April
March 8, 2013

367

DM

John Rucker
Attorney at Law
522 North church st.
Greenville, S.C. 29601

RE: Supreme R. Ackbar V. State of S.C.
C.A. No: 2012-CP-42-0987

Dear Mr. Rucker:

The Court has appointed you as My Attorney. At this time I must subject you to mistrust due to the fact of Previous Court appointed Attorney's.

PLEASE understand my position as a wrongfully convicted inmate who's processibility was once obscured by detrimental turbalance of confusion.

As the appointed client I will submit the facts of this case to you as I see it and pray that you are receptive to the exhibiting Perception.

Mr. Rucker if we are to succeed in our endeavor we must be alike and see alike by becoming alike in the harmony of peace in our war against the state.

I've recently completed a meticulous examination of Jones v Barnes 103 S.Ct. 3308 (1983) and I vigorously pray that your heart doesn't lack the warmth of humane decency as My Previous attorney's.

It is now noted Mr. Rucker that you are allowed to subpoena the witnesses request that you subpoena the following witnesses, "Shaquille Kelly, Octavious Downey Burnside Jr., Marcus Wright, Lorin Williams and Dr. Wren.

PLEASE find enclosed four Memorandum's in support of My Post conviction. Three are already filed for the record and the other one I've submitted to be filed.

Mr. Rucker I'm looking forward to hearing from you. Thank you

Supreme R. Ackbar

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SPARTANBURG COUNTY
2013 APR 23 AM 8:44
M. HOPE BLACKLEY

April 9, 2013

Supreme R. Ackbar

L. C. I

990 W. Sacky Hwy

Bishopville S.C. 29010

John Rucker

Attorney At Law

522 North Church St.

Greenville S.C. 29601

RE: Ackbar v State 2012-CP-42-4987

Dear Mr. Rucker

As I respectfully compose this letter, I sincerely hope that all is well with your person. It is written Mr. Rucker that in either event, denial of cross-examination concerning a witness bias may deprive the defense of its best opportunity to expose genuine flaws in the prosecution's case - flaws that the cold record will not reveal to an appellate court. Delaware v Van Arsdall, 106 S.Ct. 1431 (1986)

I bring to your attention the submission of trial counsel. "Some witnesses may have reasons for testifying the way that they will do so" Tr. P. 184 Lines 14-16.

In the aforementioned case the trial court improperly restricted defense counsel's cross-examination designed to show bias on the part of a prosecution witness. This error violated Arsdall's confrontation rights under the 6th and 14th Amendments to the United States Constitution. Such a violation required "automatic reversal." This case was vacated and remanded.

In our case Mr. Rucker at Tr. P. 184 Lines 7-10 the trial court can clearly be seen violating our 6th and 14th Amendments of the United States Constitution and the corresponding provisions of South Carolina. The trial court prohibited trial counsel from engaging in appropriate cross-examinations to which unequivocally showed a prototypical form of bias on the part of the witness. The trial court hindered trial counsel from exposing to the jury facts from which the jurors could appropriately draw a inference relating to the reliability of the witness.

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SPRINGBURG COURT
2013 APR 23 AM 10:44
PHONE BLACKLEY

See; objections, Your Honor. We don't know whether
the defendant was in a truck outside or what not,
simply -- overruled.

Here Mr. Rucker the trial court prohibited the inquiry into the possibility that trial counsel was about to present reliable evidence to discredit one of the states key witnesses.

I stand in good faith in saying that a reasonable jury might have received a significantly different impression of Bouside's credibility had trial counsel been permitted to pursue his proposed objection. "Considering that trial counsel submitted that the evidence and witnesses presented in our case is not enough to hold us for this tragic murder" tr. p. 268 lines 16-21.

What cogitating upon this line^{of} ponderance I'm compel to conclude that trial counsel was denied the opportunity to cast doubt on the testimony of the adverse witness by the trial court.

Mr. Rucker this error requires "automatic reversal" and I reiterate that our assigned appellate counsel was ineffective in failing to raise a obvious reversible error.

Regarding subject matter Mr. Rucker; What do you think? I look forward to hearing from you.

Suzanne R. Ashburn.

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SPARTANBURG COUNTY
2013 APR 23 AM 8:46
M. HOPE BLACKLEY

April 16, 2013

Suzanne R. Ackbar

L.C.I.,

996 Wisacky Hwy

Bishopville S.C. 29610

M HOPE BLACKLEY

Clerk of Court Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

C.A. No: 2012-CP-42-4957

Dear Ms. Blackley,

PLEASE find enclosed for your filing in the Court of Common Pleas the following: (4) Four letters addressed to my appointed attorney John Rucker, Affidavit of Default Judgment undated, Another Memorandum in support of Amend Application for Post Conviction Relief from default Judgment. PLEASE also find a certificate of service showing compliance with the rules of service as mandated by SCRPC.

PLEASE Note that I am the applicant in the abovementioned case and that I do not have available to pay the cost of filing and service in the present matter. I hereby request that the enclosed material be filed and service made without cost. I further signature affixed to this letter that the contents of this letter are true.

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SPARTANBURG COUNTY
2013 APR 23 AM 8:44
M. HOPE BLACKLEY

Will you please be so kind and courteous as to inform me by letter when the filing of the enclosed material has been completed?

Thank you for your assistance in this matter.

Respectfully Submitted
Suzanne R. Ackbar

April 16, 2013

Supreme R. Ackbar

L.C.I

990 Wilsacky Hwy.

Bishopville S.C. 29010

John Rucker

Attorney at Law

532 North Street

Greenville S.C. 29601

RE: Ackbar v State do12-CP-42-4987

Dear Mr. Rucker

Greetings and may Peace be upon thee.

After you review the enclosed material please see United States v. Morrison, 101 S.Ct. 645. There the court stated, in right to counsel cases, dismissal of an indictment is inappropriate "absent demonstrable prejudice, or substantial threat thereof," *Id.*, at 365, 101 S.Ct. 648.

Based upon the factual evidence embodied in the provided material in which I've provided you and submitted for the record I have faith, we have strong merits that supports the required certiorari of Morrison and I pray that you file a motion to dismiss the indictment as such that respondent failed to produce the evidence of the offense charged State v. Chisolm 584 S.E.2d 401 Criminal Law Key 753.2(3.1). I look forward to your responds.

At this time I will depart as I began -- "Peace be upon thee"

Sincerely

Supreme R. Ackbar

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SPARTANBURG COUNTY
2013 APR 23 AM 8:44
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

SUPREME R. ACKBAR (ALLAHX)

S.C.D.C. 275886

Applicant

VS.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No: 2012-CP-42-4987

MEMORANDUM INSUPPORT OF

AMEND APPLICATION FOR

POST CONVICTION RELIEF FROM

DEFAULT JUDGMENT

On February 9, 2011 applicant was convicted of murder and sentence to confinement for life without parole. The sentence however, was invalid. The state vouched for the credibility of their witnesses while the trial court lacked subject matter jurisdiction.

Appellate counsel was ineffective in failing to raise meritorious ineffective assistance claims against trial counsel.

These failures throughout applicant's case resulted in the state of South Carolina (the state) pursuing, and applicant receiving, and invalid sentence. As such applicant is entitled to post conviction relief from default judgement.

PROCEDURAL HISTORY

In November of 2009 the Spartanburg County Grand Jury indicted applicant for Murder indictment # 2009-03-42-5943. On June 4, 2010 applicant appeared before chief Justice Judge Couch to relieve counsel and to request additional evidence. The Motion was granted as well as the request for additional evidence. In early January of 2011 applicant appeared before chief Justice Judge Couch a second time. The Motion was denied. On January 27, 2011 applicant appeared on a motion to relieve counsel the Honorable J. Derham Cole. The Motion was denied. On Feb. 7, 2011 applicant proceeded to jury trial with the very same J. Derham Cole presiding. The Jury returned a verdict of guilty on Feb. 9, 2011 and Judge Cole sentenced applicant to life imprisonment without parole. A timely notice of intent to appeal was served on February 17, 2011. The unpublished opinion appeal was denied on September 12, 2012.

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SPARTANBURG COUNTY
2012 APR 23 AM 08:46
M. HOPE BLACKBERRY

Applicant filed a petition for rehearing and the petition was denied on October 17, 2012. Applicant timely apply's for post conviction relief this day of ~~March~~ ^{April} 8, 2013, on the grounds that Appellate Counsel was constitutionally ineffective in failing to raise a meritorious ineffective assistance trial counsel claim such as the following:

STATEMENT OF FACT

N. Appellate Counsel deprived applicant of the right to effective assistance of Appellate Counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by failing to assert a subject matter jurisdiction in that trial counsel failed to do so.

On January 27, 2011 applicant appeared before the subverted "Hanging High" trial court on a motion to relieve trial counsel due to the fact that trial counsel was not functioning in accordance with the effective safeguarded assistance standards to which is provided by our United States and South Carolina Constitution U.S.C. 3-6.

While there trial counsel's defaulted litigation of ineffectiveness was brilliantly highlighted as he failed to show contemporaneous aversion towards the treacherous "Hanging High" trial court for engaging in a colloquy with applicant while knowing that without a warrant, indictment or a valid waiver thereof deprived the nefarious "Hanging" trial court of subject matter jurisdiction U.S.C. 10-14.

ARGUMENT

Insofar it is a bedrock axiomatic, universally recognized concept, precept, and principle of the state of South Carolina, that a circuit court acquires subject matter jurisdiction by indictment or a valid waiver thereof State v. Johnston, 333 S.C. 459, 510 S.E. 2d 311.

In applicant's case the incongruous "Lynch Hanging" trial court malevolently violated the above mention law of our United States and South Carolina Constitution in that the "Hanging High"

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SPARTANBURG COUNTY
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M. HOPE BLANKLEY

trial court failed to remain absolute impartial while in the performance of his judicial duties. See indictment # 2007-63-42-5943

The Applicant, Sufrene R. Ackins, did in Spartanburg County on or about September 20, 2007, feloniously, willfully, and with malice aforethought, kill one Ricky Kelly Jr. by stabbing and/or cutting the victim numerous times with a "large fixed blade hunting knife" and the victim died as a proximate result thereof, all in violation of Section 16-3-000, 0020, Code of Laws of South Carolina (1976, as amended), see tr. P. 53 lines 21-25 - tr. P. 54 lines 1-2 where the mentally unbalanced "Hanging" trial court suffered a spell of illiteracy as such that the gurgling trial court stumble in the reading of a indictment.

The state alleges that that offense occurred back on or about September the 20th of 2007. And they allege by way of this indictment that the applicant did willfully and with malice aforethought kill one Ricky Kelly Jr. by stabbing him with a "knife" and that he died as a proximate result of wounds wounds received during that stabbing.

The indictment that the morally bad ("Willy Lynch Hanging") trial court capitulated to the jury was invalid therefore the trial court committed fraud upon the court and there is no limitation when a party seeks to set aside a judgement due to fraud upon the judgement key 456 (1)

See South Carolina Code (1976) Section 22-5-320, to which provides a right to a preliminary hearing upon proper demand. However, and accused can waive this right in several ways.

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SPARTANBURG COUNTY
2018 APR 23 AM 8:46
M. HOPE BLACKLEY

- (1) Failure to request a hearing
- (2) Failure to comply with statutory requirement for the request State v Wheeler, 259 S.C. 571, 193 S.E. 2d 515 (1992)
Blanchard v. State, 345 S.C. 385, 164 S.E. 2d 184 (1965);
- (3) Failure to appear at least through an attorney at the scheduled hearing State v Roberts 79 S.C. 542, 60 S.E. 442 (1906);
- (4) Plea Negotiation and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty Plea. ~~Bennette v State~~ Bennette v State, 3.C. 282 S.E. 2d 597 (1981)

See Ross v Kemp of the S.E. 2d 244 200 Ga at 315 393, "where the evidence of ineffectiveness was so pervasive that a Particularized inquiry into the prejudice was deemed unguided speculation."

In applicant's case as we continue we will see evidence of ineffectiveness that will be so pervasive that a Particularized inquiry should also be deemed unguided speculation, so applicant will now ~~abandon~~ ~~from this argument~~ ~~hault~~ this argument.

O. Applicant's right to due process of as guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment to the United States Constitution and South Carolina was denied as the result of the effective misconduct of Appellate Counsel in that Appellate Counsel raised a meritorious ineffective assistance fraud, claim against trial counsel.

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 M. HOPKINS BECKLEY

On February 7, 2011 the Perfidious trial court engaged in the production that was a knowingly presentation of false testimony, flagrantly abusive prosecutorial conduct by way of false testimony, with the involvement of trial counsel in a scheme to suborn perjury. And the prosecution was the "Yellow belly turncoat" that submitted that they did tr. p. 49 lines 4, 7, 8.

"WE DID" have an in chambers conference, "WE" have sort of whittled down how we're going to present this case base on the conference.

Note: The involvement of an attorney, as an officer of the court in a scheme to suborn perjury would certainly be considered fraud on the court. Great Coastal Express, Inc. v. INT'L Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir 1982) See tr. p. 65 lines 12-16 and tr. p. 208 lines 16-21

There will be certain particular witnesses who will testify, and I'll submit to you there will be inconsistencies. I'll submit to you that some witnesses may have a reason for testifying the way they will do so. But the evidence that's been brought in yesterday and the day before and shown to you. I submit to you, is not enough to hold appl. cant guilty of murder. Not when you have the testimony of these witnesses and not when you have the state bringing a star witness in like Marcus Wright. Thank you

ARGUMENT

See United States v. Olano — U.S. —, 113 S.Ct. 1776, 123 L.Ed.2d 508 (1993). Olano makes error analysis should apply when the right in question has been forfeited; that is, when there is no timely assertion of the right. Id. at —, 113 S.Ct. at 1777.

Plain error under Fed. R. Crim. Proc. 53 (b) requires reversal when: (1) there has been an error, (2) the error is plain, and (3) the plain error affected substantial rights, which in most cases means that "the error must have been prejudicial. It must have affected the outcome of the District Court proceedings". Id. at —, 113 S.Ct. at 1777-78.

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Applicant states the claim that the error transcribed in the above statement of fact should be plain and obvious.

The courts have noted, because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish the prejudice, and the perpetrator of this fraud upon the court should not be allowed to dispute the effectiveness of the fraud after the fact.

Thus the hallmark of effective appellate advocacy is winnowing out weaker arguments and focusing on "those more likely to prevail." JAMES V. BARNES 463 U.S. 745 751-752, 103 S.Ct. 3308, 3312-3313 77 L.Ed.2d 989 (1983)

STATEMENT OF FACT

P. Appellate Counsel deprived applicant of the right to effective assistance of Appellate Counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by failing to raise a meritorious ineffective assistance claim against trial counsel in that trial counsel failed to object with contemporaneous objection to the prosecution's In-court Identification Procedure.

On the first day of trial to which was February 7, 2011 the various Prosecution assailed by soliciting testimony that lead to applicant being identified by In-court identification with no objection from trial counsel tr.P. 80 lines, 19, 20, tr.P. 82 lines, 14, 15.

Q. Okay And who is Supreme?

A. Him right there,

Q. Don't, Don't point any more. okay

A. All right.

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ARGUMENT

A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification, Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1194 (1967). Single person show-ups are disfavored because

they are suggestive by their nature, See Kyles V. Whitley, 514 U.S. 419, 131 L. Ed. 490 115 S.Ct. 1555 (1995)

In Kyles V. Whitley several witnesses gave a description of the Gunman.
(three of whom had previously picked Kyles from the photo line up)

In applicant's case none of the witnesses gave a description of applicant nor did anyone pick applicant out in any photo line up. The only time applicant was pointed out was by in-court identification.

In Kyles V. Whitley because the state withheld evidence, its case was much stronger and the defense suffered infirmities, than the full facts would have suggested.

In applicant's case trial counsel withheld evidence and assisted in strengthening the states case, (while disarming the actual innocence defense case) than the full facts would have suggested.

In determining the reliability of an identification, the following factors are considered: 1) the opportunity of the witness to view the criminal(s) at the time of the crime; 2) the witness's degree of attention; 3) the accuracy of the witness's prior description; 4) the level of certainty demonstrated by the witness at the confrontation; and 5) the amount of time between the crime and the confrontation. See 409 U.S. at 199, 93 S.Ct. 375; State V. Stewart, 275 S.C. 447, 272 S.E. 2d 628 (1980). After the trial determines the witness's identification is reliable, the witness is permitted to testify before the jury. See State V. Moore 513 S.E. 2d 626 (S.C. App. 1994).

In State V. Moore in determining that Davis's identification was admissible the court stated: "The court's finding is that there is evidence — I won't say reliable, but I think that's a matter for the jury — that she can identify them."

The court did not evaluate the reliability of Davis's identification in light of the above factors and did not make a determination that her identification was reliable. This was error.

In applicant's case the court did not evaluate the reliability of Sharquille Kelly's identification in light of the above factors and did not make a determination that his identification was reliable. This was error.

"Reliability is the linchpin in determining the admissibility of identification testimony..." Manson v. Brathwaite, 432 U.S. 98, 98 S.Ct. 2243, 53 L.Ed. 2d 140 (1977). In State v. Moore the court clearly did not exercise its discretion but instead erroneously decided reliability was a jury issue. Although the admission of evidence at trial is within the court's discretion, the failure to exercise that discretion is an abuse of discretion. See State v. Smith, 276 S.C. 494, 260 S.E. 2d 200 (1981); Samuels v. Mitchell, 324 S.C. 105, 495 S.E. 2d 213 (Ct. App. 1997). In State v. Moore, the failure of the trial court to undertake the analysis articulated by the United States Supreme Court for use when there has been a suggestive identification procedure was an abuse of discretion.

The error was not harmless because the defense presented alibi witnesses.

In applicant's case the error should not be harmless because trial counsel submitted that the evidence and the witnesses was not enough to applicant guilty of murder. Tr. p. 268 lines 11-21

Note: Where conviction would have been unlikely without the identification testimony or there is a factual basis for doubting its veracity, a defendant is entitled to a jury instruction on misidentification, if requested.

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United States V Holley, 502 F.2d 273 (4th c.r. 1974)

See Appeal / Post-conviction § 335. Ineffective assistance of counsel.

"A defendant can raise the claim of ineffective assistance of counsel in one of three ways: (1) in a motion for New trial base on anything other than newly discovered evidence; (2) "On direct appeal if and only if it conclusively appears from the record that his counsel did not provide effective assistance;" or (3) by a collateral challenge pursuant to 28 U.S.C. § 2255" United States V. Martinez, 136 F.3d 972, 979-80 (4th c.r.)

Appellate counsel's slothfully detected ineffectiveness should be plain and obvious in that appellate counsel failed to raise a more prevailing hallmark issue because trial counsel was clearly ineffective.

STATEMENT OF FACT

9. Applicant's right to due Process of law as guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment to the United States Constitution and South Carolina was denied as the result of the effective misconduct of Appellate Counsel in that Appellate Counsel failed to raise a meritorious ineffective assistance trial counsel claim in that trial counsel failed to object with contemporaneous repugnance to the Prosecution for the credibility of its own witnesses.

While during the fraudulent trial trial counsel submitted that there was no evidence was at the crime seen tr.p. 184 lines 7-10. From this over powered submission we can conclusively conclude that the states witness lacked the alacrity of truthful sufficiency. However, with the effective assistance of trial counsel and the dereliction of Appellate counsel the Prosecution was allowed to vouch for the credibility of their own fabricating witness uncontested. See tr.p.

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258 lines 18, 19 tr. p. 259 line 6 tr. p. 260 lines 6-9, 16-21 tr. p. 261 lines 3-6, 15-16 tr. p. 262 lines 9-13

"WE" know that the applicant had arrived there because Octavious gave him a ride.

Shaq stops to visit with the applicant in the truck.

"WE" know he was sitting in that car with weapons at his disposal, and gloves and it's as if he was lying in wait waiting to see if the opportunity presented itself to kill Ricky Kelly.

He was prepared for the opportunity to present itself. He saw Marcus roll up. And Marcus unfortunately unknowingly became his right away, because the applicant jumped in Marcus car and told him to leave. And Marcus was already leaving. Then the applicant told him where to go, and he jumps out and leaves.

Yeah, there were some drops of blood on the passenger side suggesting transfer from when somebody's getting into that side. There was no blood on the driver's side. It corroborates what Marcus tells you.

"I submit to you he told Marcus to go get the bag and get rid of it and Marcus did."

Somebody was angry at him for some reason. "WE" know that somebody is applicant. "WE" don't need to know why. "WE" know he got on that and killed a young 19-year old boy. Please do your duty, please find him guilty. Thank you.

Now see a recapitulation of trial counsel's submission tr. p. 268 lines 1-10

The evidence that's been brought in yesterday and the day before and shown to you, I submit to you, is not enough to hold applicant guilty of murder. Not when you have the testimony of these witnesses and not when you have the state bringing a star witness in like Marcus Wright. Thank you.

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Note: An act of Perjury or concealment of a document coupled with an intentional scheme to defraud the courts justifies the setting aside of a judgement due to extrinsic fraud Ray v Ray (S.C. 2007) 374 S.C. 14, 647 S.E. 2d 237

ARGUMENT

It is error for the government to bolster or vouch for its own witnesses. United States v. Samad, 754 F.2d 1091 1100 (4th Cir, 1984)

"Vouching generally occurs when the Prosecutor's action are such that a jury could reasonably believe that the Prosecutor was indicating a personal belief in the credibility of the witness. Consequently, the Prosecutor may not, among other things, make explicit personal assurances that a witness is trustworthy or implicitly bolster the witness by indicating that information not presented to the jury supports the testimony." United States v. Lewis 10 F.3d 1086, 1089 (4th Cir 1993) (Citations omitted)

Note: Failure to sustain burden

C.J.S. Evidence § 122

C.C.A.4 (S.C.) 1933 where facts equally support inconsistent inferences, Judgment must be against party having burden of proof.

With the prosecution indicating a personal belief in the credibility of the witnesses coupled with the personal belief enclosed in the indictment of the indictment (2009-03-42-5543) that applicant "did" do it, implicitly first hand knowledge as a witness to the crime thus automatically shifting the burden of proof to applicant thus the state failed to sustain the burden of proof.

The Fourth circuit applies the chorman "two prong test [chorman, 910 F.2d 102, 103 (4th cir. 1990)] for determining whether a prosecutor's misconduct in closing argument so infected the trial with unfairness as to make the resulting conviction a denial of due process". United States v. Wilson, 135 F.3d 291 (4th cir.) (internal quotation and citation omitted), cert. denied, 523 U.S. 1153 (1998). Specifically, to establish reversible error, "a applicant must show (1) that the prosecutor's were improper and (2) that they affected the applicant's substantial rights as to deprive him of a fair trial." *Id.*, citing United States v. Adam, 710 F.3d 176, 780 (4th cir. 1995); United States v. Francisco, 35 F.3d 116, 120 (4th cir. 1994); United States v. Mitchell, 1 F.3d 235, 240 (4th cir. 1993) and United States v. Brockington 849 F.3d 813, 875 (4th cir. 1988)

In Wilson, the defendant was charged with conducting a continuing Criminal Enterprise (CCE). However, Defendant "was not on trial for Murder, and the evidence was insufficient to permit the inference that he had committed Murder. Nevertheless the prosecutor, in the an eleventh hour surprise at summation, told the jury that [Defendant] had murdered a man, and that improper argument prejudiced [Defendant] to the point of denying him a fair trial." *Id.* at 215 (vacating convictions and remanding for new trial.)

In applicant's case, applicant was never given a warrant for Murder only armed robbery. However, applicant "was not on trial for armed robbery but Murder, and the evidence was insufficient to permit the inference that applicant had committed Murder. Nevertheless the prosecution in the same ~~eleventh~~ ^{eleventh} hour told the jury that [Applicant] had murdered a man, by vouching for the credibility of lying witnesses, and the improper argument prejudiced [Applicant] to the point of denying applicant a fair trial.

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In evaluating whether a prosecutor's remarks were sufficiently prejudicial to warrant reversal, the Fourth Circuit has noted a number of relevant factors. Namely: (1) the degree to which the prosecutor's remarks

had a tendency to mislead the jury and to prejudice the applicant, (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the applicant; (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters; (5) whether the prosecutor's remarks were invited by improper conduct of defense counsel; and (6) whether curative instructions were given to the jury." United States v. Scheetz, 293 F.3d 115, 185-86 (4th Cir.) cert. denied, 123 S.Ct. 397 (2002), citing Wilson, 16135 F.3d at 2979. Accord United States v. Harrison, 716 F.2d 1050, 1052 (4th Cir. 1983)

Note: The Fourth Circuit has expressed much confidence in the ability of curative jury instruction to counter a prosecutor's improper conduct or remarks. See; Scheetz, 293 F.3d at 126; United States v. Verna, 113 F.3d 499, 504 (4th Cir. 1997); United States v. Looney, 107 F.3d 257, 262-63 (4th Cir. 1997); Morsley, 64 F.3d at 913; and United States v. Massuet, 851 F.2d 111, 114 (4th Cir. 1988)

Note also: A district court's factual findings are deferentially reviewed on appeal for clear error Gray, 137 F.3d at 770; United States v. DeFau, 932 F.2d 324, 327 (4th Cir. 1991)

This error should be plain and obvious pursuant to Fed. R. Crim. Proc. 52(b). However, appellate counsel claimed to have read applicant's trial transcript and did not see any meritorious issues. See Final ANDERS BRIEF OF APPELLANT P. 11 (2). Applicant reiterated that an act of "perjury or concealment" of a document coupled with an intentional scheme to defraud the courts justifies the setting aside of a judgment due to extrinsic fraud Ray v. Ray (3.C. 2007) 374, 3.C. 79, 647 3.C. 2d 237

CONCLUSION

In the Peace of War Applicant prepared this Memorandum in support of Post Conviction Relief From

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Default Judgment pursuant to rule 60(b)(3) of the South Carolina Rules of Civil Procedure. And in the
 War of Peace Applicant shall depart knowing that Applicant is entitled to default Judgment,

S/ Supreme R. Ackbar

Supreme R. Ackbar

L.C.I.

990 Wisconsin Hwy

Bishopville S.C. 29010

April
~~March~~ 8, 2013

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 2013 APR 23 AM 8:44
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Supreme R. Ackbar (ALLAH A)

S.C.D.C.

Applicant

VS.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No: 2012-CP-42-4987

AFFIDAVIT OF DEFAULT

PERSONALLY APPEARING BEFORE ME, the undersigned, who being duly sworn did
State as follows:

1. That I am the Applicant in the above referenced action;
2. That pursuant to the South Carolina Rules of Civil Procedure, the Respondent, State of South Carolina, was served with the Summons and Complaint in this matter by mail through the Mailroom at Lee Corr. Inst. with postage paid;
3. That it has now been more than (90) days since the service of the Summons and Complaint, exclusive of the date of service, upon the Respondent and that no Answer or Notice of Appearance has been served upon me as required by the Summons in this action;
4. That the Respondent is not a member of the military service; and
5. That the Respondent is therefore in default in this action, subject to the terms of Rule 60(b)(3) of the South Carolina Rules of Civil Procedure

SIGNATURE PAGE TO FOLLOW

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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

SI Supreme R. Ackbar

SUPREME R. ACKBAR

APPLICANT PRO-SE LITIGANT

L.C.I

940 WISACKY HWY

Bishopville S.C. 29010

SWORN AND SUBSCRIBED BEFORE ME

This 8 day of April

Notary Public for South CarolinaMy Commission Expires

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
 J. Durham Cole, Circuit Court Judge

Supreme R. Ackbar

Applicant

Y

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar hereby affirms by his signature affixed to this document, that he has, this 17th day of April 2013, properly served the attorney (John Rucker) for the applicant with true copies of all memorandums in support of Amended Application for Post conviction Relief that are currently on file and/or requesting to be filed. Applicant also affirms by his signature affixed to this document that he has sent (4) four letters dated 4-7-13, 4-8-13, 4-10-13, 4-16-13 to the below attorney.

Office of John Rucker

Attorney at Law

522 North [REDACTED] Church Street
 Greenville S.C. 29601

S/ Supreme R. Ackbar
 Applicant

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
 J. Durham Cole, Circuit Court Judge

Supreme R. Ackbar

Applicant

Y

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar hereby affirms by his signature affixed to this document, that he has, this 17th day of April 2013, properly served the attorney (John Rucker) for the applicant with true copies of all memorandums in support of Amended Application for Post conviction Relief that are currently on file and/or requesting to be filed. Applicant also affirms by his signature affixed to this document that he has sent (4) four letters dated 4-7-13, 4-8-13, 4-10-13, 4-11-13 to the below attorney.

Office of John Rucker

Attorney at Law

532 North [REDACTED] Church Street
 Greenville S.C. 29601

S/ Supreme R. Ackbar
 Applicant

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 McHOPE BLACKLEY

May 2, 2013

DM

John Rucker

Attorney at Law

523 North Church St.

Greenville S.C. 29601

RE: Ackbar v State

C.A. No: 2012-CP-42-0787

Dear Mr. Rucker:

Greetings and May Peace be upon thee.

As we prepare this Scribe, I hope all is well with your Person as it is with mine. Let us begin by reviewing case # 0909053 Warrant # M-11626 Supplemental incident reports 00005 and 00006. When we review the aforesaid report 00005 we see officer C. Miller stating that he received information regarding a possible suspect. See Matheny v. State, 400 S.E.2d 25

In Matheny v. State, 400 S.E.2d 25 the court ruled that all the statements were voluntary and admissible because: (1) they occurred in non-custodial investigation prior to arrest to which Miranda has no application, and (2) the statements made after arrest were spontaneous and not in response to any police questioning.

See report 00006; Here, Mr. Kelly was in Police custody being questioned about a robbery without the advise of family, friends, or lawyer. He submits first that he didn't know anything about the robbery. After continued questioning Mr. Kelly "finally" admitted that he did have knowledge of the robbery and that he participated in the incident.

Note: This admission of guilt was in response to police questioning and the record clearly reveals that at no time was Mr. Kelly advised of his Miranda rights by the investigating officer nor does the record reflect a signed waiver form with Mr. Kelly's signature indicating that he was aware of his rights.

Reviewed in this light, the arrest, Mr. Rucker, both in design and in execution, was investigatory. The

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Detective embarked upon this expedition for evidence in the hope that something might turn up. The manner in which Mr. Kelly's arrest was effected gives the appearance of having been calculated to cause surprise, fright, and confusion. See Brown v. Illinois, 45 U.S. 2254

In Brown v. Illinois Petitioner was arrested without probable cause and without a warrant. He was given in full, the warnings prescribe by Miranda v. Arizona. Thereafter, while in custody, he made two inculpatory statements.

In this case the arrest warrant(s) for armed robbery was secured without probable cause and I was tried and convicted for murder without a warrant. Mr. Kelly was never given in full, the warning prescribed by Miranda v. Arizona. Thereafter, while in custody, Mr. Kelly made inculpatory statements. ... As stated in Brown v. Illinois everything about my arrest lies at the crossroads of the Fourth and Fifth Amendments.

In Brown v. Illinois the holding is that evidence obtained as a result of an illegal arrest in violation of the Fourth Amend. must be suppressed.

Mr. Rucker being that our person was improperly detain in violation of Miranda v. Arizona and due to lack of probable cause regarding warrant #M-116206 on 9-21-09, "All evidence obtained thereafter should be suppressed". S. Ke v. State, 448 S.E. 2d 560 (S.C. 1974)

I recapitulate, "trial counsel was ineffective in failing to file a retrial motion to suppress evidence ibbs v. state, 408 S.E. 223, ... This error should be plain and obvious.

As we entered this service so shall we depart... Peace be upon thee,

Supreme & Action

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M. MICHAEL BLAUNLEY

May 4, 2013

Supreme R. Ackbar

L.C.I.

490 Wiscaky Hwy

Bishopville S.C. 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

RE: Ackbar v. State

C.A. No: 2012-CP-42-4987

Dear Ms. Blackley

PLEASE find enclosed for you filing in the court of Common Pleas the following: A 2 of 2 Page letter address to my assigned attorney John Rucker. PLEASE also find a certificate of service showing compliance with the rules of service as mandated by SCRPC.

PLEASE also note that I am the applicant in the above mention case and that I do not have the funds available to pay the cost of filing and service in the present matter. I hereby affirm by my signature affixed to this letter that the contents of this letter are true and request that the enclosed material be filed and service made without cost.

Will you please be so kind and courteous as to inform me by letter when the filing of enclosed material has been completed?

Thank you for your assistance in this matter.

Supreme R. Ackbar

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SPARTANBURG COUNTY
2013 MAY -9 AM 11:12
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
J. Durham Cite, Circuit Court Judge

Supreme R. Ackbar

Applicant

V

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar hereby affirms by his signature affixed to this document, that he has this 6th day of May 2013 sent the undersigned attorney John Rucker a (2) two page letter dated 5-2-13 Postage paid through the Mail room at Lee Corr. Inst. at ■ the following address below.

Office of John Rucker
Attorney at Law
522 North church street
Greenville S.C. 29601

S/ Supreme R. Ackbar
Applicant

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M. RUCKER
ACKLEY

May 21, 2013

20120902-4987

SUPREME R. ACKBA

L.C.I.

990 Wiscoky Hwy

Bishopville S.C. 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

RE: Ackba v. State

C.A. No: 2012-CP-42-4987

2013 MAY 29 PM 3:35
M. HOPE BLACKLEY

Dear Ms. Blackley,

PLEASE find enclosed for your filing in the Court of Common Pleas the following; Agreement to Debit E.H. Cooper Account form 10-14, a letter. That is an exact copy of the letter in which I sent the appropriate counsel John Rucker on 5-17-13, certificate of service for showing compliance with the rules of Service mandated by SCRPC, and another letter addressed to you requesting additional information.

PLEASE also note that I am the defendant in the above mention case and that I do not have the funds available to pay the cost of filing and service in the present ~~matter~~ matter. I hereby respectfully request that the enclosed material be filed and service made without cost. I further affirm by my signature affixed to this letter that the contents of this letter are true.

Will you PLEASE be so kind and courteous as to inform me by letter when the filing of the enclosed material has been completed?

Sincerely,

Supreme R. Ackba

May 21, 2013

John Rucker

Attorney at Law

505 North Church St.

Greenville, S.C. 29601

RE: Ackbar V. State

C.A. No. 2012-CP-42-4987

2013 MAY 29 PM 3:35
M. HOPE BLACKLEY

Dear Mr. Rucker

Greetings and as always, May Peace be upon thee.

Did the trial court error in failing to relieve counsel? We shall see.

We prepare this brief to show that had trial counsel's performance not been deficient the outcome of our trial might have been different Strickland V. Washington. And but for appellate counsel's deficiency, we might have won our appeal. See U.S. V. Alarce, 430 F.3d 681, 689 (4th Cir. 2005) [appellate court reviews for plain error if defendant do object to misconduct.]

At tr. p. 10, lines 11, 12 we stated that we had pointed out several facts to trial counsel and that nothing had been done with those facts tr. p. 16, line 3. Our trial counsel was ineffective in failing to investigate and develop our version of facts unlike Gutis V. Snyder, 278 F.3d 282, 236 (3rd Cir. 2002). He was also ineffective failing to impeach the prosecution's eyewitnesses and for not properly arguing for admission of potentially favorable portions of police reports and voluntary statements unlike Lynn V. Wiggins, 443 F.3d 238, 250-53 (2d Cir. 2006).

After we reviewed McKaskle V. Wiggins, 465 U.S. 168 177 (1984) we discovered that the denial of the right to proceed pro-se is not subject to the harmless error analysis but requires reversal per se; see Fulminate, 499 U.S. at 310-11; see e.g. Wilson V. Walker, 304 F.3d 33, 37 (2d Cir. 2000).

This unearthing compelled us to review tr. p. 16, lines 4-13. Here we informed the trial court that we had no problem going to trial and that we wanted a trial. But we had a problem going to trial with trial counsel. Unlike U.S. V. Bush, 464 F.3d 263, 272 (4th Cir. 2005) we was not trying to delay or manipulate trial. We ■ didn't want trial counsel to assist in the hanging of us because we knew that if there was to be a hanging, "We wanted to hang ourselves." At tr. p. 17, lines 1-11 the court presented us with three choices and we undoubtedly stated to the court that we didn't want trial counsel's representation tr. p. 13, lines 3, 4, 17, 18. As we see at lines 21, 22 the trial court comment including, "we want have lawyer if we couldn't hire one" at tr. p. 19, lines 5, 8, 9 created the element of improper burden-shifting U.S. V. Petla, 439 F.3d 1149 1172-73 (9th Cir. 2006)... Our trial counsel's error in failing to object and move the court for

a direct verdict at Ex. P. 52, lines 20, 21 is clear and obvious. We support this fact with the fact that a prosecutor's opening argument are improper when they contained sufficiently questionable evidence that make it unreasonable to refer to such evidence U.S. v. Brockington, 349 F.2d 872, 875 (4th Cir. 1988). Via indictment # 09-68-42-5443 the introduced evidence is a large fixed blade hunting knife. At Ex. P. 61 lines 11-12, 62 line 1 the respondent stated that the evidence would show that we brutally killed him, cut his throat, cut his face, stabbed him in the chest. A clear review of Ex. P. 65, lines 16, 17, 18, 20-24 we readily see that the unanswered questionable evidence is a photograph, not a large fixed blade hunting knife. See U.S. v. Thomas, 114 F.3d 236 (D.C. Cir. 1997) (Prosecutor's opening argument improper because later failed to produce referenced evidence.) Our appellate counsel was ineffective in failing to raise a meritorious ineffective assistance trial counsel claim as such trial counsel failed to object to the prosecution's improper opening argument and she was ineffective in failing to file the motion to test the sufficiency of the evidence. Tolson v. Virginia 99 S.Ct. 2181. At this hour we request your effective assistance of counsel in the filing of the required motion to test the sufficiency of the evidence. See Ex. P. 368 lines 16-20; See also Shin Weig v. Union, 335 F.3d 117, 121 (2d Cir. 2003) (conviction reversed because prosecutor failed to correct government witness's false testimony and conviction substantially depended on that testimony.) See also U.S. v. Baker, 432 F.3d 1189, 1231 (11th Cir. 2005) (Plain error because prejudicial effect of hearsay testimony outweighed this evidence against defendant.) At Ex. P. 291 lines 8-24 our trial counsel was ineffective in failing to move the court to quash the indictment and/or to request request for a mistrial based on respondent's improper closing argument. Goodman v. Bertrando, 467 F.3d 1622, 1023-31 (7th Cir. 2006); See U.S. v. Conrad, 320 F.3d 851, 851 (2nd Cir. 2003) (conviction reversed because prosecutor's improper remarks during trial had cumulative effect that "substantially impaired the defendant's right to a fair trial," evidence against defendant was not overwhelming.)

Mr. Rucker based on the cumulative misconduct of the trial court, trial counsel, and respondent at our trial and appellate counsel on direct appeal, "the trial court did error in failing to relieve counsel", our case cite should read, "reversal rehearing denied, affirmed".

We do have a effective defense prepared and we have sufficient testimony and evidence to support our defense, we require all the photographs that was taken of the interior of the Ford-150, we also require the phone records of (847) 541-2200 and (847) 641-0585 for the day of 9-26-09 (4:00 P.M. - 4:45 P.M.) See Starkenburg county Sheriff's Investigative Report 10128. Lastly we require the CD recordings of the Ray-tel communications so that we may listen to them. As we entered we will depart. Peace be upon thee.

Supreme R. Acton

2011
M. HOPKINS
BLACKLEY
PH 3:35

STATE OF SOUTH CAROLINA
 IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
 J. Derham Cole, Circuit Court Judge

Supreme R. Ackbar

Applicant

v

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar, hereby affirms by his signature affixed to this document that he has, this day of May 19, 2013 properly served the appointed attorney, John Rucker with a true copy of the enclosed requested to be filed herein and that it was dated 5-19-13, by depositing same in the U.S. Mail, through the mailroom at Lee Corp. Inst. First class, Postage Paid and addressed to the following:

John Rucker
 Attorney at Law
 532 North Church St
 Greenville S.C. 29601

Supreme R. Ackbar
 L.C.I
 990 Wisconsin Hwy
 Bishopville S.C. 29010

2013 MAY 29 PM 3:35
 M. HOPE BLACKLEY

May 21, 2013

SUPREME R. ACKBAR

S.M.O. South # 130

L.C.I

223 Wiscoky Hwy

Bishopville S.C. 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

Dear Ms. Blackley

Currently I am on child support and unable to make any payments. The only information that I am able to impart at the moment is the case cite to which is Bernadette R. Brown V. Supreme R. Ackbar. I'm requesting the case number and the attorney of the record for Ms. Brown as well as the office address in order that I may properly serve him/her with my intent to dismiss the child support payments.

Another applicable matter that I am in need of your assistance is the name of the the Court reporter for the day of Dec. 19, 2012 regarding S.A. No. 2012-DC-42-0741 and the address that provide her with a motion for trial transcription as evidence and a Motion Notice for transcript order form. As such that I am a pro-se in the matter of Brown V. Ackbar and Bernadette V. Ackbar could you please inform me whether I need to serve Ms. Bernadette's attorney of the record with the two motions aforementioned.

Sincerely

Supreme R. Ackbar

2013 MAY 29 PM 3:35
M. HOPE BLACKLEY

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <i>Supreme R. Ackbar (Kawela Gay)</i>	SCDC #: <i>275624</i>	Housing Unit: <i>S.M.U. 2nd 163</i>	Date: <i>5-19-13</i>

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff:

Item	Amount
Envelope	
Pen	
Paper	
Postage	
Tape	
Box	
Electronic Repair	
Other	

*The envelope
to the Clerk
of Spartanburg
was empty...*

RECEIVED

MAY 20 2013

Sub-Total:
LEE CI MAIL ROOM

Cost

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

To be completed by
SCDC staff:

Item	Amount
Envelope	
Pen	
Paper	
Postage	<i>2</i>
Other	

1

Sub-Total:

Cost
<i>.40</i>

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

To be completed by
SCDC staff:

Item	Amount

Cost

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Supreme R. Ackbar

SCDC 275886

Applicant

V.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS

C.A. No: 2012-CP-42-4987

APPLICANT'S BRIEF AND MOTION

TO DISMISS INDICTMENT

STATEMENT OF THE CASE

This matter is before the Court of Common ("CCP") pursuant to the application for Post Conviction Relief ("PCR") of Supreme R. Ackbar ("applicant") an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). On September 5, 2009 the Money Store in Duncan S.C. was robbed at gun point by two alien suspects. Two employee witnesses were present during the stick-up, "Ashely Jeter and Berdine Wilkins".

Ashely Jeter said that she notice a man with a gray hoodie and shades cock his gun while approaching the door. Ms. Jeter said that the man entered and ordered her and Ms. Wilkins to get down. Ms. Jeter said that the second guy in black and red took the money out of the file drawer that she showed him and that he then said, "this ain't all of it". Ms. Jeter said that she then pointed to the store's cash drawers and that the guy in black and red emptied those cash drawers and then instructed them to stay down and don't look. Ms. Jeter said that the guy in grey hoodie eased his gun away and walked off and then she heard the clicking of the back door.

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Ms. Wilkins said that a man came in the store with mask and glasses wearing black pants and told her and Ms. Jeter to get on the floor and don't move and not to look at him. Ms. Wilkins said that another man asked Ashely, "where is the money, is this all of it". Neither Ms. Jeter or Ms. Wilkins identified the alien suspects as black or white, nor did they give any description of any vehicle or tag number that the alien suspects may or may not have been driving. On September 7, 2009 respondent purported in their report that Ms. Jeter and Ms. Wilkins described both alien suspects as black males. On September 10, respondent alleged to have received information from a check cashing business in Greer regarding a possible suspect that matched the description of their suspects. The record reveals the check cashing business in Greer never called the Greer Police to report that a man with a grey hoodie and shades wearing black pants and mask or a second man in black and red entering the place of business with guns or being around it. The record reveals the only information that respondent received was a tag number to which was FJC-525. This license plate number revealed to be a green in color Honda belonging to Nathaniel Everett at 697 Wickson Ct. Spartanburg S.C. 29361. On September 11, 2009, respondent without probable cause appeared at the aforesaid address and spoke with Ricky Kelly not Nathaniel Everett. Respondent and Mr. Kelly then headed back to the Duncan P.D. with Mr. Kelly following in his own vehicle allegedly voluntarily.

When respondent engaged the in-custodial interrogation Mr. Kelly stated that he didn't know anything about the robbery. After further bombardment Mr. Kelly was finally intimidated and admitted that he did have knowledge of the robbery and that he participated in the stick-up.

The record reveals that respondent never afforded Mr. Kelly the procedural safeguards against self-incrimination known as the Miranda warnings. The record also reveals disturbing controversy regarding Mr. Kelly's signatures and the I.D. badge number of Sgt. C.L. Miller. On September 15, 2009 respondent signed warrants for the arrest of the applicant, Mr. Kelly, and Marius A. Wright. On 9-30-09 respondent was notified

of a stabbing at 312 Irby Rd. and that the victim was Ricky Kelly. Respondent claimed to be aware Mr. Kelly had positively I.d. and given a statement against Marcus A. Wright and the applicant. The record reveals that Mr. Kelly never positively I.d. the applicant and that Mr. Kelly only mentioned someone by the first name as the applicant. The record reveals that it was respondent who I.d. the applicant and that it was respondent who was forthwith in suspecting the applicant and Marcus Wright of the Murder of Ricky Kelly. Later that night after informing respondent that it had been several days since she last saw the applicant, Octavious Burnside's grandfather Freddy Davis was requested by respondent to come down to the Sheriff's office to speak to Ms. Burnside. After speaking with Mr. Davis Ms. Burnside's story regarding the applicant underwent a transformation that lead respondent on a wild goose chase causing respondent to illegally seize her truck on 9-21-09. At approx. 2:00 P.M. DN 9-21-09 the applicant appeared in the lobby of the Sheriff's office and was later confronted with some of the "bull excrements" of Ms. Burnside by respondent. The applicant was ~~legally~~ ^{illegally} booked into the Spartanburg County Jail on the invalid warrant for armed robbery (warrant #M-116206) in violation of the applicant's 4th, 5th, and 14th Amendments. As the applicant was being illegally detain without bail Ms. Burnside continued her web of lies with the assistance of her brother and friends. On September 25, 2009 the applicant discovered via news that the applicant was charged with the Murder of Ricky Kelly. The record reveals that the applicant was never charged with the Murder of Ricky Kelly, "who was a Junior" on 9-25-09 or any date thereafter. On 9-26-09 respondent failed to reassert the Miranda warning before Mr. Wright got on board to dismantle the applicant's life. In November of 2009 the applicant was indicted for murder without a warrant ever being delivered to the applicant. On January 27, 2011 the applicant appeared before the trial court on a motion to relieve counsel. While there respondent informed the trial court that the applicant was scheduled for a murder trial on February 7, 2011 without a warrant or indictment being presented to P.R. 7 lines 3-12. The applicant's trial counsel was ineffective in failing to move the court for a direct verdict and/or to

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Move the court to suppress the evidence. The Motion to relieve counsel was denied despite the fact that the applicant informed the trial court that trial counsel was assisting respondent in obtaining a conviction against the applicant tr.P. 10 lines 18, tr.P. 11 lines 2-4. On February 1, 2011 the applicant proceeded to trial on the charge of Murder indictment #2007-B3-42-5943. The applicant's trial counsel was ineffective in failing to move the court to quash the indictment and/or move the court to suppress the evidence tr.P. 20 lines 1-5. The applicant's trial counsel was ineffective in failing to object to the trial court's constructive amendment of the indictment tr.P. 20 lines 18, 19. The applicant's trial counsel was in the chambers with the trial court and respondent assisting them as they whittled down the protection of this case tr.P. 43 lines 4, 7, 8. The applicant's trial counsel was ineffective in failing to object as the trial court constructively amended the indictment again tr.P. 53 lines 23-25, tr.P. 54 lines 1-2. The applicant's trial counsel was ineffective in failing to object to the trial court's curative instruction because the instruction was not given at the time of respondent's improper statements tr.P. 56 lines 8-11. The applicant's trial counsel was ineffective in failing to object to respondent's opening argument such that respondent failed to produce the referenced evidence and because the applicant's trial counsel showed contempt for respondent's evidence after he failed to object to a surprised in-court identification tr.P. 61 lines 17-19, tr.P. 82 lines 10, 11, 14-18, tr.P. 115 lines 23-24. The trial court failed to give a finding of fact and conclusion of law on the preserved objection. The applicant's trial counsel showed more of his assistance to respondent by soliciting testimony that bolstered respondent's star witness credibility and by failing to utilize exculpatory evidence tr.P. 153 lines 23-25, tr.P. 174 lines 18, 19, tr.P. 175 lines 1, 3, 6. The applicant's trial counsel was ineffective in failing to object to the trial court's abuse of discretion as such that the trial court prohibited trial counsel from casting doubt on one of respondent's key witnesses tr.P. 184 lines 9-10. The applicant's trial counsel was ineffective in failing to object to respondent's solicitation of hearsay testimony from a government official that vouched for the credibility of one of respondent's witnesses

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tr.P. 201 lines 8-18, The trial court abused its discretion and overruled trial counsel's contemporaneous objection and respondent's witness prejudicial hearsay was allowed entry tr.P. 246 lines 17-20. The applicant's trial counsel was ineffective in failing to move the court to quash the indictment and or to move the court for a mistrial on the grounds of respondent's improper opening argument tr.P. 250 lines 13-21. The applicant's trial counsel was ineffective in failing to subject respondent's case through a meaningful adversarial testing by failing to present a defense tr.P. 254 lines 4-7. The applicant's trial counsel was ineffective in failing to object to respondent vouching for the credibility of their witnesses tr.P. 258 lines 18,19, tr.P. 259 line 6, tr.P. 260 lines 6-9, tr.P. 261 lines 3-6, tr.P. 262 lines 9-13, while knowing that the evidence and witnesses was nothing but "bull excrements". The applicant's trial counsel was ineffective in failing to impeach the witnesses tr.P. 268 lines 16-21. The applicant's trial counsel was ineffective in failing to object as the trial court constructively amended the indictment a third time tr.P. 269 lines 22-25 - tr.P. 270 lines 1,2. The applicant's trial counsel was ineffective in failing to request curative instructions tr.P. 287 lines 15-19. The applicant's counsel was ineffective in failing to object to the imposition of the sentence and to move the court to quash the indictment and or also to move the court for a mistrial based on respondent's opening and closing arguments because trial counsel knew that the sentence would be based wholly on perverted testimony and evidence tr.P. 291 lines 8-14. On February 9, 2011 the applicant was sentenced to life imprisonment without parole with the useage of perverted poisonous testimony and evidence tr.P. 292 lines 23-25 - tr.P. 293 lines 1-3 gained through a invalid warrantless illegal detention in violation of the applicants 4th, 5th, 6th, 8th and 14th Amendments. The applicant's appellate counsel was ineffective in failing to raise a more prevailing plain and obvious hallmark issue.

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 J. HOPKINS

ARGUMENT

5.

THE COURT OF COMMON PLEAS SHOULD DISMISS THE INDICTMENT UNDER MIRANDA V. ARIZONA, *supra* at 384 U.S. 444, at 86 S.Ct. 1612, BROWN V. ILLINOIS, 432 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416, FED. R. CRIM. P. 12(b)(3)(B), FED. R. CRIM. P. 12(b)(3), UNITED STATES V. OLAND, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), U.S. V. YOUNG, 476 U.S. 1, 15 (1985), AND UNITED STATES V. MORRISON, 101 S.Ct. 665 "Id.", at 365, 101 S.Ct. 668"

Accord, "the prosecution is barred from using any statements in its case-in-chief, whether exculpatory or inculpatory, obtained from a suspect during custodial interrogation, unless it first demonstrates that the suspect was afforded the procedural safeguards against self-incrimination known as the Miranda warning". Miranda v. Arizona, *supra* at 384 U.S. 444, at 86, S.Ct. 1612

The applicant contends with Incident Report Supplemental 00016 Paragraph 14 that it's plain and obvious that the respondent didn't advise Mr. Kelly of his rights.

See, Spartanburg Investigation reports 00124-00127 and the warrant #M-081345. Note the absence of the applicant being served a warrant for Murder. Note also the copy of the warrant was never delivered to the applicant. Note also Paragraph 14 at 00135

The applicant also contends that the "Fruit of the Poisonous tree doctrine" holds that where evidence would not have come to light but for illegal actions of Police, and evidence has been obtained by exploitation of that illegality, evidence "must" be excluded. Brown v. Illinois, 432 U.S. 590, S.Ct. 2254, 45 L.Ed.2d 416

ON May 13, 1968 Detectives William Nolan and William Lenz broke into the
6.

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Petitioner's Richard Brown's apartment, searched it and then arrested Brown, without Probable Cause and without any warrant, in relations to the Murder of Roger Corpus. Mr. Corpus was Murdered one week earlier with a .38 caliber. Petitioner was identified as a acquaintance Not a suspect.

In BROWN V. ILLINOIS Petitioner made two in-custody inculpatory statements after he had been given the prescribed Miranda warning. Thereafter indicted for Murder Petitioner filed a Pretrial Motion to suppress the statements to which was overruled.

In the applicant's case the arrest of Mr. Kelly as with Petitioner Richard Brown was both in design and execution, investigatory. Respondent embarked upon the same expedition as Detectives William Nolan and William Lenz for evidence in the hope that something might turn up also. The manner in which Mr. Kelly's arrest was affected gives the same appearance of having been calculated to cause surprise, fright, and confusion.

While in [REDACTED] custody Mr. Kelly made a inculpatory statement after identifying knowledge and was never afforded the prescribed Miranda warning. Petitioner Richard Brown was.

From this poisonous tree, respondent issued a fruit of it's poison in the form of a warrant for armed robbery for the applicant's arrest (warrant # M-116206) on 9-15-09. Mr. Kelly was Murdered on 9-20-09. After being informed on 9-20-09 that the applicant had not been around for several days and then observing the body of Mr. Kelly taken away, Respondent responded to the last known address of the applicant and illegally entered the home without Probable Cause or a warrant under the advice of Freddy Davis

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Whose name was not listed as a renter and the landlord who violated the applicant's renter's rights. Spartanburg Investigation reports 00124 Paragraphs 7, 12 and 00135 Paragraphs 3, 4 Mr. Kelly was murdered via respondent's indictment with a Large Fixed Blade Hunting Knife. The Proclaimed Knife was never unearthed. On 9-21-09 the applicant was booked into the Spartanburg County Jail on the illegal actions of respondent with the usage of their Poisonous Warrant M#-116206. Thereafter in November 2009, the applicant was indicted for the Murder of Mr. Kelly without being delivered a warrant for the Murder.

In the applicant's case the applicant's trial counsel failed to file a Pretrial Motion to suppress the evidence pursuant to Fed. R. Crim. P. 12 (b)(3) and the applicant's trial counsel failed to object to the defective indictment pursuant to Fed. R. Crim. P. 12 (b)(3)(B).

■ The applicant contends that these errors as well as those in this brief and Motion to dismiss indictment should be plain and obvious pursuant to United States v. Olano, 507 U.S. 725, 113 S.Ct. 1770, 123 L. Ed. 2d 508 (1993) that the applicant's trial counsel sparingly used the contemporaneous objection twice during the course of trial pursuant to U.S. v. Young, 15 (1985) to which states, "the plain error exception to the contemporaneous objection is to be used solely in those circumstances in which a miscarriage of justice would otherwise result" as in the applicant's case.

The applicant contends that had respondent not engaged with illegal actions prior to and during his illegal arrest none of the perverted hearsay evidence would have been obtained.

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The applicant further contends that the demonstrable prejudice or the substantial threat thereof required by United States v. Morrison, "Id., at 365, 101 S.Ct. 668" has been met.

CONCLUSION

Based on the foregoing reasons and legal authorities, the applicant respectfully request that the indictment be dismissed with prejudice and a New trial ordered expeditiously.

By: Supreme R. Ackbar

Applicant

Lieber corr. Inst.

P.O. Box 205

Ridgeville S.C. 29472

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M. HOPE BLACKLEY

July 22, 2013

INCIDENT REPORT SUPPLEMENTAL

409 1

Case Number: 09090503

Officer MILLER C. MILLER, C.

Date Entered/Changed: 09/07/2009

Reviewer: LONGC

Review Date: 09/30/2009

DETAILED STATEMENT OF INVESTIGATION: MS. JETER AND MS. WILKINS STATED THAT THE FIRST SUBJECT ENTERED FROM THE SIDE OF THE BUILDING AND PRESENTED A HANDGUN AND YELLED AT THEM TO GET ON THE FLOOR. THAT SUBJECT WAS DESCRIBED AS A BLACK MALE APPROX 5'9" TALL, HUSKY BUILD, WEARING A BLACK IN COLOR HOODED SWEATSHIRT, SUNGLASSES, A RED BANDANNA OVER HIS FACE AND BLUE (MEDICAL STYLE) RUBBER GLOVES. MS. JETER AND MS. WILKINS STATED THEY DID NOT ACTUALLY SEE THE SECOND SUBJECT ENTER THE STORE DUE TO ALREADY BEING ON THE GROUND BUT PARTIALLY SAW HIM DURING THE INCIDENT AND DESCRIBED HIM AS A BLACK MALE, SKINNY BUILD (APPROX 145LBS) WEARING A GREY IN COLOR HOODED SWEATSHIRT, SUNGLASSES, BLUE (MEDICAL STYLE) RUBBER GLOVES AND POSSIBLY SOME SORT OF MASK OVER HIS FACE. SUBJECT TWO WAS ALSO ARMED WITH A HANDGUN.

MS. JETER STATED THAT THE FIRST SUBJECT DEMANDED TO KNOW WHERE THE MONEY WAS SO SHE POINTED TO THE BACK CENTER FILING CABINET. AFTER OBSERVING SUBJECT ONE BECOMING FRUSTRATED DUE TO THE CABINET DRAWER NOT OPENING DUE TO ANOTHER FILING DRAWER BEING CRACKED OPEN MS. JETER PUSHED THE OPEN DRAWER CLOSED SO THE TOP DRAWER WOULD OPEN. SUBJECT ONE THEN TOOK THE MONEY DRAWER OUT AND THREW IT ONTO THE FLOOR. SUBJECT TWO THEN BEGAN PICKING THE MONEY UP. MS. JETER STATED SUBJECT ONE THEN STATED "I KNOW THIS ISN'T ALL OF IT" AND PUSHED HIS HANDGUN INTO HER HEAD DEMANDING TO KNOW WHERE THE OTHER MONEY WAS. MS. JETER THEN POINTED TOWARD THE FRONT COUNTER. SUBJECT TWO THEN WENT TO THE FRONT COUNTER AND REMOVED TWO CASH DRAWERS FROM THE SHELVES. AFTER THE MONEY WAS REMOVED FROM THE DRAWERS THE TWO SUBJECTS FLED TO THE BACK OF THE STORE WHERE MS. JETER STATED SHE HEARD WHAT APPEARED TO BE A CLICKING NOISE THEN THE DOOR OPENED AND CLOSED. MS. JETER STATED THAT SHORTLY AFTER THE DOOR CLOSED MS. WILKINS TOLD HER TO GET UP AND THEY LEFT OUT THE FRONT OF THE STORE AND CALLED 911.

MS. WILKINS STATED THAT SHE DID NOT MOVE FROM WHERE SHE HAD GOT ON THE FLOOR AND SUBJECT ONE PRIMARILY ISSUED DEMANDS TO MS. JETER. MS. WILKINS DID STATE THE SUBJECTS WOULD POINT THEIR GUNS AT HER AND CONTINUOUSLY TELL HER NOT TO MOVE AND NOT TO LOOK UP. MS. WILKINS STATED THAT AFTER SHE HEARD THE BACK DOOR CLOSE SHE LOOKED INTO THE BACK AREA AND SAW THAT THE SUBJECTS HAD LEFT AND TOLD MS. JETER TO GET UP, SHE GOT THE PHONE, AND THEY WENT OUT THE FRONT OF THE STORE AND CALLED 911.

I THEN SECURED THE BUSINESS AND ADVISED OTHER OFFICERS IN THE AREA OF THE EXIT DIRECTION AND DESCRIPTION. UPON ARRIVAL OF SPARTANBURG COUNTY SHERIFF'S OFFICE K-9 DEPUTY FRALEY, A K-9 TRACK WAS THEN INITIATED. OFFICER B. TEAL ASSISTED K-9 DEPUTY FRALEY. THE OFFICERS TRACKED FROM THE REAR OF THE STORE, UP THE RIGHT SIDE OF THE PARKING LOT APPROX. 50 YARDS THEN TURNED WEST AND WENT INTO A WOODED AREA THAT RUNS BEHIND THE NEIGHBORING "CIRCLE K" GAS STATION. K-9 TRACK WAS TERMINATED IN THE WOODS AFTER LOSING SCENT.

APPROX. 20-30 FEET OUTSIDE THE BACKDOOR A BLACK IN COLOR NYLON "STOCKING" CAP WAS RECOVERED. THE STOCKING WAS IN A DIRECT PATH OF THE ROUTE THE K-9 BEGAN TRACKING FROM THE BACKDOOR. THE "STOCKING" WAS PHOTOGRAPHED AND COLLECTED FOR FURTHER PROCESSING.

I THEN ENTERED THE STORE AND BEGAN PROCESSING THE SCENE. THE EXTERIOR AND INTERIOR OF THE BUSINESS WAS PHOTOGRAPHED. BOTH VICTIMS WERE POSITIVE THAT BOTH SUBJECTS HAD ON RUBBER GLOVES SO PROCESSING FOR LATENTS WAS NOT ATTEMPTED.

THE EMPLOYEES OF THE BUSINESS STATED THEY HAVE BEEN HAVING PROBLEMS OUT OF THEIR SURVEILLANCE SYSTEM. UPON INSPECTION OF THE VCR UNIT IT WOULD NOT TURN ON. EMPLOYEES ARE NOT SURE IF IT WAS WORKING AT THE TIME OF THE INCIDENT OR NOT. WITH CONSENT FROM THE MONEY STORE THE VCR FOR THE COLLECTED FOR FURTHER INVESTIGATION.

STATEMENTS WERE TAKEN FROM BOTH MS. JETER AND MS. WILKINS.

ON 09-06-09 I, SGT. C. L. MILLER ALONG WITH OFFICERS D. MATHIS, B. BURRELL, AND K. WALKER RETURNED TO WOODED AREA SURROUNDING THE AREA THE K-9 TRACKED AND CONDUCTED AN ARTICLE SEARCH IN AN ATTEMPT TO LOCATE ANY POSSIBLE ITEMS OF EVIDENTIARY VALUE. NOTHING FOUND.

FURTHER INVESTIGATION NEEDED

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B. HOPKINS
CLERK OF COURT
SPARTANBURG, SC

Case Number: 09090503

Officer: MILLER C. MILLER, C.

Date Entered/Changed: 09/14/2009

Reviewer: LONGC

Review Date: 09/30/2009

DETAILED STATEMENT OF INVESTIGATION: ON THURSDAY SEPT. 10TH, 2009, I RECEIVED INFORMATION REGARDING A POSSIBLE SUSPECT AND TAG NUMBER FROM A CHECK CASHING BUSINESS IN GREER THAT HAD A SUBJECT COME IN TO THEIR BUSINESS THAT MATCHED THE DESCRIPTION OF OUR SUSPECTS. A SC VEHICLE LICENSE NUMBER OF FJC-525 WAS OBTAINED FROM A GREEN IN COLOR HONDA. ACCORDING TO SCDMV THE TAG CAME BACK TO AN ADDRESS OF SPARTANBURG SC. According to report 00000

This vehicle belongs to Nathaniel Everett - Mr. Rocky Kelly - Reviewing incident report 00004
there is no mentioning of the above vehicle coming to that ~~compromised~~ crime scene or leaving it
a b. g. in the facility of it, ~~he~~ does. This ~~same report~~ and we can add that

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M. HOPE BLANKLEY

INCIDENT REPORT SUPPLEMENTAL

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Case Number: 09090503

Officer MILLER C. MILLER, C.

Date Entered/Changed 09/17/2009

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: ON 09-15-2009 ARMED ROBBERY WARRANTS WERE SIGNED BY JUDGE C. JONES ON MR. WRIGHT, MR. ACKBAR, AND MR. KELLY.

LATER THAT SAME EVENING MR. WRIGHT AND MR. KELLY WAS REESTED ON ABOVE WARRANTS,

ATTEMPTS TO LOCATE MR. ACKBAR WERE UNSUCCESSFUL ON 09-15-2009

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CLERK OF COURT
SPARTANBURG COUNTY
2009 AUG -6 PM 3:23
M. HOPE BLACKLEY

412

(12/02/09) 00017
VOLUNTARY STATEMENT

DATE 9-05-09 TIME 1000 M. PLACE The Money Store
 I, Bridene Wilkins, am _____ years old and I live at _____

Spokane SC
 I am giving this statement to Sgt CL Miller I.D. 0543, who has identified himself as a Durham Police Officer

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

Man come in store with mask and glasses wearing black pants. Stole us to get on the floor and dont move dont look at me. Another man ask Ashley were is the money Is this all of it

FILED
 CLERK OF COURT
 SPOKANE COUNTY
 2013 AUG -6 PM 3:24
 MIHOPE BLANCHLEY

I have read this statement consisting of _____ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

[Signature]
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

[Signature]
 Witness

(This must be one and the same person as named above)

(12/02/00) : 00013
VOLUNTARY STATEMENT

413

DATE 09-11-09 TIME 3:00P M. PLACE DUNCAN P.D.
I, Ricky Kelly, am 19 years old and I live at ct Spthg. SC

I am giving this statement to Sgt CL Miller I.D. C12E, who has identified himself as a Duncan P.D.

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I woke up and went to Marcus house and chined with him for a while, Supreme came over and they both went into the house came back out. Marcus had a white finish line bag. Marcus and me went to the house (Supreme) and Supreme already had his stuff on. By that time I knew what they was going to do we went to the money store and pulled up on the right side and they jumped out and Marcus had on a mask with Sun glasses and a red band on his face and also a silver 38. Supreme had on a gray beady Sun glasses and a mask over his face. We went in and I pulled in the old win. parking lot waited on them. I pulled around back and picked them up. I dropped them both back off a Supreme house and went home. I waited they came to my house and left. They came out with a VCR, money, and cans. EUS

I have read this statement consisting of -1- page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

Witness

(This must be one and the same person as named above)

414

(12/02/09) 33315
VOLUNTARY STATEMENT

DATE 09-11-09 TIME 2:00P M. PLACE Duncan P.D
 I, Ricky Kelly, am 19 years old and I live at Splbg. Sc.

I am giving this statement to Sgt C.L. Miller I.D. 0543, who has identified himself as a Duncan Police

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

Well I woke up around 9:00am, went to my homies house and picked him up, then I went to greet to see about some money I come get locked so I could help my family out then I left there and hit the main road on 29" Then turned right a Nickitars strip place and took my homie home and went home my self that I was walking around Plum Ridge

FILED
 CLERK OF COURT
 SPARTANBURG, SOUTH CAROLINA
 AUG 16 6 PM 3:24
 M. HOPE BARNUMLEY

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Ricky Kelly jr
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

Witness

C.L. Miller
 (This must be one and the same person as named above)

VOLUNTARY STATEMENT

TIME _____ M. PLACE _____

, am _____ years old and I live at _____

I am giving this statement to _____ I.D. _____, who has identified himself as a _____

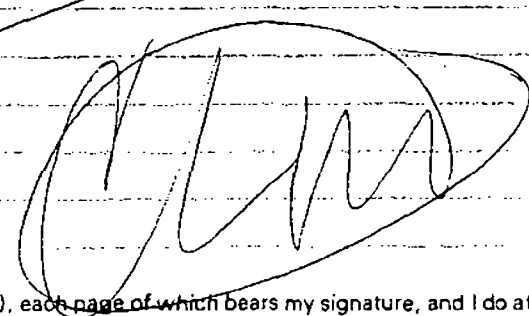
and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I woke up at 9:00am went to my homies house picked him up, then went to the place in green, left there dropped my homie off at his house, then I got a strange call from a crazy number the guy told me if I wanted some extra money to come see him so I said okay, he gave me the way there all I know I was on 29 and turned ~~left~~ right and went straight for a while made a left turn and a right turn the rest of the way and it was a little house the dude got in the car

2013 AUG 26 PM 3:24
CLERK OF COURT
CLARK COUNTY
JULIA BLANKLEY

2nd attempt



I have read this statement consisting of _____ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Signature of person making voluntary statement

The above warnings were given by and
this voluntary statement was taken by

Witness

(This must be one and the same person as named above)

12/30/99

12/30/99

TIME 3:00P

M. PLACE

Durham P.D.

Kelly

am 19 years old and I live at

Spthg. SC

I am giving this statement to Sgt CL Miller

I.D. 543

who has identified

himself as a Durham Police

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I woke at 9:00 and went over his house (marcus) and chilled over there for a while, then Supreme came in a silver car 4 door and both went in the house a talk both came out and marcus had a white hoody in his hand they changed clothes marcus had a sweat shirt on went some jogging pants a black shoes. Supreme had a camo mask and a gray hoody with a hood. they came out with cans a VCR and some other stuff took them back to north st to drop them off and they told me to wait a home. I waited at home and they come back gave me some money and left.

RECEIVED
FBI
JAN 3 1999
PH 3:24

I have read this statement consisting of _____ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

Witness

(This must be one and the same person as named above)

(12/02/09) : 00015
VOLUNTARY STATEMENT

417

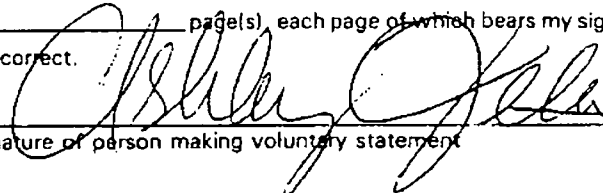
DATE 4-5-09 TIME 10:00 M. PLACE The money store
I, Ashtley Jeter, am 24 years old and I live at _____

I am giving this statement to Sgt CL Miller I.D. 0543, who has identified himself as a Duncan Police and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

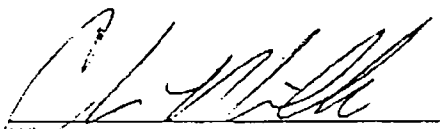
Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

About 10:00am me and Berdine were talking and I looked up and noticed a man with a grey hoodie and shades on coming towards the door. I saw him cock his gun. He came in and ordered us to get down. I was already under my desk. He came behind the counter and said "where you at". I came from under the desk, and he told me to get down. He told me to show him asked me where the safe was. He grabbed me, I pointed to the the safe cabinet. I showed him what drawer the money was in. The second guy in black and red took the money out. The one of the guys said this ain't all. I pointed to our cash drawers the second guy in the black and red emptied the cash drawers. They told us to stay down and don't look. The guy in the grey hoodie eased his gun away and walked off. I heard the click, click, click of the back door.

I have read this statement consisting of _____ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.


Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by


Witness

(This must be one and the same person as named above)

INCIDENT REPORT SUPPLEMENTAL

Case Number: 09090503

C. MILLER C. MILLER, C.

Date Entered/Changed: 09/14/2009

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: ON FRIDAY SEPT. 11TH, 2009 AT APPROX 1:00 PM I, SGT. C. L. MILLER RESPONDED TO AND SPOKE WITH A RICKY KELLY (SUBJECT 3) WHO VOLUNTARILY FOLLOWED ME BACK TO DUNCAN P.D. IN REFERENCE TO THIS MATTER. MR. KELLY STATED AT FIRST THAT HE DID'NT KNOW ANYTHING ABOUT THE ROBBERY. AFTER FURTHER INVESTIGATION MR. KELLY FINALLY ADMITTED THAT HE DID HAVE KNOWLEDGE OF THE ROBBERY AND PARTICIPATED IN THE INCIDENT.

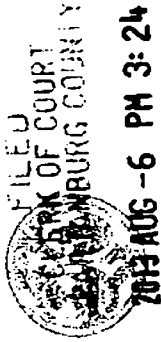
MR. KELLY STATED THAT ON SATURDAY MORNING SEPT. 5TH, 2009 HE DROVE HIS CAR (A 1996 HONDA ACCORD) OVER TO HIS FRIEND'S HOUSE NAMED MARCUS (AKA P-NUT) AND WAS HANGING OUT FOR A WHILE WHEN ANOTHER SUBJECT WHO HE KNEW AS "SUPREME" CAME OVER AND HE AND MARCUS WENT INTO THE HOUSE. MR. KELLY STATED THAT WHEN THEY CAME OUT SUPREME LEFT AND MARCUS WAS CARRYING A WHITE "FINISH LINE" BAG. MR. KELLY STATED THAT HE AND MARCUS WENT OVER TO SUPREME'S HOUSE AND PICKED HIM UP. MR. KELLY STATED THAT WHEN SUPREME CAME OUT HE HAD ON A GREY HOODIE SWEATSHIRT. MR. KELLY STATED THAT MARCUS CHANGED CLOTHES IN THE CAR AND PUT ON A BLACK HOODIE SWEATSHIRT, SUNGLASSES AND A RED BANDANA. MR. KELLY STATED THAT SUPREME ALSO PUT ON SUNGLASSES AND A MASK OVER HIS FACE. MR. KELLY STATED THAT BOTH MARCUS AND SUPREME BOTH HAD ON RUBBER GLOVES AND DID HAVE HANDGUNS, POSSIBLY A SILVER 38 AND A 9MM. MR. KELLY STATED THAT THEY WENT TO THE MONEY STORE IN DUNCAN. MR. KELLY STATED THAT WHEN THEY GOT TO THE MONEY STORE HE PULLED TO THE RIGHT SIDE OF THE STORE AND MARCUS AND SUPREME JUMPED OUT AND WENT INTO THE STORE. MR. KELLY STATED THAT HE THEN PULLED AROUND BACK AND WAITED ON THEM. MR. KELLY STATED THAT A FEW MINUTES LATER MARCUS AND SUPREME CAME RUNNING OUT THE BACK DOOR AND HE PICKED THEM UP AND THEY LEFT. MR. KELLY STATED THAT THEY WENT TO SUPREME'S HOUSE WHERE HE DROPPED MARCUS AND SUPREME OFF AND THEN HE WENT HOME. MR. KELLY STATED THAT SOMETIME LATER MARCUS CAME TO HIS HOUSE AND GAVE HIM SOME MONEY FOR HIS PART.

STATEMENT WAS OBTAINED FROM MR. KELLY

THROUGH INVESTIGATION "MARCUS" AND "SUPREME" WERE IDENTIFIED AS MARCUS ALLEN WRIGHT AND SUPREME RAHEEM ACKBAR.

THESE SUBJECTS WERE POSITIVELY IDENTIFIED AS THE ABOVE MENTIONED SUBJECTS BY MR. KELLY.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 AUG - 6 PM 3:24
M. HOPE BLACKLEY



Current Plate

VIN: 1HGCD5636TA170766
 Empty Weight: 2864
 Year: 1996
 Make: HOND
 Model: ACCORD LX/EX
 Body: 4S
 Title Number: 770870192967251
 Status: CURRENT TITLE
 Issue Date: 06/16/2008
 Dup: N
 Owner Number: 23187509
 Owner Name: EVERETT, NATHANIEL
 Owner Address: SPARTANBURG SC,
 Last Transaction: COUNTY REG RENEWAL
 Plate Number: FJC525
 Date of Issue: 07/02/2009
 GVW: 0
 County: 42 - SPARTANBURG
 Vehicle Housed Address:
 Plate Class: RP1 REGULAR PLATE
 Plate Exp Date: 06/30/2010
 Empty Weight: 2864
 Municipality: 0
 SPARTANBURG SC,
 Vehicle Type: 1
 Decal Exp Date: 06/30/2010
 Equip Number:
 School District: 00
 Annual Fee: \$24.00

End of Report

Colin Handley

(11/23/99) 00124
SPARTANBURG COUNTY SHERIFF'S OFFICE
INVESTIGATION REPORT

SC0420000

TYPE: ☐ PRELIMINARY ☐ CONTINUING

CASE: 2009091084

INCIDENT TYPE: Homicide

VICTIM: Kelly, Ricky

LOCATION:

I was notified of a stabbing on _____, by Spartanburg County 911. While in route to the incident location I was advised by Patrol that the victim was a Ricky Kelly. I knew the victim because of an incident that had occurred very recently with the victim and two other codefendants. I knew that the victim had given statements on Marcus Allen Wright and Supreme Ackbar, in an armed robbery. I knew that the victim and Wright had been arrested for the charges and that Ackbar was on the run. I arrived on the incident location where I was met by numerous Deputies along with Sgt. Blanton. Sgt. Blanton advised Patrol had separated all of the witnesses and that the victim had been pronounced dead by Spartanburg County EMS.

I observed the victim lying on the front porch of the residence. From the distance I was at that time I could see a large amount of blood on the side of the residence next to the front door. I also observed a green in color Honda in the driveway with blood on the door and ground beside the vehicle.

Sgt. Wood along with Inv. Taylor arrived on scene. I ask that Inv. Taylor start interviewing one of the witnesses, a Danny Lee Burnside (DJ).

I knew that we needed to find Marcus Allen Wright and Supreme Ackbar. I selected _____

Inv. Taylor interviewed DJ and stated that he had a phone number for Wright but that he had not seen him. DJ's mother, Kendra Burnside, who was also at the residence stated she had seen a sporty silver or gray vehicle leaving her residence at a high rate of speed, just before finding the victim lying on the front porch. Inv. Taylor ask DJ if he saw the vehicle but he stated he didn't.

I had knowledge of Marcus Wright and knew that he drove a silver Chrysler Sebring, 4 door.

I interviewed Octavious Burnside (TA). Ta told me that she had been inside the residence when the victim arrived to be some chicken. She stated she ate a piece and heard a loud noise at the front door. She stated her small child started to scream and when she got to the door she saw the victim lying there covered in blood. I ask Ta when the last time she saw Supreme or Wright was and she stated it had been several days (Ta is also Ackbar's wife. I ask if she thought Supreme could do this and her answer was I don't know. I didn't believe what she was tell me so I asked that she be taken by Patrol to the Office for a further interview.

Duncan PD arrived on scene. I ask that they give us the warrant for Ackbar so that we could find and pick him up for questioning.

I signed into the crime scene where I observed the victim's car with a very large amount of blood in the drivers seat and drivers side of the vehicle. There was a large amount of blood on the ground. The blood trail went from the car to the steps leading onto the porch. The victim had a large cut in the throat area that was visible from the ground.

I D Investigators arrived on the scene and began to process the area.

Coroners Investigators arrived.

After seeing the body rolled, and the numerous stab wounds and cuts on the victim I left the scene.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 AUG - 6 PM '99
 HOPE BLANCHARD

(11/23/09) : 00125

Inv. Taylor, Foster and Sgt. Wood went with me to the residence of Marcus Wright. Upon arrival at the residence I observed the silver Sebring sitting in the driveway. We approached the residence and were met by Wright's mother. Mrs. Wright stated her son was not a home. She stated that she would call him and have him return. Approximately 20 mins. later Wright arrived in a black in color Honda. At the time he was dropped off I was unable to clearly get the tag number off of the car. Wright was approached in the yard and ask him where he had been. Wright was very defensive. He stated that he had gone to the store for his mother and then gone to Greenville to pick up a girlfriend. When I ask Wright if he knew what had happened to Ricky he stated that several people had called his phone. He finally walked away from me and started crying to his mother.

I noticed that there was mud on the tires and on the floor mats of the Sebring. It had been muddy at the crime scene. There was nothing else that was seen at the time we were out with Wright.

Inv. Taylor, Foster and several Patrol Deputies responded to in Wellford. This was the last know address for Ackbar. Upon arrival at the residence it was locked and there didn't appear to be anyone home. We were approached by a Freddy Davis from across the street. Mr. Davis told us he was Ta's grandfather. He stated he could call the landlord of the residence who would bring us a key.

A short time later the landlord arrived and gave us a key to the residence we went into the residence and found no one to be at home.

I spoke with Mr. Davis and ask if he would come to the Sheriff's Office to speak with T. He stated that he would and he met us at the Sheriff's Office.

After Mr. Davis spoke with Ta she stated that she had seen Supreme. Ta told us that she and Supreme had gotten Trac Phones and that he had been calling her to bring him food. Ta gave us a statement. Ta told us that she had brought Supreme to the incident location but didn't see if he had killed Rick.

We continued to look for Ackbar. I found an address for Ackbar's mother in Lauren's County. I contacted Lauren's County Sheriff's Office. They went to the residence, Ackbar was not there.

We returned to the crime scene on 9-21 at approx. 0700. We had county roll back come and tow the truck that Tav had brought Supreme to the crime scene in.

On 9-21 we continued to look for Ackbar. We were trying to locate Wright again.

At approx. 2:00 pm I received a call from the Sheriff's Office, Supreme Ackbar was in the lobby. I returned to the office and got Ackbar. I escorted him to CID. I put Ackbar into an interview room. I read Ackbar Miranda from a pre-interrogation waiver form, which he signed.

Ackbar was ask about his day on Sunday, 9-20. He stated that he stayed in the woods in a tent. He stated that he hadn't talked to anyone.

Ackbar was confronted with Ta's statement. He stated that she was lying. He stated that he hadn't seen Ta, or been on. He stated that he hadn't seen or spoken with Wright.

Ackbar was ask to give a written statement about what he had just told me and he ask for an Attorney. He stated he would give a written statement after he got his lawyer.

Ackbar was booked into the county jail on armed robbery warrants. I requested a formal bond hearing.

CLERK OF COURT
SPRINGFIELD
2009 AUG - 6 PM 3:24
M. HOPE BUCKLE

(11/23/09) : 00126

On 9-21 I spoke with Dep. Turner and Inv. McJunkin. Both stated that they knew Ta and that they would talk with her.

On 9-22 I went to the County Jail for a bond hearing. Judge Ashmore denied bond for Ackbar.

On 2-22 I received a call from Inv. McJunkin. He stated he was with Ta at her residence on . He stated he thought we needed to come to the residence. He stated she told him that the shower curtain was missing from the bathroom. We responded to the residence on . A search warrant was obtained for the residence. After the warrant arrived we made entry to the residence. ID processed the inside of the residence. Mr. Davis from across the street called us over and told us that the day before he had seen Supreme at the residence. He stated that he saw Supreme come from the back of the house. We went to the rear of the residence and found a phone on the ground behind the porch. A search of the woods behind the house found the tent that Tav had bought Supreme. I ask for McJunkin and Turner to take Tav back to the Sheriff's Office.

After speaking with Ta at the Sheriff's Office, I ask that Inv. Taylor go and get DJ. DJ arrived at the Office. After a long interview with him he finally told me that there was a young kid by the name of S.K. and his brother at the location the day of the homicide. DJ told me where they lived. DJ didn't want to give another statement. He was afraid of giving a statement after seeing what had happened to Rick. He also stated that Marcus was in fact at the residence.

9-23-09 we obtained a search warrant for the F-150 that was taken from the crime scene. In side we were able to locate a back pack that contained a Kel-Tec 9mm, the sheath for a hunting style knife and a cell phone located in a baby seat. There were also latex gloves. All items recovered by ID and taken into evidence.

We obtained a search warrant for the Sebring. On 9-23 we started looking for the vehicle and doing background on S.K. and Trap. We found the Sebring at approx. 4:40 pm. Wright's mother was driving the vehicle. The warrant was served on the vehicle and was towed to the shop by the County Roll back.

We were able to identify the driver of the vehicle that dropped Wright off at his residence the first night we were looking for him. The driver was a Lindsey Bridges. We located Ms. Bridges and interviewed her. She stated that she had not seen Wright since that night. She stated she had been calling his phone but he had it turned off.

On 9-24 myself and Inv. Foster went to 715 Mirabelle Ct. We met with Angela Simpson. Angela stated she was S.K.'s mom. She stated he was not home. She made a phone call and told us where he was in the City of Spartanburg.

We went and picked up S.K.. S.K.'s name is S.K.. S.K. stated that he had gone over to DJ's house to hang out. He stated he was leaving when he saw Supreme in the back of Tav's truck. He stated he got into the truck. While he was sitting there Rick pulled up. He stated that Marcus pulled in after Rick. He stated Supreme told him that he was going to get Rick. He ask S.K. if he wanted to "do" Rick. S. q told him no. S.K. stated that he saw Supreme put on rubber gloves and get a knife. He stated that Supreme's cell phone and the sheath for the knife were in a baby seat in the back seat. S.K. stated Supreme got out of the truck and ran up to Rick. He stated he saw Supreme stab Rick 2 times and heard Rick yelling. He stated he took off running and went home.

We were able to get in touch with Trap, Shaq's brother. Trap agreed to come to the Office. Trap is Travis Antonio Miller. Trap came and gave a written statement. He puts Marcus at the scene at the time of the homicide.

(11/23/09) : 00229

09/25/09
07:52Spartanburg County Sheriff's Office
Law Supplemental Narrative:490
Page: 1

Case Number: 09091084 Name: Murphy H
 Sequence Number: 11 Date: 11:22:37 09/25/09
 Narrative
 (See below)

Narrative:

AFIS Report

Case: 2009091084
 Victim: Kelly, Ricky Jr
 Date: 09/25/09
 Submitted By: David Hogsed
 Examined By: Hugh Murphy

Suspect: Wright, Marcus Allen B/M 10/19/88 SID SC01681648

Latent print 006 and 007 Submitted from a Silver colored Chrysler Sebring SC#DBJ 598 have been identified. Latent print 006 from the interior rearview mirror identified as the #1 (right thumb) of Marcus Allen Wright B/M DOB 10/19/88 SID SC01681648. Latent print 007 from the Exterior passenger side front door above window of the above vehicle identified as the #4 (right ring) finger Marcus Allen Wright B/M DOB 10/19/88 SID SC01681648. Latent prints 005 and 007 identified by Hugh Murphy and verified by Ted Saar. Latent print 005, and 008 were entered into afis with negative results. Latent print 005, 008, and 009 were compared to Marcus Allen Wright, Supreme Akbar S.K. and victim Ricky Kelly Jr with no identification. The other prints submitted were not identifiable.

This also shows clear prejudice and evidence that was not used at trial and also more proof of actual innocence. Mr. Katherine I noted the lack of investigation by the Defense attorneys and the Spartanburg Sheriff's department.

(11/23/09) : 00127

1 We obtained a search warrant for Wrights address and served it. Nothing was collected from the warrant. |

2 I received a call from Mr. Davis. He stated after Supreme had turned himself in that Wright had come over to the house and gotten a bag off the back porch. He had left in a small car. We were able to determine that the car belonged to Lindsey Bridges. Bridges gave a statement about taking Wright over to the house and that he did get a bag. She stated she didn't know what was in the bag or what Wright had done with it. 3

3 We got the phone records from the jail and heard Ackbar asking Wright about the "package", Wright told Ackbar that he had taken care of it. 2

4 ID Officer Hogsed served the search warrant on the Sebring at the county shop. He was able to locate a couple of areas that tested positive for human blood. The door panel on the passenger door also was tested with blue star and had a positive reaction. All of the evidence was collected and packaged to be sent to SLED. 3

5 Marcus Wright turned himself in at the Sheriff's Office on 9-26. I got Wright and took him to CID. Wright was given Miranda from a Pre-Interrogation Waiver Form and he signed. Wright gave a statement that he had no idea of the homicide. After reading the statement I told Wright of all the evidence and witnesses that we had in this case. Wright ask if he could give another statement. Wright then told of his involvements in the homicide. He stated he didn't know that it was going to happen, he stated after getting to the residence on he was in the yard with the victim. He stated he was on the phone, listening to music when he heard the victim scream. He said when he turned around he saw Ackbar at the victims car stabbing him. Wright stated he went to his car and as he was about to pull out Ackbar ran over and jumped in. He stated he drove Ackbar away and that Ackbar got out of his car and he didn't see him again. I ask him about going to Ackbar's residence to get a bag. He stated he did go and get the clothes and throw them away like Ackbar had ask. Wright provided another statement with all of the details. 11 He failed to give a Miranda form before administering questions. 4

INVESTIGATOR: Lorin Williams	DATE:
APPROVING OFFICER:	DATE: M. HOPE BLACKLEY

See 11/23/09 V. Van Pelt
Wright's statement

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 AUG -6 PM 3:25
M. HOPE BLACKLEY

TF6451M04 V2

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief from Spartanburg County
J. Derham Cole, Circuit Court Judge

Supreme R. Ackbar,

Applicant

V.

State of South Carolina,

Respondent

CERTIFICATE OF SERVICE

H. HOPE BEAULIEU

2013 AUG -6 PM 3:22

CLERK OF COURT
SPARTANBURG COUNTY

Applicant, Supreme R. Ackbar, hereby affirms by his signature affixed to this document, that he has, this 22 day of July 2012, properly served the assigned attorney for the applicant with a true copy of the applicant's brief and motion to dismiss indictment a letter dated July 22, 2013 by depositing same in the U.S. Mail, through the mailroom at Lieber Corr. Inst., first class, postage paid, and addressed to the following:

John Rucker
Attorney at Law
532 North Church St
Greenville S.C. 29601

SI Supreme R. Ackbar
Lieber Corr. Inst.
P.O. Box 205
Ridgelyville S.C. 29472

July 22, 2013

Supreme R. Ackbar
 Lieber Corr. Inst.
 136 Willbourn Dr.
 P.O. Box 205
 Ridgeville S.C. 29472

John Rucker
 Attorney at Law
 522 North Church St
 Greenville, S.C. 29601

RE: Ackbar v. State, 2012-CP 42-4987

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 AUG -6 PM 3:23
 M. HOPE BLACKLEY

Dear Mr. Rucker

Recently I was transported to another institution. Enclosed is a Brief Motion To Dismiss Indictment. I filed this motion with the Clerk of Court along with additional Supplemental and investigation reports. I was informed via request to staff that the copy machine or printer in the law library here is down, therefore I'm unable to provide you with copies of the aforesaid reports, however I will forward you copies A.S.A.P."

After reviewing the reports I thought it wise that we subpoena Sgt. C.L. Miller I.d. 0543 of the Duncan P.D. with the other individual who's I.d. is 0138 regarding my claim of being illegally detained.

Sincerely
 Supreme R. Ackbar

July 22, 2013

Supreme R. Ackbar
 Lieber Corr. Inst.
 136 Wilborn Dr.
 P.O. Box 205
 Ridgeville S.C. 29472

M. Hope Blackley
 Clerk of Court Spartanburg County
 P.O. Box 3483
 Spartanburg S.C. 29304-3483

Re: Ackbar v. State, 2012-CP-42-4787

CLERK OF COURT
 SPARTANBURG COUNTY
 2013 AUG -6 PM 3:22
 M. HOPE BLACKLEY

Dear Ms. Blackley,

Please find enclosed for filing in the court of Common Pleas the original of Applicant's Brief And Motion To Dismiss Indictment, with a certificate of service attached for showing compliance with the Rules of Service, as mandated by SCRPC. PLEASE also find the following Supplemental and Investigation reports, 00004, 00005, 00007, 00015, 00016, 00017, 00018, 00019, 00020, 00021, 00022, 00124, 00125, 00126, 00127, 00304, and warrant # M-089645, and a letter to John Rucker.

Will you please be so kind and courteous as to inform me by letter when the filing of this material has been accomplished?

Thank you for your assistance in this matter.

S/ Supreme R. Ackbar
 Applicant

September 27, 2013

Supreme R. Ackbar

Lieber Corr. Inst.

P.O. Box 205

Ridgeville S.C. 29472

John Rucker

Attorney at Law

522 North Church St.

Greenville S.C. 29601

RE: Ackbar V. State, 2012-CP-42-04997

Dear Mr. Rucker

Have you bothered to think the thought to assert thought into the subject matter of my Jurisdiction at tr. P. 7 lines 8-13? Zealously I've made you aware of the fact that the trial court did not have any jurisdiction regarding my subject matter. Also I've been relentless in pointing out to you the fact that trial counsel admitted how he was receptively aware beforehand regarding the states "bushwhacking" witnesses at tr. P. 65 lines 12-16. Combatively Mr. Rucker I've bombarded you with the fact how trial counsel properly preserved the Jurisdiction of my subject matter for direct review at tr. P. 165 lines 18, 23. See Criminal Law Key 1030 (1)

Here it states that a contemporaneous objection is required to properly preserved error for appellate review.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 10 AM 9:49
M. HOPE BLANKLEY

Mr. Rucker I'm also receptively aware of three (3) cases that holds remand for further factual findings are appropriate when the trial court fails to rule on an issue and State V. Goff, 525 S.E.2d 246 just happens to be one of them. See Williams V. State, 410 S.E.2d 563 (S.C. 1991)

Here the defendant pled guilty to assault and battery with intent to kill and received extra punishment for displaying "what appeared to be a knife during the

attack", Id. at 563. The instrument actually turned out to be a barbecue fork and the trial court was ruled to be without jurisdiction to accept the plea because the statute clearly stated that the weapon that was involved had to be a knife, not what "appeared to be a knife". Id. at 564. See Killing Texas: PoB by Ralph Cotton pg. 48

Here it states, "A man gets the wrong kind of lawman down on him the (the state) can turn him into a killer quicker than you can slap a cat".

Regarding the jurisdiction of my subject matter Mr. Rucker, trial counsel admitted that the state's perverted evidence along with their ambushing witnesses are not reliable tr. p. 268 lines 16-21. See Pauling v. State, 503 S.E. 2d 468 (S.C. 1998)

Here the defense counsel admitted that the nurse's testimony was critical and the trial court noted this in its findings of prejudice. Id. at 471 (citing Marquez v. State, 403 S.E. 2d 113 (1991)) (standing for proposition that where trial counsel admits the testimony of a certain witness may have made the difference in obtaining an acquittal the court may find ineffective assistance)).

Mr. Rucker, its also plain and obvious that I was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I §§ 3 and 14 of the South Carolina Constitution during the sentencing phase of my trial.

Supporting facts: Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. See Strickland v. Washington, 464 U.S. 668 (1984).

Counsel's acts or omission include, but are not limited to the following;

1.) Counsel Failed to investigate, develop, and present all available, relevant and admissible Mitigating evidence. See Wiggins v. Smith, 539 U.S. 510 (2003). As a result of counsel's failure to present this evidence My life Sentence without Parole is unreliable,

2.) Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the Prosecution. As a result of counsel's failure to make all appropriate objections My life Sentence without Parole is unreliable. See Washington v. State, 478 S.E. 2d 833 (S.C. 1986)

Here the trial court granted relief even though it was a successive PCR application because Washington had Not received due Process due to a number of procedural abnormalities, including State Misconduct.

Mr. Rucker, the record does reflect that I've provided you with additional procedural abnormalities including, State Misconduct which constitutes "Fraud". See Ray v. Ray, 447 S.E. 2d 237

Here it states, "An act of Perjury or concealment of a document coupled with an intentional Scheme to defraud the Court Justifies setting aside a Judgment due to extrinsic "Fraud".

It's also plain and obvious Mr. Rucker that appellate Counsel never gave the Jurisdiction of my subject matter any thought Berry v. State, 679 S.E. 2d 425 (2009) as such appellate counsel failed to raise and obvious reversible error on direct appeal Simpkins v. State, 461 S.E. 2d 142 (S.C. 1991)

As you can attest Mr. Rucker, "I've extracted the Jugular", brutally", from the State's throat per order of the great advocate John W. Davis. Jones v. Barnes, 103 S.Ct. 3308 (1993)

I'm instructing you Mr. Rucker with the full power of my Sixth and Fourteenth Amendments of our

United States Constitution and Article I §§ 3 and 4 of the South Carolina Constitution to appear before
me here at Lieber Corr. Inst. before November 1, 2013 or expurgate your self as my appointed
attorney.

Sincerely
Supreme R. Antbor

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 10 AM 9:49
M. HOPE BLACKLEY

October 11, 2013

Supreme R. Ackbar

Lieber Corr. Inst.

P.O. Box 305

Ridgeville S.C. 29472

John Rucker

Attorney at Law

532 North Church St.

Greenville S.C. 29601

RE: Ackbar v. State, 2012-CP-42-4987

Dear Mr. Rucker

If you want me to believe that you are really appointed to assist me then I know I'll be blessed by your presence here at Lieber Corr. Inst. instead of your demonic apparition before Nov. 1, 2013.

Sincerely
Supreme R. Ackbar

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 18 AM 10:34
THOMAS L. STANLEY

October 13, 2013

Supreme R. Ackbar
Lieber Corr. Inst.
P.O. Box 205
Ridgeville S.C. 29472

M. Hope Blackley
Clerk of Court, Spartanburg County
P.O. Box 3483
Spartanburg S.C. 29304-3483

RE: Ackbar v. State, 2012-CP-42-4987

Dear MS. Blackley

PLEASE find enclosed for your filing in your court a letter addressed to my appointed attorney John Rucker dated 10-11-13.

Would you please be so kind and courteous as to inform me via letter when the filing of the enclosed material has been completed?

Thank you for your assistance.

Sincerely
Supreme R. Ackbar

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 18 AM 10:34
MARION BLACKLEY

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
J. Derham Cole, Circuit Court Judge.

Supreme R. Ackbar

Applicant

V.

State of South Carolina

Respondent

CERTIFICATE OF SERVICE

CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 18 AM 10:34
J. DERHAM COLE

Applicant, Supreme R. Ackbar, hereby affirms by his signature affixed to this document that he has this 14th day of October 2013, properly served the assigned attorney for the applicant a true copy of the applicant's letter dated 10-11-13 by depositing same in the U.S. Mail, through the Mailroom at Lieber Corr. Inst, first class, postage paid and addressed to the following;

John Rucker

Attorney at Law

522 North Church St.

Greenville S.C. 29601

3/ Supreme R. Ackbar

Lieber Corr. Inst,

P.O. Box 205

Ridgerville S.C. 29472

Spartanburg County

437

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 10 PM 3:54
M. HOPE BLACKLEY

October 10, 2013

Supreme R Ackbar #275886
Lieber Correctional Institution
PO Box 205
Ridgeville SC 29472

Re: Filings: Ackbar v State of South Carolina
2012CP4204987

Mr. Ackbar,

As per your request, the letter to your attorney Mr. Rucker and the certificate of service have been filed. You requested that we send you "(2) two 1983 forms". I am not familiar with those forms and would need to have more information before I can send them to you.

Sincerely,

M. Hope Blackley
Clerk of Court

By: Pat Gotautas

Pat Gotautas
Sr. Court Clerk Common Pleas Division



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE 803.734.4113

January 14, 2014

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, South Carolina 29304-3483

**RE: Supreme Raheem Ackbar aka Ronald B. Gary v. State of South Carolina
2012-CP-42-4987**

Dear Ms. Blackley:

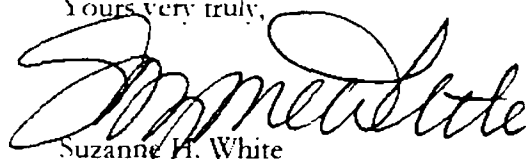
On May 9, 2013, I received a clocked copy of the attached letter from Supreme Raheem Ackbar to his PCR counsel J. Brandt Rucker in the aforementioned matter. If this letter is intended as an amendment or supplement to his PCR Application, please be advised that Rule 11 of the South Carolina Rules of Civil Procedure requires every pleading, motion or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11 SCRPC. Furthermore, the South Carolina Supreme Court has stated that Counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation, but must use their professional judgment in reviewing the documents and shall only submit those arguments that are relevant and have been edited by counsel. Jones v. State, 2018 S.C. 13, 14, 558 S.E.2d 517, 517 (2002).

According to our records, Inmate Ackbar is represented by J. Brandt Rucker, Esq. Therefore, the State does not consider this letter to be a part of this action. However, if the letter was filed merely as a record of communication between the Applicant and his counsel, the State does not object to its being placed in the record. By copy of this letter, I am notifying you of the State's position.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 17 AM 11:05
J. BRANDT RUCKER
J. BRANDT RUCKER

The Honorable M. Hope Blackley
January 14, 2014
Page 2

Yours very truly,


Suzanne H. White
Assistant Deputy Attorney General

SHW/aam
Enclosure

cc: J. Brandt Rucker, Esquire (w/enclosure)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 17 AM 11:05
H. HOPE BLACKLEY

May 2, 2013

John Rucker

Attorney at Law

522 North Church St.

Greenville S.C. 29601

RE: Ackbar V. State

C.A. No: 2012-CP-42-0187

Dear Mr. Rucker:

Greetings and May Peace be upon thee.

As we prepare this Scribe, I hope all is well with your person as it is with mine. Let us begin by reviewing case # 0909053 Warrant # M-11266 Supplemental incident reports 00005 and 00006. When we review the aforesaid report 00005 we see officer C. Miller stating that he received information regarding a possible suspect. See Matheny V. State, 400 S.E.2d 25

In Matheny V. State, 400 S.E.2d 25 the court ruled that all the statements were voluntary and admissible because: (1) they occurred in non-custodial investigation prior to arrest to which Miranda has no application, and (2) the statements made after arrest were spontaneous and not in response to any police questioning.

See report 00006; here, Mr. Kelly was in Police custody being questioned about a robbery without the advise of family, friends, or lawyer. He submits first that he didn't know anything about the robbery. After continued questioning Mr. Kelly "finally" admitted that he did have knowledge of the robbery and that he participated in the incident.

Note: This admission of guilt was in response to police questioning and the record clearly reveals that at no time was Mr. Kelly advised of his Miranda rights by the investigating officer nor does the record reflect a signed waiver form with Mr. Kelly's signature indicating that he was aware of his rights.

Reviewed in this light, the arrest, Mr. Rucker, both in design and in execution, was investigatory. The

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 MAY -9 AM 11:12
JULIE CLAUDE

DM

Detective embarked upon this expedition for evidence in the hope that something might turn up. The manner in which Mr. Kelly's arrest was effected gives the appearance of having been calculated to cause surprise, fright, and confusion. See Brown v. Illinois, 45 S.Ct. 2254

In Brown v. Illinois, Petitioner was arrested without probable cause and without a warrant. He was given in full, the warnings prescribed by Miranda v. Arizona. Thereafter, while in custody, he made two incriminatory statements.

In this case the arrest warrants for armed robbery was secured without probable cause and I was tried and convicted for murder without a warrant. Mr. Kelly was never given in full, the warning prescribed by Miranda v. Arizona. Thereafter, while in custody, Mr. Kelly made incriminatory statements. ... As stated in Brown v. Illinois everything about my arrest lies at the crossroads of the Fourth and Fifth Amendments.

In Brown v. Illinois the holding is that evidence obtained as a result of an illegal arrest in violation of the Fourth Amend. must be suppressed.

Mr. Rucker bring that our person was improperly detain in violation of Miranda v. Arizona and due to lack of probable cause regarding warrant #M-110206 on 9-21-09, "All evidence obtained thereafter should be suppressed". State v. State, 448 S.E.2d 560 (S.C. 1974)

I recapitulate, "trial counsel was ineffective in failing to file a retrial motion to suppress evidence State v. State, 448 S.E. 2d 560. ... This error should be plain and obvious.

As we entered this service so shall we depart... Peace be upon thee,

Supreme K. Acton

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY -9 AM 11:12
K. L. BLAUNLEY

May 4, 2013

Supreme R. Ackbar

L.C.I.

990 Wisconsin Hwy

Bishopville S.C. 29010

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg S.C. 29304-3483

RE: Ackbar v. State

C.A. No: 2012-CP-42-4987

Dear Ms. Blackley

PLEASE find enclosed for you filing in the Court of Common Pleas the following: A 2 of 2 Page letter address to my assigned attorney John Tucker. PLEASE also find a certificate of service showing compliance with the rules of service as mandated by SCRCP.

PLEASE also note that I am the applicant in the above mention case and that I do not have the funds available to pay the cost of filing and service in the present matter. I hereby affirm by my signature affixed to this letter that the contents of this letter are true and request that the enclosed material be filed and service made without cost.

Will you please be so kind and courteous as to inform me by letter when the filing of enclosed material has been completed?

Thank you for your assistance in this matter.

Supreme R. Ackbar

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 AM 11:12
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg County
 J. Durham Cole, Circuit Court Judge

Supreme R. Ackbar

Applicant

V

The State

Respondent

CERTIFICATE OF SERVICE

Applicant, Supreme R. Ackbar hereby affirms by his signature affixed to this document, that he has this 6th day of May 2013 sent the undersigned attorney John Rucker a (5) two page letter dated 5-2-13 Postage paid through the mail room at Lee Corr. Inst. at the following address below.

Office of John Rucker
 Attorney at Law
 522 North church street
 Greenville S.C. 29601

S/ Supreme R. Ackbar
 Applicant

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAY -9 AM 11:12
 KIMBLE
 ACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-42-4987

Supreme R. Ackbar aka Ronald Gary
Plaintiff,

vs.

State of South Carolina
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Brandt Rucker, Bar No. <u>65403</u> Address: 522 N. Church St. Greenville, SC 29601 Phone: 864-271-9925 Fax 864-271-9554 E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant 9-11-2014 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SC RCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction ☐ Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 SEP 11 PM 2:20
HOLIE BLACKLEY

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OF SPARTANBURG)

C/A#:2012-CP-42-4987

Supreme Raheem Ackbar a.k.a.
Ronald Gary)

Plaintiff,)

State of South Carolina)

Defendant.)

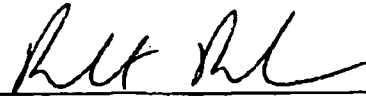
**NOTICE OF MOTION TO AMEND
APPLICATION FOR POST-CONVICTION
RELIEF**

The Applicant, by and through his attorney, Brandt Rucker, hereby moves this Honorable Court to amend his Post Conviction Relief Application, pursuant to S.C. Codes of Law Section 17-27-70 (1976) and South Carolina Rules of Civil Procedure by adding the following grounds to his previous application and amendments.

Ineffective Assistance of Counsel

1. Trial Counsel was ineffective for failing to meaningfully cross examine the state's witnesses.
2. Trial Counsel was ineffective for failing to object to a constitutionally invalid warrant.
3. Trial Counsel was ineffective for failing to object to the admission of unconstitutionally obtained evidence.

Respectfully submitted,



Brandt Rucker
Attorney for Applicant
522 North Church Street
Greenville, S.C. 29601
(864)271-9925

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 SEP 11 PM 2:20
M. HOPE BLACKLEY

Greenville, S.C.
September 11, 2014

May 2, 2014

Supreme R. Ackbar 275886

S. M. U-A-220

Lieber Corr. Inst.

P.O. Box 205

Ridgeville S.C. 29472

Brandt Rucker

Attorney at Law

522 North Church Street

Greenville S.C. 29601

Re: Ackbar v. State, 2012-CP-42-4987

Dear Mr Rucker

Greetings and May peace be upon you. Prior to your reception of this particular letter I was entertaining the contents of State v. Adolphe, 441 S.E. 2d 832, State v. Johnson, 395 S.E. 2d 167, State v. Prialcan, 548 S.E. 2d 213, State v. McWee, 472 S.E. 2d 235 and State v. State, 448 S.E. 2d 560. Why? It was in regards to My atomic subject matter being illegally detain with the usage of a defective armed robbery warrant. Review tr.p. 14 lines, 13-25 - tr.p. 15 lines, 1-8 & 14-17. At this location you will note the fact that the record is absence of any investigation regarding this issue therefore the dispositive issue here is whether sufficient information was given to the Magistrate to perform his "Neutral and detached" function rather than serve as a "rubber stamp for the police". By the way, I would have you know that I've augmented the intelligence of My data bank by inserting the following into My current programming; "[R]eviewing courts will not defer to a warrant based on an affidavit that does not 'provide the Magistrate with a substantial basis for determining the existence of probable cause.' Sufficient information must be presented to the Magistrate to allow that official to determine probable cause; his action can not be mere ratification of

M. HOPE BLACKLEY

2014 MAY 15 AM 9:29

the bare conclusions of others."

At this time I request that you review the enclosed voluntary statements of Ashley Jeter and Berdine Wilkins and be sure to note that on 9-5-09 neither of these employee witnesses provided any definitive information that describe the alleged robbers height, weight or Nationality.

At this time I request that you review officer C. Miller's enclosed incident report supplemental 0004 and note the date 9-7-09 the story was entered changed to black male approx 5'9" tall husky build, and the second subject was described as black male build approx 145 LBS. Also note there was (is) no additional statements or sworn oral testimony that corroborates officer C. Miller's changed report. Respectfully I would have you note that - officer C. Miller's report states that the employee witnesses stated they had been having difficulties out of their surveillance system and they were not sure if the VCR unit was working at the time of the purported incident. Also you should note that there was (is) no corroborating evidence that supports the allegation of the employee witnesses claim that the Money Store was actually robbed at gun point by hooded masked men.

At this time I request that you review officer C. Miller's enclosed incident report supplemental 0005 where he alleges to have received information on 9-10-09 regarding a possible suspect and tag number from a unidentified check cashing business in greer. At this time I would have you note there was (are) several check cashing businesses in greer, "which one was it" and what was the individual (s) name (s) that made the transmission for officer C. Miller to receive information regarding a suspect who allegedly matched the description of their suspects. At this time I would have you note there was (is) no corroborating evidence that supports officer C. Miller's claim that he received information that the subject who entered the alleged check cashing business was wearing a hood and a mask with shades while brandishing a gun. At this time I reiterate, "that sufficient information must be presented

M. HOPE
of
ASHLEY

2014 MAY 15 AM 9:29

to the Magistrate to allow that official to determine probable cause; his action can not be mere ratification of the bare conclusion of others" and note without any information concerning the reliability of the purported check cashing business "the inferences from the facts which lead to the complaint was not drawn by a 'Neutral and detached Magistrate' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime,' or as in this case by an unidentified 'check cashing business' (citations omitted) Aguilar v. Texas, 84 S. Ct. 1509 and its plain and obvious that trial counsel was ineffective in failing to raise a Meritorious Fourth Amendment claim that applicant was (is) improperly detained. Sike v. State. I vehemently state this because in State v. Johnson, the Court recognized that a warrant affidavit which is insufficient in itself to establish probable cause may be supplemented by sworn oral testimony and like Johnson's case the record in applicant's case evinces no sworn oral testimony concerning this issue. (Note: Error without prejudice does not warrant reversal. State v. Wyatt, 453 S.E.2d 890) (Note also: Whether the improper introduction of evidence is harmless requires the court to determine if the applicants "guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached". State v. Parker, 433 S.E.2d 831) Review again trial counsel's submission at Tr. B, 268 lines 16:21 and be sure to note the findings of State v. Singleton, 400 S.E.2d 487.

At this time I'm going to trust that you plainly see that applicant was (is) fraudulently imprisoned as the result of the fruit of the poisonous tree. Wong Sun v. United State, 83 S. Ct. 407. I will now recapitulate the fact that trial counsel was ineffective in failing to raise a Meritorious Fourth Amendment claim that applicant was (is) improperly detained. Sike v. State. (Note: To establish a claim of ineffective assistance of counsel applicant must show counsel's representation fell below an -

M. HOPE BLANCHLEY

2014 MAY 15 AM 9:29

CLERK OF COURT

objective standard of reasonableness and that defendant was prejudiced by such deficient performance, Strickland v. Washington, 104 S.Ct. 2052; — Gallman v. State, 414 S.E.2d 780 (1992) When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded. Kimmelman v. Morrison, 106 S.Ct. 2574) See again tr. 8, 268 lines 16-21.

Before I disembark I would like to say, "I am of conscious mind that trial counsel was ineffective in failing to object with contempt towards the defective inflammatory remark made by the state at tr. 9, 15 lines, 9-13."

Would you be kind and courteous by providing me with a responds to this letter. And will you get me in court or have the case vacated by the trial judge after all he does have the power to set aside his own judgment or you can have the case remanded back to the court of appeals. Thank you and good day.

Sincerely
Supreme R. Ackbar

2014 MAY 15 AM 9:29
M. HOPE BLAUNLEY

May 11th, 2014

Supreme R Ackbar 275886

S.M.U-A-220

Lieber Corr. Inst.

P.O. Box 205

Ridgeville S.C. 29472

M. HOPE BLACKLEY

Clerk of Court, Spartanburg County

P.O. Box 3483

Spartanburg, S.C. 29304-3483

Re: Ackbar v. State 2012-CF-42-4987

Dear Ms. Blackley

PLEASE find enclosed for filing in your court the original of my letter dated May 2nd 2014 with a certificate of service attached for showing compliance with the rules of service, as mandated by SCRP.

Will you please be so kind and courteous as to provide me with a copy of the letter when the filing of the letter has been accomplished?

Thank you for your assistance in this matter.

Supreme R. Ackbar

Supreme R. Ackbar

Applicant

M. HOPE BLACKLEY

2014 MAY 15 AM 9:29

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Post Conviction Relief From Spartanburg

County

J. Derham Cole, Circuit Court

Supreme R. Ackbar

Applicant

V.

The State

Respondent

CERTIFICATE OF SERVICE

M. HOPE BRADLEY

2014 MAY 15 AM 9:29

Applicant, Supreme R. Ackbar hereby affirms by his signature affixed to this document, that he has this 12th day of May 2014 sent the undersigned attorney John Rucker a four (4) page letter dated May 2, 2014. PLEASE note that I did enclosed with the letter trial pages fourteen (14), fifteen (15) and two sixty eight (268) and the following incident reports supplemental 00004 and 00005 and also the voluntary statements of Ashley Jeter and Berdine Wilkins.

John Rucker

Attorney at Law

522 North church street

Greenville S.C. 29601

SI Supreme R. Ackbar

Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4987
Supreme Raheem Ackbar, #275886,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed December 4, 2012, and amendment on January 25, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2009 term of the Spartanburg County Grand Jury for murder (2009-GS-42-5943). The Applicant was represented by J. Roger Poole, Esquire. On February 9, 2011, the Applicant proceeded to trial, where he was convicted by a jury. The Honorable J. Derham Cole sentenced Applicant to life.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. Applicant also filed a *pro se* brief in support of his appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Ackbar, Op. No. 2012-UP-521 (filed September 12, 2012). After reviewing a letter from the Applicant and his *pro se* petition for rehearing, the Court of Appeals denied the petition on October 17, 2012. The Remittitur was returned on November 29, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of counsel, in that;
 - i. Counsel deprived Applicant of his Sixth Amendment right to effective counsel by engaging in intrinsic fraud with the State,
 - ii. Counsel failed to fully disclose Brady material,
 - iii. Counsel failed to object to the State's failure to properly serve Applicant for the charge of murder,
 - iv. Counsel failed to object and make a motion to quash the indictment,
 - v. Counsel failed to object to perjury,
 - vi. Counsel failed to object to the trial judge not making impartial findings of fact and conclusions of law,
 - vii. Counsel failed to object to the jury charge,
 - viii. Counsel failed to make a motion for directed verdict,
 - ix. Counsel failed to move to suppress evidence based upon an illegal search and seizure,
 - x. Counsel failed to raise a meritorious argument that Applicant was illegally seized and that the evidence was obtained because of unlawful detainment,

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 19, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4987
	)	
SUPREME RAHEEM ACKBAR, #275886	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

J. Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, South Carolina 29601

DATED this 19th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 SUPREME RAHEEM ACKBAR AKA)
 5 RONALD B. GARY,)
 6 APPLICANT,)
 7 VS.)
 8 STATE OF SOUTH CAROLINA,)
 9 RESPONDENT.)

TRANSCRIPT
 OF
 RECORD
 2012-CP-42-4987

10
 11 September 15th, 2014
 12 Spartanburg, South Carolina

13
 14 B E F O R E:

15 THE HONORABLE ROGER L. COUCH, Judge.

16
 17 A P P E A R A N C E S:

18 J. BRANDT RUCKER
 19 ESQ.
 Attorney for the Applicant

20 SUZANNE WHITE
 21 ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

22
 23
 24 PAMELA E. GREEN
 25 Circuit Court Reporter
 Seventh Judicial Circuit

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THE COURT: All right. The State may proceed.

MS. WHITE: Thank you, Your Honor.

This is the case of Supreme Raheem Ackbar versus the State. It's Number 2012-CP-42-4987. He's represented today by Mr. Brandt Rucker.

He was originally indicted in June of '09 for murder. Proceeded to trial where he was represented by Roger Poole. He was convicted by a jury. Received a sentence of life. There was a direct appeal filed. An Anders brief was filed on his behalf and he also filed a pro se brief in support. The conviction and sentence were affirmed.

He filed this application December 4th, 2012, amended January 25th, 2013, and I believe, Your Honor, his counsel did file a recent amendment. So it's most likely not in your packet.

THE COURT: All right.

MS. WHITE: But I believe we can get somebody to maybe make a copy for you.

THE COURT: All right.

MR. RUCKER: Your Honor, I have a copy if you'd like me to bring it up.

THE COURT: Please. Just pass it up. Officer Bishop will give it to me.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 MS. WHITE: He has alleged about ten allegations, Your
2 Honor, and I guess with these three, now 13, alleging
3 ineffective assistance of counsel and various failures to
4 object, failures to quash, failure to make motions for
5 directed verdict, move to suppress, and a variety of things.
6 So I can reference the return from those, and, at this
7 point, I will turn it over to Mr. Rucker.

8 THE COURT: Yes, sir.

9 MR. RUCKER: Your Honor, I would tell you that the
10 amendments I believe were already, probably already
11 contained in the initial application, but I wanted just to
12 be clear, and I gave notice to opposing counsel last week.

13 THE COURT: All right.

14 MR. RUCKER: We call -- I call Supreme Ackbar to the
15 stand.

16 THE COURT: Come forward, sir, to be sworn.

17 (Witness complies.)

18 THE COURT: Place your left-hand on the Bible, raise
19 your right please, sir.

20 SUPREME ACKBAR, being first duly
21 sworn, testified as follows:

22 THE COURT: Thank you. Have a seat.

23 (Witness complies.)

24 THE COURT: State your name please.

25 THE WITNESS: Supreme Raheem Ackbar.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 THE COURT: Thank you.

2 Your witness, counselor.

3 MR. RUCKER: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. RUCKER:

6 Q Before we start, Supreme, did, did you go by another
7 name at one point?

8 A Yes.

9 Q All right. What's that name?

10 A Ronald Gary.

11 Q All right. But were you convicted under the name
12 Supreme Ackbar?

13 A Yes, sir.

14 Q Okay. And we talked about this briefly, but apparently
15 Judge Couch was your bond judge when you first went up for a
16 bond hearing.

17 Do you recall that?

18 A Yes.

19 Q Do you object to him being the judge at this hearing?

20 A No, sir, I don't object.

21 Q Okay. You do not believe there's a conflict or any
22 issue as to him being fair in your case?

23 A No, sir.

24 Q Okay. I'm gonna go -- work you through your
25 application and the issues you've raised.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 What, what -- first of all, what do you first think
2 that your trial attorney, Roger Poole, did incorrectly?

3 A Didn't do correctly?

4 Q Right.

5 A He didn't impeach the witnesses.

6 Q All right. And how did he not impeach, impeach the
7 witnesses properly?

8 Specifically which witness and what did he do wrong?

9 A Octavious Burnside, S.K. , and Marcus Wright.

10 Q Okay. And what did you do incorrectly in those
11 cases---

12 A Well, he didn't---

13 Q ---of those witnesses?

14 A Well, he didn't confront them with, with, with the
15 perjury, with the perjured testimony, with the exculpatory
16 evidence. What they, what they -- when they had said that,
17 upon initial investigation or upon questioning, Octavious
18 Burnside stated that I -- he had spoken to me and all the
19 evidence corroborated that from, from my, from my, from my
20 view of the record.

21 Q Okay. Well, let's go back just for some background.
22 What were you convicted of?

23 A Murder.

24 Q Okay. And what -- who was the alleged victim in the
25 case?

Supreme Ackbar - Direct examination
by Mr. Rucker

1 A Ricky Kelly.

2 Q What evidence was presented by the State to prove that
3 you were guilty, you were guilty?

4 A A photograph of a Kel Tec 9mm handgun.

5 Q Okay. And was there any other evidence?

6 A Some -- a book bag, a -- photographs.

7 Q Okay. Did witnesses testify in your case?

8 A Yes, sir.

9 Q Okay. And your allegation is that they were not
10 properly confronted, three specific witnesses?

11 A Yes, sir, and also Lorin Williams.

12 Q Okay. And who is Lorin Williams?

13 A He's the investigator. He committed perjury too.

14 Q How did he commit perjury?

15 A He was solicited, solicited by the prosecution.

16 Q Okay. Had you ever been treated---

17 THE COURT: I'm sorry. I didn't understand that last,
18 that last statement.

19 He was what by the prosecution?

20 THE WITNESS: He was -- the testimony was solicited by
21 the prosecution.

22 THE COURT: Solicited by the prosecution.

23 THE WITNESS: Yes, sir.

24 Q That testimony---

25 THE COURT: Go ahead.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 MR. RUCKER: I apologize, Judge.

2 That testimony was brought by the prosecution?

3 A Yes, sir.

4 Q Is that what you're saying?

5 A And he, and he, and he vouched for the credibility of

6 S.K. and knowing that S.K. had

7 committed -- had lied in Court.

8 Q Okay. Did -- had you ever been -- had your mental

9 health ever been in question when you went and talked to Mr.

10 Poole?

11 A No, sir.

12 Q Okay. Did -- have you had mental issues at one point?

13 A No, sir.

14 Q Okay. Do you recall the day -- the actual trial?

15 A Yes, sir.

16 Q Okay. The three witnesses were not properly impeached,

17 and I want to work you back through that and make sure it's,

18 it's clear to the, to the judge what, what you're talking

19 about.

20 What was the perjured testimony that was gonna be

21 presented?

22 A Well, Marcus Wright stated that -- of which witness?

23 Q All right. Let's start with Marcus Wright now.

24 A Marcus Wright, he was stating that I was with him in

25 the car and there was no evidence to support that. No

Supreme Ackbar - Direct examination
by Mr. Rucker

1 exculpatory evidence in there that could of been used to
2 impeach Marcus Wright. He, he admitted on the record that
3 he was a liar. Mr. Poole knew he, knew he was lying. The
4 lies, the lies were plain obvious in there.

5 Q Okay. What was the exculpatory evidence that you
6 believed was entered?

7 A I think it's Form 229, 229 when blood DNA -- blood was
8 found on the, on the window seal of the car --

9 Q Okay.

10 A -- of the Chrysler Sebring on the passenger side --

11 Q Okay.

12 A -- and Marcus Wright -- Marcus fingerprint was right
13 there.

14 Q All right. Do you have a question about the chain of
15 custody or, or the forensic analysis of the blood?

16 A Of the blood?

17 Q Yes.

18 A I mean I don't know. I don't -- I didn't review the
19 case to my knowledge. I didn't review it with looking,
20 looking for, for the chain of custody or anything.

21 Q Okay. But how, how is the blood -- how would that show
22 perjury?

23 A Well, they -- when he solicited the testimony that
24 characterized me as that passenger of that Sebring, you know
25 what I mean, that was, that was -- that bolstered the state

Supreme Ackbar - Direct examination
by Mr. Rucker

1 case, and when that, when that happened, that basically put
2 in the minds of the jury that yeah, he's telling the truth
3 cause the solicitor, he also vouched for the credibility of
4 Marcus Wright.

5 Q Okay. How, how -- what was Mr. Poole suppose to do to
6 cross-examine to show that bias?

7 A He was suppose to impeach Marcus Wright. He had the --
8 we had the evidence to impeach him. It's also the phone,
9 the phone recordings that was never, never, never -- that
10 was never brought forth.

11 Q Okay. Have you -- what recordings are you talking
12 about?

13 A The phone recordings that, that I, I had asked for and
14 I never received those.

15 Q Okay. You asked for Mr. Poole to get the phone
16 recordings?

17 A Yes, sir, and they was granted to me by, by Judge
18 Couch.

19 Q Okay. And you're saying that Judge Couch granted
20 the---

21 A Yes, sir.

22 Q All right. All right. As to Octavious Burnside, what
23 was his testimony and how or I should say what could of been
24 used to impeach him?

25 A Well, there was no evidence to support nothing she

Supreme Ackbar - Direct examination
by Mr. Rucker

1 said. Her testimony was clearly hearsay. He should of
2 objected to that. It was clearly fabricated hearsay.

3 THE COURT: Who are we talking about?

4 THE WITNESS: Octavious Burnside. She's my ex-wife,
5 sir. I'm sorry.

6 THE COURT: Okay. Thank you.

7 Q And when you say it was hearsay, what did she testify
8 that you believed is hearsay?

9 A She testified that she gave me a ride over there, and
10 that she brought me, she brought me, she brought me
11 something to drink. She brought me, she brought me -- that
12 the book bag and all this stuff was mine and it was nothing.
13 Nothing, nothing to indicate that it was.

14 Q Okay. And who -- so solely her testimony to place you
15 at the scene?

16 A That placed me there, yes, sir.

17 Q Okay. Who was the third witness that should of been
18 impeached?

19 A S.K.

20 Q Okay. And what was the impeachment evidence against
21 him?

22 A Well, he testified that he didn't see me stab
23 Mr., Mr. Kelly, but he, he informed the police that I did.
24 He saw me stab Mr. Kelly twice.

25 Q Okay. Were there any other witnesses that should of

Supreme Ackbar - Direct examination
by Mr. Rucker

1 been impeached?

2 A Other than those -- let's see. Octavious Burnside,
3 S.K. , Marcus Wright, and Lorin Williams.

4 Q Right.

5 was it -- those are the, those are the four?

6 All right. You've alleged also that there was a issue
7 as to a appellate counsel.

8 What was the issue with appellate counsel?

9 A Ineffective -- failing to raise a plain and obvious
10 reversible error on direct appeal.

11 Q Okay. Did she file what's called an Anders brief?

12 A Yes, sir.

13 Q Do you know what an Anders brief is?

14 A Yes, sir.

15 Q What is an Anders brief?

16 A That just basically saying that she, she, she, she
17 raised the, she raised the issue that was already raised at
18 trial and the Trial Court has sound discretion over the
19 Court. That ruling would not be disturbed on appeal absent
20 abuse of discretion.

21 Q Okay. How many times did you meet with Roger Poole,
22 your trial counsel, before this trial?

23 A I can say he, he came on several occasions. I pointed
24 out several facts, but none of them facts were brought out,
25 brought out.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q All right. And how many, how many -- several
2 occasions?

3 A He come on several, he come on several. I can't give
4 you an exact number, how many times he came.

5 Q Okay.

6 A But he came -- but he was just trying to mislead me
7 though.

8 Q All right. And how was he trying to mislead you?

9 A Telling, telling me that the State had evidence and
10 then, when we come to Court, he saying that he, he had had
11 the evidence, but he telling me -- he kept telling me
12 state -- he had to get it from the State.

13 Q All right.

14 A I never seen. I never heard the phone records---

15 Q All right.

16 A ---and I wanted to hear them.

17 Q Did he call that evidence discovery?

18 A Yes.

19 Q Okay. Did you ever get to review the discovery with
20 Mr. Poole?

21 A No, sir.

22 Q Okay. When you met with him, how long would y'all
23 meet?

24 A I'd say probably -- that would depend. Probably like
25 ten, ten minutes---

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q Okay.

2 A ---at the time until like towards, towards, towards
3 trial when he came in there with the investigator.

4 Q All right. And did, did -- were you ever given a plea
5 offer in your case---

6 A No, sir.

7 Q ---to your knowledge?

8 All right. You argued that the judge was not impartial
9 as he was suppose to be.

10 Did Mr. Poole ever make an objection to the
11 impartiality -- non-impartiality?

12 A He made a contemporaneous objection towards the
13 evidence, but he never made an objection towards the Trial
14 Court's impartiality.

15 Q If I -- how do you believe that the Trial Court wasn't
16 impartial or why do you believe that?

17 A Well, he kept -- every time people -- when Mr. Poole
18 did object, and he was stating, as he was stating his
19 Constitutional basis towards Octavious Burnside, the Trial
20 Judge, the Trial Judge intervened and then just overruled
21 him. He prohibited him -- from, from Mr. Poole from casting
22 doubt on, on this -- on the key witness there.

23 Q Okay. And do you believe Mr. Poole didn't properly
24 protect your interest for appeal then?

25 A No, sir.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q Okay.

2 A He should of gave a contemporaneous objection right
3 there.

4 Q Okay. All right. And let's talk about the jury
5 charges.

6 what do you believe were incorrect with the jury
7 charges?

8 A The jury charges, well, like I say, he admitted that
9 the case was all about reasonable doubt for the record, but
10 he allowed the jury, the jury, the judge to, to give
11 instructions on murder, and I felt like that, that was wrong
12 cause if you feel like the case was reasonable doubt, and it
13 was, and it was all about reasonable doubt, said the
14 defendant should not have -- advocated my, my Sixth and
15 Fourteenth Amendments.

16 Q Do you believe that you were entitled to a lesser
17 included charge of manslaughter?

18 A I was entitled to an acquittal.

19 Q Okay. All right. When you -- you've, you've raised an
20 issue regarding the, the indictment.

21 what is your issue regarding the indictment?

22 A He should of moved the Court to quash the indictment.

23 Q And---

24 A Because the State failed to produce evidence of the
25 offense charged.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q All right. What -- the issue was there was
2 insufficient evidence?

3 A The State, the State in that -- by way of the
4 indictment, they stated that I did this with a large fixed
5 blade hunting knife. By them using that word did, that's
6 not an allegation. That's a proven fact and they shifted
7 the burden by the, by that, by that indictment, by stating
8 that I did, and they did not produce no large fixed blade
9 hunting knife. They produced a photograph of a Kel Tec 9mm
10 handgun and a book bag and I was entitled to an acquittal.

11 Q All right. Was it your -- is it your testimony they
12 never produced the actual alleged murder weapon in the
13 hearing?

14 A Yes, sir.

15 Q All right.

16 A They never proved -- produced nothing of a murder
17 weapon.

18 Q All right. Did you talk to Mr. Poole about the lack
19 of, of production of evidence?

20 A Yes, sir.

21 Q And what did he say to you?

22 A We're going to trial.

23 Q All right. Did you talk to him about it at the case
24 though?

25 A We going to trial. He say he told me at the end of

Supreme Ackbar - Direct examination
by Mr. Rucker

1 trial that he was gonna, he was gonna impeach the witness
2 during the, during the, during his closing arguments, but
3 he, he didn't do nothing.

4 Q Did he discuss with you issues of -- regarding defense,
5 self-defense, any kind of defense you may have?

6 A Nothing.

7 Q All right. Do you believe you were entitled to a
8 self-defense charge?

9 A I was entitled to an acquittal.

10 Q All right. You, you allege that there was an illegal
11 search and seizure, Fourth Amendment violation.

12 A Yes, sir.

13 Q Explain your, your intention to the Judge there please.

14 A well, first off, they took evidence off hearsay that
15 was allegedly in Octavious Burnside car, truck, you know,
16 and they saying it was mine because she said it was mine
17 cause she say she bought it from me, you know, and when
18 they, when they seized that truck, they seized that truck
19 illegally on the 21st.

20 Q All right. Whose truck was it?

21 A Octavious Burnside.

22 Q All right. And it's your contention that they did not
23 have probable cause to search the vehicle?

24 A They didn't have probable cause to take the vehicle.

25 Q All right. Are there other issues we need to address

Supreme Ackbar - Direct examination
by Mr. Rucker

1 with the judge?

2 A The Trial Court failure to give a finding of fact,
3 conclusion of law on the timely objection.

4 Q Okay. And which objection was that?

5 A That was that contempt objection when Mr. Poole
6 objected toward the evidence. So contempt towards the
7 evidence that the State was trying to introduce, a photo, a
8 photograph.

9 Q Okay. And what was the photograph of?

10 A The Kel Tec 9mm handgun.

11 Q All right. And what was the relevance -- was there any
12 relevance as to the admission of the gun?

13 A No, sir.

14 Q Okay. Was it -- do you recall testimony regarding the
15 gun?

16 A Only, only that the man identified, identified it,
17 Mr., I think, Hodges --

18 Q Okay.

19 A -- and he just identified who that's going over the
20 evidence, going over the evidence.

21 Q All right. Are there other grounds you believe you
22 have a right to a new trial because of?

23 A The prosecution voucher for the credibility of, of, of
24 Marcus Wright.

25 Q All right. How did they do that?

Supreme Ackbar - Direct examination
by Mr. Rucker

1 A He stated that it corroborates -- I submit to you that
2 it corroborates with, with Marcus Wright. Mr. Poole didn't,
3 didn't object, didn't object to that.

4 Q Okay. Are there any other issues you'd like the Court
5 to look at?

6 A The, the Fourth Amendment. I'm illegally detained
7 under the Fourth Amendment.

8 Q Okay. And why are you illegally detained under the
9 Fourth Amendment?

10 A Inside the armed robbery, I was allegedly -- I was, I
11 was detained with the uses of a defection armed robbery
12 warrant.

13 Q Okay. And what happened with that alleged armed
14 robbery charge?

15 A To my knowledge it's pending against me.

16 Q Okay. All right. Continue please.

17 A And they didn't have probable cause to detain, to
18 detain -- to issue a warrant for my arrest for that or no
19 probably cause cause the magistrate, in that case, to my
20 knowledge of the law, does not deny. However, was not
21 provided sufficient evidence to, to issue, issue the warrant
22 for my arrest for it because the, the -- I think it's -- I
23 don't know if it's Lieutenant, Lieutenant now or Sergeant
24 Chris Miller, he alleged that he received information from a
25 check cashing business in Greer. But he never identified

Supreme Ackbar - Direct examination
by Mr. Rucker

1 the check cashing business, places in Greer. No one
2 identified, identified, identified no, no suspects around
3 that store that he's alleging.

4 Q Okay.

5 A And under the Sixth, I have a right to confront my
6 accuser and I, and I can't confront an accuser that I do
7 not know.

8 Q Okay. Are there other issues?

9 I think we've gotten through everything. I want to
10 make sure you get everything.

11 A What else?

12 Let's see.

13 Pretty up.

14 MR. RUCKER: Your Honor, I'm gonna -- if there's no --
15 any objection?

16 MS. WHITE: Oh, no.

17 MR. RUCKER: Your Honor, I'm gonna -- if you'll allow
18 me to approach, I'm gonna show him the PCR application to
19 make sure we've addressed every issue.

20 THE COURT: Certainly.

21 Q Go ahead.

22 A Another issue I had was the State, they never issued --
23 they issued a warrant for, for, for murder, but they never
24 served me with a warrant for murder. They took me to trial
25 for murder and never even give me a warrant for murder.

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by Mr. Rucker

1 Q Are there any other issues, after reviewing the
2 application, take your time.

3 A Sentencing. Failure to object to the sentencing.

4 Q Okay. What was the grounds for that objection that you
5 believe he should of---

6 A He stated he had---

7 Q ---had?

8 A He stated on the, on the record that the case is all
9 about reasonable doubt. It's all about reasonable doubt and
10 that the evidence of the witnesses in the case is, is, is
11 not enough, and that he should of, he should of objected to
12 the sentencing, the sentencing. He, he failed to, to bring,
13 bring forth relevant evidence and to object on all possible
14 grounds to the inflammatory remarks of the prosecution in
15 that case. The sentence, the sentence is grossly, grossly
16 inadequate.

17 Q All right. Do you recall the issue with your Anders
18 brief being that a juror said to the Court that they knew
19 you and---

20 A I think the jury said that he knew the jury -- no, he
21 didn't say me. He say he knew of Mr. Kelly.

22 Q Okay.

23 A Mr. Kelly and he had talked, talked with another jury
24 about it.

25 Q Okay. And do you believe you had a grounds for a

Supreme Ackbar - Direct examination
by Mr. Rucker

1 mistrial because jurors knew the victim?

2 A The, the jurors knew the victim?

3 I have a grounds for a mistrial due to Mr. Poole
4 ineffective added to, added to, to that, that issue right
5 there.

6 Q Okay. So the issue being there could be bias in the
7 jury?

8 A At, at -- there was bias in the jury, but added, added
9 with these errors in which, in which I've spoken for today,
10 should be, should amount -- it should amount to abuse of
11 discretion --

12 Q Okay.

13 A -- and ineffective assistance of counsel and I felt
14 like this, this -- that the, that the, that the -- that it
15 was fraud in committing fraudulent acts in the Court and
16 with the Court, that I thought more, that he, he was more
17 boasting, more boasting more with the Court than he was
18 concerned about my, my constitutional rights.

19 Q Okay. Are those all the issues that you, you want to
20 introduce?

21 A Everything I have on the record.

22 Q Okay. All right.

23 THE COURT: I'm not sure what that answer means,
24 everything you have on the record.

25 THE WITNESS: I mean I've supplied, supplied --

Supreme Ackbar - Direct examination
by Mr. Rucker

1 everything I've supplied to -- with Mr. Rucker in the---

2 THE COURT: Well, he's asking if there's anything else
3 that he hasn't covered.

4 THE WITNESS: Let's see.

5 (Pause.)

6 THE WITNESS: I think that's about it.

7 THE COURT: Okay.

8 THE WITNESS: I look at my notes there. If we need to
9 redirect, we redirect.

10 Q All right. Have you -- have we had enough time to
11 talk?

12 Are you comfortable going -- I mean we're already going
13 forward, but have you covered---

14 A I'm comfortable.

15 Q ---everything you want?

16 A I'm comfortable with, with, with the time we done
17 talked.

18 MR. RUCKER: Okay. No further questions.

19 THE COURT: State may cross-examine.

20 MS. WHITE: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MS. WHITE:

24 Q Mr. Ackbar, first of all, in regards to -- I'm gonna
25 try to kind of start with the same order that you went

Supreme Ackbar - Cross-examination
by Ms. White

1 through.

2 You were talking about Marcus Wright.

3 A Yes, sir. I mean yes, ma'am. Sorry.

4 Q That's fine.

5 Mr. Wright was the alleged driver of the Chrysler
6 Sebring and the testimony was supposedly that you hopped in
7 the car after the stabbing and he drove away about a mile
8 away from the Dollar General.

9 Is that right?

10 A Yes, ma'am.

11 Q Okay. And you were testifying about the fact that a
12 fingerprint was found on the car.

13 Is that right?

14 A Yes, ma'am.

15 Q They also testified, and you're saying it's Officer
16 Hogshed I believe, and testified as to finding some blood on
17 the passenger side door.

18 Is that right?

19 A Yes, ma'am.

20 Q Okay. So that was presented to the jury as well as
21 testimony that Mr. Wright's fingerprint was there?

22 A That was solicited by my Counsel. Not by the
23 prosecution.

24 Q Okay. The prosecution presented a witness who
25 testified as to what he found on the car and the fact that

Supreme Ackbar - Cross-examination
by Ms. White

1 they did, did find blood on the car, did they not?

2 A The who now?

3 You say the witness did that?

4 Q Yes.

5 A They didn't---

6 Q The prosecution actually went through the fact of --
7 the fact that they found the blood on there, did they not?

8 A After, after Mr. Poole solicited the testimony.

9 Q Okay. And did you talk with him about the fact that,
10 in fact, your defense was trying to possibly throw the blame
11 to Mr. Marcus Wright?

12 A My, my defense was not trying to possibly throw the
13 blame. My, my defense was I had nothing -- wasn't even
14 there. I ain't have nothing to do with this.

15 Q Okay. So your defense is one that you were completely
16 innocent, you weren't present, and had nothing to do with
17 it?

18 A That's my, that's my understanding.

19 Q Okay. Now, you said your ex-wife testified, Ms.
20 Burnside. She did testify that she had taken you there.
21 This was at the -- her mother's home where the stabbing
22 occurred.

23 Is that right?

24 A Yes, ma'am.

25 Q Okay. She testified that she brought you there that,

Supreme Ackbar - Cross-examination
by Ms. White

1 you were there in her truck, that she went outside to give
2 you something to drink, and then you were gone.

3 Is that right?

4 A Yes, ma'am.

5 Q And Mr. -- I believe it's S.K. is the one
6 who testified that he was in that truck with you and
7 witnessed you stabbing the victim.

8 Is that right?

9 A Yes, ma'am.

10 Q Okay. Now, your attorney objected to some photos
11 coming in that showed a picture of the car where the victim
12 was stabbed, did he not, because they were too prejudicial?

13 Do you recall that?

14 A Yeah, some photos cause some graphic details---

15 Q Okay.

16 A ---or some blood, blood splatter.

17 Q Right.

18 A Yes, ma'am.

19 Q And he was trying to keep that out so the jury wouldn't
20 see all the blood?

21 A I don't know what, what he was doing. All I know is he
22 was ineffective.

23 Q Okay. And speaking of these, you said something about
24 some jail recordings.

25 This was discussed at the beginning of your trial,

Supreme Ackbar - Cross-examination
by Ms. White

1 wasn't it, when you initially made a motion to relieve
2 counsel?

3 A Yes, ma'am, that was in January.

4 Q Okay. And there was a separate hearing on that, right?

5 A Yes, ma'am.

6 Q And Mr. Poole testified and the solicitor or -- spoke
7 before the Court about the fact that there were phone and
8 jail recordings that Mr. Poole was gonna bring to you that
9 day, that you had refused to communicate with him?

10 A No. No, ma'am, not that day. He didn't bring them
11 that day. He never -- the day, the day -- he, he say I
12 refused to speak with him --

13 Q Right.

14 A -- I was speaking with -- Mr. Poole kept asking me for
15 evidence that day. I gave him everything that I knew about
16 the case. He never mentioned the phone records that day --

17 Q Okay.

18 A -- on that day.

19 Q Mr. Poole -- did they use the phone records against you
20 at the trial?

21 A No, ma'am.

22 Q Okay. And Mr. Poole talked about the fact that he did
23 have them, but you were concerned also about a transcript of
24 the jail recordings?

25 A The recordings. I, I -- to my knowledge, I thought I

Supreme Ackbar - Cross-examination
by Ms. White

1 was entitled to some transcripts, but the prosecution said
2 that they recordings. So I wanted to listen to the
3 recordings because, to my knowledge, Marcus Wright is on
4 there informing them, to my knowledge, that we already told
5 the police that you wasn't even over here, you ain't had
6 nothing to do with this against my knowledge.

7 Q You're saying there was a conversation between you and
8 Mr. Wright that you---

9 A Yeah.

10 Q ---felt was important?

11 A And Mr. Wright stated that, what I'm stating for the
12 record.

13 Q Okay. So you wanted that for purposes of trying to
14 impeach Mr. Wright?

15 A Exculpatory purposes.

16 Q Okay. In addition to that testimony there was
17 testimony of the knife that they believed was used to stab
18 him and your ex-wife or wife at the time testified that she
19 had purchased a knife similar to what they believed was used
20 for you prior.

21 Is that right?

22 A You'd have to ask her that. If she, if she purchased
23 it, you have to talk to her about that cause I don't know
24 nothing about no knife.

25 Q But I'm saying that's what her testimony was---

Supreme Ackbar - Cross-examination
by Ms. White

1 A That's what her testimony was.

2 Q ---at trial?

3 Okay. You were arguing that the search warrant for the
4 car or the truck was illegal.

5 Is that right?

6 A Yes, ma'am, they, they, they towed the truck on the
7 21st. They didn't get a warrant for -- until the 23rd---

8 Q Okay.

9 A ---and then they tried to backdate in the, in the
10 supplemental report saying that they got a warrant on the,
11 on the 23rd, and the record reflects that they took the, the
12 truck on the 23rd.

13 Q Okay. That was Ms. Burnside's truck, is that right?

14 A Yes, ma'am.

15 Q It was registered to her?

16 A Yes, ma'am.

17 Q And the home that was searched was her home as well?

18 A Yes, ma'am.

19 Q Okay. So did your attorney talk with you about the
20 fact that you really had no standing to contest the search
21 of the truck or the home?

22 A Didn't tell me nothing.

23 Q Okay. In regards to the armed robbery warrant, that
24 was unrelated -- you were arrested for murder in this case.

25 Is that right?

Supreme Ackbar - Cross-examination
by Ms. White

1 A No, sir, I was arrested for armed robbery.

2 Q Okay. That was the statement that supposedly the
3 victim was involved with---

4 A Yes, ma'am.

5 Q ---an armed robbery in Duncan and one in Greer.

6 Is that right?

7 A To my knowledge, one in Duncan.

8 Q Okay. And that was where the victim was -- gave a
9 statement and there -- the State's argument was that this
10 was the motive --

11 A This was---

12 Q -- for the murder?

13 A Yes, ma'am.

14 Q Okay. And so you're saying you were never arrested for
15 the murder in this case?

16 A No, ma'am, I was never given a, an arrest warrant for
17 murder in this case.

18 Q Okay. But you have seen the arrest warrant since, have
19 you not?

20 A Yes, ma'am, I've seen the arrest warrant.

21 Q Okay. Were you already in the prison or in jail when
22 this warrant was issued?

23 A Yes, ma'am, I -- when I got there -- when I got the,
24 got the warrant, it was inside my motion of discovery and I
25 informed Mr. Poole of this. He did ask me. He say how did

Supreme Ackbar - Cross-examination
by Ms. White

1 you get that -- how you get the warrant, how you get that
2 warrant. I tell him it was inside my motion of discovery.

3 Q Okay. So you did see it prior to your trial?

4 A Yes, ma'am.

5 Q Okay. And in regards to your indictment, you said that
6 it was stating evidence. It's stating what the State
7 believed occurred.

8 Is that not correct?

9 A Say that again.

10 Q The, the indictment, when it says you said that it said
11 you did stab him with a knife --

12 A The what?

13 Q -- that's stating what the, what the State believed
14 occurred.

15 Is that right?

16 A That stated that, that -- by way of that indictment, to
17 my knowledge, it's not an allegation that ain't nothing --
18 as a witness to the crime. By what I'm saying I did do this
19 with a large fixed blade hunting knife.

20 Q Okay. And do recall the judge going over with the jury
21 the fact that the indictment was not evidence?

22 A He, he did -- I don't, I don't remember him saying that
23 it's not evidence, but he constructed or amended that
24 indictment. He never, he never, he never read the
25 indictment appropriately---

Supreme Ackbar - Cross-examination
by Ms. White

1 Q Okay.

2 A ---until --.

3 Q In regards to the juror that said he thought he might
4 of known the victim and might of mentioned that to another,
5 another juror, the judge called them before him and asked
6 him about that, did they not?

7 Did he not?

8 A Back in the, back in his office.

9 Q Is it not on the record that there was a discussion
10 with the juror about whether or not he was familiar with the
11 victim?

12 A Yes, ma'am.

13 Q Okay. So they were in chambers, but it's on the
14 record, right?

15 A Yes, ma'am, every -- everything -- to my knowledge,
16 it's on the record.

17 Q Okay. And the gentleman talked about what he knew of
18 the victim possibly and who he had told in the jury -- the
19 judge actually spoke with---

20 A Yeah.

21 Q ---both of the jurors, did he not?

22 A Yes, ma'am, and one of the jurors said he, he didn't
23 really know what was going on. He couldn't even keep up
24 with what's going on.

25 Q Okay. Your attorney made a motion for mistrial, did he

Supreme Ackbar - Cross-examination
by Ms. White

1 not?

2 A But on the same grounds. He, he didn't, he didn't make
3 a motion on a different ground, on a different, a different
4 ground. He made a motion for a mistrial on the same thing
5 that he already, had already made a motion for mistrial on.

6 Q He made a motion for mistrial on the fact that he
7 believed the jury might be tainted.

8 Is that right?

9 A Yes, ma'am.

10 Q Okay. And that was denied?

11 A That was denied.

12 Q Okay. The -- do you recall how long it took the jury
13 to deliberate in this matter?

14 A I know it wasn't long.

15 Q About 30 minutes?

16 Is that right?

17 A About 30 minutes.

18 Q Okay. And you realize that the evidence that was
19 presented, even though you think it might have been
20 incorrect, the jury believed them, believed them. They
21 minds was inflamed by the inflammatory remarks of the
22 prosecution and my trial counsel failed to object to them,
23 to them remarks.

24 MS. WHITE: Okay. All right. Your Honor, I think
25 that's all I have for this witness.

1 THE COURT: Counsel.

2 MR. RUCKER: No redirect, Your Honor.

3 THE COURT: You were talking about the remarks of the
4 prosecution that inflamed the jury.

5 Can you tell me when that occurred in the trial?

6 THE WITNESS: Throughout the trial, and it's -- in the
7 beginning, he said that, in the beginning, he stated that,
8 that the evidence would show that I brutally murdered and
9 cut his throat, stabbed, cut his face, stabbed him in the
10 chest.

11 THE COURT: Uh-huh. (Affirmative).

12 THE WITNESS: He stated that then in the beginning,
13 and, at the end, at the end, he was stating that, that you
14 could -- we know that that someone was Mr. Ackbar sitting
15 there in that car. I was laying in wait waiting for him.
16 He continued -- it could -- it -- telling them that I was in
17 the car with S.K. .

18 THE COURT: You were what?

19 THE WITNESS: I was in the truck with S.K. .

20 THE COURT: Oh.

21 THE WITNESS: with S.K. , that my wife had
22 brought me over there.

23 THE COURT: So you're, you're just basically objecting
24 to arguments made by the State pointing to factors that may
25 tend to show that you were guilty?

1 THE WITNESS: Yes, he should---

2 THE COURT: Okay.

3 THE WITNESS: He should of objected to all, all of
4 that.

5 THE COURT: All right.

6 THE WITNESS: Considering he knew -- he admitted for
7 the record that --.

8 THE COURT: All right. You may step down.

9 Petitioner wish to call any other witnesses?

10 MR. RUCKER: No, sir.

11 THE COURT: State may call any witnesses it chooses.

12 MS. WHITE: Thank you, Your Honor.

13 We'd call Roger Poole to the stand.

14 THE COURT: Thank you.

15 Come forward to be sworn.

16 ROGER POOLE, being first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please.

19 (Witness complies.)

20 THE COURT: State your name.

21 THE WITNESS: Roger Poole.

22 THE COURT: Thank you.

23 Your witness, Ms. White.

24 MS. WHITE: Thank you, Your Honor.

25 DIRECT EXAMINATION

Roger Poole - Direct examination
by Ms. White

1 BY MS. WHITE:

2 Q Mr. Poole, do you recall representing Mr. Ackbar in
3 this case?

4 A I certainly do.

5 Q And in what capacity were you representing him?

6 A I was his lawyer at his trial in February of 2011.

7 Q And, at that point, how long had you been practicing
8 law?

9 A Thirty-one years.

10 Q Okay. And has the majority of that been spent
11 criminal, civil, half and half?

12 A There was a 30 year period I was in private practice.
13 So I didn't, of course, practice as much criminal defense as
14 I do now or as I did right before private practice. So a
15 substantial portion.

16 Q Okay. And how -- do you recall how far in advance of
17 this trial, in February of 2011, you began representing him?

18 A I started representing Mr. Ackbar about the middle of
19 the year prior -- well, it would of been 2010.

20 Q Okay.

21 A Probably June. I started coming to see him on about a
22 monthly basis throughout 2010 with trying to see him more
23 regularly in December because I knew the trial, as a result
24 of my conversations with the State, was probably going to
25 come up, come up in February.

Roger Poole - Direct examination
by Ms. White

1 I have some communication problems with Mr. Ackbar and
2 he filed a motion to have me relieved of counsel and that
3 was heard in January by Judge Cole. And I think that's in
4 the transcript.

5 Q And that would be the January 27th hearing where it
6 was discussed and the, the recordings were discussed?

7 A Yes, ma'am.

8 Q Do you recall that particular topic and what his
9 concerns were with his jail recordings?

10 A Right. Well, what -- we talked about the recordings.
11 Now I'm not sure if I listened to those recordings and
12 conveyed information to him. I know I did not play them for
13 him.

14 Also, the telephone records were records of numbers
15 called from and called to a particular cell phone for a
16 period of time, and they were voluminous records, and I, I
17 talked to him and said what is it that you want me to do
18 with, you know, this printed material. We don't have the
19 technology to obtain the substance of the, of the phone
20 conversations. We can't reach up into the air and pull them
21 down and have them converted to word on a document that I
22 know of.

23 Our communication got better after the hearing in
24 January where the advice given by the Court is that both of
25 us need to make consolidated and concerted effort to listen

Roger Poole - Direct examination
by Ms. White

1 to one another, and not for -- basically, as I took it, for
2 Mr. Ackbar not to be the lawyer and me not be a client, that
3 type of thing, and Mr. Ackbar, up until that time, seemed to
4 want to dictate how everything was going to go.

5 I wrote him a letter stating that my job -- and this
6 was before the hearing. This was in mid December I wrote
7 him a letter saying I'm coming to see you. At our meeting
8 we need to talk about two things, and I told him that my
9 role is to accomplish his objective, his objective is my
10 ability to use whatever tactics necessary to achieve a
11 certain strategy to get to the objective through the use of
12 legal means, and his role was to communicate with me and let
13 me know what was going on and what was happening in his case
14 like I have something to work with.

15 I couldn't get anything directly from him up until that
16 time except, when we talk about the discovery, he would talk
17 about untruths, discrepancies in statements, things like
18 that, but nothing I could get much from him on what was
19 coming from him. And so that was our fundamental problem.

20 well, like I say, it got better after the hearing in
21 January, and by the time we got to trial, Mr. Ackbar and I
22 were communicating pretty meaningfully.

23 Q Did he ever talk with you about any witnesses that he
24 wanted you to call that you were not able to find?

25 A No, ma'am.

Roger Poole - Direct examination
by Ms. White

1 Q And in discussions with him about the incident, you
2 heard him say today his defense was that he was not there.

3 was that the same thing he conveyed to you?

4 A That's, that's the first time I've heard that.

5 Q And, in fact, there were several people that testified
6 that they saw him there.

7 Is that correct?

8 A That's right. The S.K. fellow and Marcus Wright.

9 Q And his now ex-wife, Ms. Burnside, is that right?

10 A That's right.

11 Q And in addition to testifying that he was there, there
12 was testimony also about a knife that she had purchased
13 previously for him.

14 A Right, a hunting knife---

15 Q Okay.

16 A ---of some sort.

17 Q And wasn't one of the witnesses also one of the ones
18 that said he actually saw Mr. Ackbar stab the victim,
19 Mr. Kelly?

20 A I think that's correct. I think that was my, my --
21 well, Mr. Wright or Mr.---

22 Q S.K. ?

23 A S.K. .

24 Q Okay. Was there anything that you're aware of in
25 regards to defense that Mr. Ackbar provided for you or

Roger Poole - Direct examination
by Ms. White

1 anything that you had to present in regards to a defense?

2 A Well, we talked about if, you know, what the State had
3 to do and that's the proof beyond a reasonable doubt, and,
4 you know, if they don't have anything affirmatively to show
5 by way of defense, you always have to go to a standard
6 default, which is the State can't reach that level of proof.
7 And so that's the only thing available to us was to see if
8 they're any inconsistencies amongst the State's witnesses
9 and make the argument that there's enough inconsistencies or
10 lack of evidence such that the State has failed to meet the
11 burden.

12 That's what I call the basic default position.

13 Q And, in fact, you cross-examined almost every witness,
14 did you not?

15 A Correct.

16 Q And you tried to bring that out, issues with
17 consistent -- inconsistencies in their statements versus
18 their testimony, did you not?

19 A That is correct.

20 Q Okay. In regards to concerns, did you have any
21 concerns over whether or not the search warrant for the
22 truck, the home, or the Chrysler, all three had been issued
23 and utilized, did you have any concerns over their validity?

24 A No, I didn't focus on any of that primarily because I
25 was under the impression Mr. Ackbar didn't have any

Roger Poole - Direct examination
by Ms. White

1 proprietary or ownership interest in any of those items.

2 Q And so you wouldn't of had any, anyway to attack
3 whether or not they were useful because he didn't own the
4 things that were searched.

5 Is that right?

6 A Not, not to my knowledge.

7 Q Okay. And was part of your defense trying to put the
8 blame more on Marcus Wright or just attack the
9 inconsistencies across the board?

10 A Both.

11 Q Okay.

12 A Marcus Wright was right there and his actions could,
13 the way he responded to the situation, could of raised some
14 red flags. For instance, there was blood found on or near
15 his car I think. Not blood. But fingerprint, a
16 fingerprint.

17 He, he assisted Mr. Ackbar and I wanted to show that
18 maybe his involvement went a little bit more than just
19 giving Mr. Ackbar a lift to a Dollar General Store or
20 whatever it was.

21 Q And, in fact, he was originally -- do you recall that
22 he was originally charged with murder in this involving the
23 case?

24 A He was and allowed to plead to accessory after the fact
25 and we brought all that out too.

Roger Poole - Direct examination
by Ms. White

1 Q All right. You did make a motion for mistrial
2 involving the juror issue, did you not?

3 A That's correct.

4 Q And did you renew that motion at the end?

5 A That's right.

6 Q Okay. Do you recall as well how long it took to
7 deliberate?

8 A Twenty-five minutes by my notes.

9 Q Okay. And that was a pretty short, short deliberation
10 on a murder case?

11 A Yes, it was.

12 Q Is that right?

13 Okay. Thank you. That's all I have at this time.

14 MR. RUCKER: Your Honor?

15 THE COURT: You may re, redirect, recross or, excuse
16 me, cross. You haven't crossed.

17 MS. WHITE: Yeah.

18 MR. RUCKER: May it---

19 THE COURT: I'm sorry. You can cross.

20 MR. RUCKER: May it please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. RUCKER:

24 Q Did you explore with Mr. Ackbar any motives that these
25 witnesses would have to lie about what happened?

Roger Poole - Cross-examination
by Mr. Rucker

1 A We seemed to have some discussion about his wife's
2 motives. I'm, I'm unclear as to what conclusion, you know,
3 we came -- we drew from that. We may have had a discussion
4 about his wife. That's the only one.

5 Q Okay. The -- let's just walk through the witnesses.

6 It's -- first of all, his wife, was the wife the
7 ex-wife at the time or, or his current wife at the time?

8 A I don't know.

9 Are you talking about Octavious?

10 Q I am.

11 A Okay. I don't -- I'm confused. I don't know if it's
12 his current wife or his---

13 Q I didn't phrase it properly and I'll rephrase it.

14 A Uh-huh. (Affirmative).

15 Q At the time the alleged crime happened, was Ms.
16 Burnside his wife or ex-wife?

17 wife?

18 A I, I don't remember. I'm confused right now. I
19 think -- I don't know.

20 Q Okay.

21 A Was it his wife?

22 Q Well---

23 A Was she his wife then?

24 Q Well, I, I -- well, let me just get through my
25 questions.

Roger Poole - Cross-examination
by Mr. Rucker

1 Okay?

2 A Fair enough.

3 Q Okay. What was the relationship with Mr. Kelly to
4 Mr. Ackbar?

5 A Mr. Kelly, the, the decedent?

6 Q Well, I---

7 A I think---

8 Q I'm talking about S.K. specifically. The -- one
9 of the witnesses.

10 A Oh, okay. One -- they were brother and sister, weren't
11 they?

12 I don't mean to ask you the question, counselor, but
13 I'm just trying to refresh my memory.

14 Q I understand.

15 Did you, did in -- in, in preparing to impeach the --
16 first of all, would you agree that this was a eye witness
17 type case?

18 A Yes, sir.

19 Q And there were some forensics, but the eye witness
20 testimony was crucial in the case?

21 A Yes.

22 Q Did you do background work on determining what was
23 usable as impeachment evidence against those witnesses?

24 A Not in any further than what was in the content of
25 their statements.