

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

JAN 07 2016

SC SUPREME COURT

KENYATTA BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000950

APPENDIX

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1 say what, but did you make contact with Kenyatta Bryant in
2 order to get him to turn himself in?

3 A. I did.

4 Q. And did he ultimately turn himself in?

5 A. He did.

6 Q. At that point was there a search warrant that had been
7 drawn up to get a D.N.A. sample from Kenyatta Bryant?

8 A. Yes.

9 Q. And was that executed that day?

10 A. It was.

11 Q. Were you aware of any conversation that took place while
12 the buccal swab was being collected from Kenyatta Bryant at
13 headquarters?

14 A. We learned, while that procedure was taking place, that
15 there was a significant forensic development. We learned
16 that his fingerprints had been matched to the driver's side
17 window of Andrew Decker's car.

18 Q. Why was that significant?

19 A. Because that put him in the area of the car where the
20 murder actually took place.

21 Q. And had he admitted to that at that point?

22 A. No. Previously he had indicated he ran and actually
23 heard the shot when he got back to his porch. So that was
24 significant.

25 Q. Are you also aware that afternoon around 1:00 after that

1 conversation took place in his presence that he wanted to
2 talk to investigators again?

3 A. Yes.

4 Q. And he actually talked to Investigator Martin?

5 A. He did.

6 Q. And you weren't present for that conversation.

7 A. I believe it was relayed to me and he was brought back
8 in my office and asked if he wanted -- whether he wanted to
9 put that down in writing and he declined to.

10 Q. He declined to put it in writing?

11 A. Yes.

12 Q. Were you aware of what he was saying?

13 A. Yes.

14 Q. And was that the first time that information had ever
15 come to your or anyone else's attention?

16 A. It was.

17 Q. That day around 2:00 did -- was there a search warrant
18 that was executed at the residence?

19 A. Yes. We went -- the same probable cause that we did the
20 search of Johnathan Holloway's residence, we had to search
21 Kenyatta Bryant's residence. So we did execute a search
22 warrant at that location.

23 Q. While the search warrant was being done, did you make
24 contact with a brother of Kenyatta Bryant?

25 A. Yes.

1 Q. And that's Miquan Bryant?

2 A. Yes.

3 Q. Had he already been interviewed prior to that?

4 A. Investigator Miller had interviewed him prior to that,
5 and he had had no knowledge of the murder or anything about
6 it at all.

7 Q. And when had that interview taken place?

8 A. On the previous day.

9 Q. Prior to his brother being---

10 A. Yes.

11 Q. ---arrested? And on this day while you were doing the
12 search warrant, he wanted to come forward with information
13 that he had known the day before.

14 A. That's correct.

15 Q. On the 25th did you receive a phone call from Kenyatta
16 Bryant's mother?

17 A. I did. They had found a bag that they were claiming had
18 Holloway's hooded sweatshirt in it. They wanted to turn that
19 over to us.

20 Q. The person, Kenyatta Bryant, who you took the statement
21 from who gave you the different statements, do you see him
22 here in the courtroom?

23 A. I do.

24 Q. Can you point him out to the jury?

25 A. He's sitting next to Mr. Johnson with the white shirt

1 on.

2 Ms. Campbell: Your Honor, may the record reflect he's
3 identified the defendant?

4 The Court: It does. All right. Mr. Johnson?

5 Mr. Johnson: Thank you, Your Honor. May it please the
6 Court?

7 Cross-Examination

8 By Mr. Johnson:

9 Q. Good morning.

10 A. Good morning.

11 Q. Just---

12 A. Good afternoon.

13 Q. Yeah, afternoon. I'm sorry. You said -- let's clarify
14 the statements issue. He gave you a statement and then on
15 the written statement he clarified it. Is that correct?

16 A. Who is he?

17 Q. I'm sorry. I'm referring to my client, Kenyatta. When
18 you met with him, he gave you the first written statement,
19 the one that you read.

20 A. Yes.

21 Q. That's the final statement that he gave you; correct?

22 A. Well, he gave an additional oral statement.

23 Q. Right, an additional oral statement explaining?

24 A. Explaining why his fingerprints were allegedly -- or
25 allegedly trying to explain why his fingerprints were on the

1 window of the victim's car; yes, sir.

2 Q. Right. When he first came to you voluntarily and you
3 took his statement, he gave you -- you say he gave you
4 several statements before he gave you that written statement?

5 A. Well, I think when you refer to statements, he made some
6 misstatements. He initially had told Martin a bogus name,
7 and then when he first was interviewed I believe he said he
8 hadn't seen Drew in a number -- in a long time, and then he
9 admitted that that was a lie when we showed him that we had
10 the phone calls. And then he got into the bulk of this
11 explanation that he would give, and then later he adds to
12 that by virtue of coming back to get the cell phone. So I
13 guess four statements.

14 Q. Okay. But the statement that he gave as far as what
15 happened as far as in the car, that was just one statement;
16 correct?

17 A. Two.

18 Q. Two?

19 A. Yes, sir.

20 Q. Yeah, because---

21 A. One written. One oral.

22 Q. One oral. And that was your basic involvement with...
23 Now, concerning the hat, he specifically asked you for his
24 hat and he said he had left it in the truck; is that correct?

25 A. He did. What he didn't tell me was that he hid it

1 behind the jack behind the seat. That's why Martin couldn't
2 find it.

3 Q. Well, you said that he hid it, but my question is---

4 A. It was secreted in the truck; yes, sir.

5 Q. It was found behind his seat. You don't know that he
6 hid it, do you?

7 A. I believe he hid it.

8 Q. Once again, you believe that.

9 A. I certainly do.

10 Q. But you have no one that saw him hiding the -- hiding
11 the hat, do you?

12 A. Circumstantially, he hid the hat.

13 Q. Circumstantially.

14 A. Yes, sir.

15 Q. Well, circumstantially, can you explain to me why a
16 person who would hide -- attempt to hide a hat tell you where
17 it was?

18 A. Because he wanted it back because it had blood on it,
19 the victim's blood.

20 Q. So it's your rational thought that a person would
21 attempt to hide a hat behind the seat because he knew it had
22 blood on it but then tell you where to go look for it.

23 A. I think he -- if you're asking me my opinion, which I
24 believe you are, I think he realized inevitably it was going
25 to be found. He wanted it back, hoping that we wouldn't find

1 that it had blood on it. It just didn't work out for him.

2 Q. I see how you think now. Thank you.

3 A. Thank you.

4 The Court: All right. Anything from -- further---

5 Ms. Campbell: No, sir.

6 The Court: ---the major? Major, you can step down.

7 Ms. Campbell: Your Honor, at this time the State would
8 rest.

9 The Court: All right. Ladies and gentlemen, the State
10 has rested which means they have now completed the
11 presentation of their evidence in their case in chief, and
12 this will be a good time for us to break for lunch. Let's
13 see here. Y'all -- y'all step up here just a minute and
14 let's see what the logistics are.

15 (Whereupon, a bench conference was held.)

16 The Court: All right. Ladies and gentlemen, we're
17 going to take a lunch break, and that clock up there is about
18 22 minutes 'til 1. I'm going to ask y'all to be back here at
19 -- by the time you get of here -- about 5 'til 2. That will
20 give -- that will be an hour and 15 minutes. Y'all don't
21 discuss the case while you're at lunch. Y'all have a nice
22 lunch, and we'll see you back here in an hour and 15 minutes.

23 (Whereupon, the jury was excused from open court to go
24 to lunch at 12:42 p.m.)

25 The Court: All right. Is there anything we need to

1 take up with the State?

2 Ms. Campbell: No, sir.

3 The Court: Anything from the defendant?

4 Mr. Johnson: I have nothing further.

5 The Court: All right. My---

6 Mr. Johnson: Oh, Your Honor, I guess I should -- since
7 they came to a close, I guess I need to make my motion for a
8 directed verdict.

9 The Court: All right.

10 Mr. Johnson: I do not believe that the State has met
11 their burden of proof as it relates to murder. They have not
12 presented any evidence that would implicate that my client
13 committed this murder. They have submitted evidence that
14 there's blood -- that my client's finger was on the door but
15 no evidence of anyone that can say that they saw my client
16 shoot anyone or did anything. Therefore, I do not think they
17 have met their burden.

18 The Court: Anything you want to say?

19 Ms. Walker: Your Honor, taking this in the light most
20 favorable to the State, we have the defendant's cap with the
21 victim's blood splattered on it. We have the defendant's
22 fingerprints on the window, the driver's side window, where
23 the murder took place. We have the defendant's D.N.A. on the
24 ignition key. The defendant puts himself there, attempting
25 to sell drugs, and a robbery goes down. Taking this evidence

1 in the light most favorable to the State, the State has met
2 its burden.

3 **The Court:** Taking this in the light most favorable to
4 the State what?

5 **Ms. Walker:** That we've met our burden.

6 **The Court:** All right. Well, the standard is is there
7 any direct evidence, any substantial circumstantial evidence,
8 and I'm going to find there is and deny your motion. They've
9 got a witness who says that your client shot him. I'm not
10 passing on the weight of the testimony. They have offered
11 other kinds of direct evidence, D.N.A., fingerprints that
12 would put your client at the location. They've got your
13 client admitting he was there at the time, that at least the
14 co-defendant attempted to commit a robbery, that -- I think
15 there's plenty of evidence that would get beyond the standard
16 for a directed verdict, so I'm going to deny your motion.

17 **Mr. Johnson:** Thank you, Your Honor.

18 **The Court:** All right. Anything else? All right. My
19 understanding is when we get back from lunch you've got
20 witnesses that are ready to go.

21 **Mr. Johnson:** That's correct, Your Honor.

22 **The Court:** Is your client -- where is your client going
23 to fit in on that...

24 **Mr. Johnson:** My client will probably be the first
25 witness.

1 **The Court:** First witness. All right. Well, let me get
2 your client to stand and raise your right hand.

3 Kenyatta Bryant, after being duly sworn, testified
4 as follows in camera:

5 Examination by the Court

6 Q. Put your hand down. I need you to speak up. I'm not
7 going to ask you anything about this incident, but I want to
8 review with you your right to testify or not to testify, and
9 I'm sure you've reviewed this with your attorney on several
10 occasions in the past. Mr. Johnson has indicated that you
11 want to testify at the trial; is that correct?

12 A. Yes, sir.

13 Q. All right. Now, you understand you have a right to
14 testify.

15 A. Yes, sir.

16 Q. And, of course, if you do, you're subject to being
17 examined by the solicitor's office. The solicitor can
18 cross-examine you. Do you understand that?

19 A. Yes, sir.

20 Q. And they can attempt to impeach you in any way they
21 believe would be appropriate that falls within the rules of
22 evidence in South Carolina including if you've got any prior
23 inconsistent statements or if you've got any prior criminal
24 record - I don't know of any of that - but they can attempt
25 to impeach you. Do you understand that?

1 A. Yes, sir.

2 Q. And do what they believe that they're entitled to do
3 under the rules of evidence. Do you understand that?

4 A. Yes, sir.

5 Q. And do you understand you also have the right to not
6 testify if you'd like?

7 A. Yes, sir..

8 Q. Under the Constitution of this state and the United
9 States, no one is entitled to testify. No one is entitled to
10 incriminate themselves and, of course, if you elected not to
11 testify, I would instruct the jury they couldn't even
12 consider the fact you didn't testify when they went back to
13 deliberate this case. Do you understand that?

14 A. Yes, sir.

15 Q. And, of course, if you don't testify, you're not subject
16 to being cross-examined by the State and asked about this in
17 any way. Do you understand that?

18 A. Yes, sir.

19 Q. Now, have you had a chance to talk to Mr. Johnson about
20 whether you wanted to testify or not testify?

21 A. Yes, sir.

22 Q. And he's reviewed with you your options, that you don't
23 have to testify but that you're entitled to. Is that
24 correct?

25 A. Yes, sir.

1 Q. Now, has anybody threatened you, coerced you, forced you
2 or pressured you into making the decision that you wanted to
3 testify?

4 A. No, sir.

5 Q. Or not testify?

6 A. No, sir.

7 Q. Has anybody offered you anything or promised you
8 anything to get you to make the decision you're making
9 regarding testimony?

10 A. No, sir.

11 Q. You're doing so freely and voluntarily.

12 A. Yes, sir.

13 Q. All right. Now, have you had any alcoholic beverages,
14 taken any drugs, or had any medication in the last 24 hours?

15 A. No, sir.

16 Q. So you're not under the influence of any sort of
17 substance when you're making the decision you're making with
18 respect to testifying; is that correct?

19 A. No, sir.

20 Q. You think you're competent to make that decision as
21 well.

22 A. Yes, sir.

23 Q. All right. Do you understand exactly what your rights
24 are?

25 A. Yes, sir.

1 Q. All right. Do you have any questions that you want to
2 ask Mr. Johnson about testifying or not testifying?

3 A. I'll talk to him.

4 Q. Pardon me?

5 A. I'll talk to him.

6 Q. You've already -- you've talked to him?

7 A. Yeah.

8 Q. All right. So you don't want to ask him anything? I
9 mean, you can see him at lunch and talk to him, but I mean,
10 is there anything you want to ask him right here?

11 A. No.

12 The Court: Mr. Johnson, any further inquiry you want
13 the Court to make with respect to your client?

14 Mr. Johnson: I don't think there's any, Your Honor. I
15 just want to -- there's one thing we didn't bring up. My
16 client initially had some indication he was not satisfied
17 with me being his attorney. I think we have worked that out,
18 but we never did put it on the record. I would like to make
19 sure that that's clarified as well.

20 The Court: Is that the case?

21 Mr. Bryant: (Nodded head up and down.)

22 The Court: I need you to answer.

23 Mr. Bryant: Yes, sir.

24 The Court: All right. Mr. Johnson, anything you want
25 to inquire of your client with respect to his testifying or

1 not testifying?

2 Mr. Johnson: Nothing that I have, Your Honor.

3 The Court: All right. You think he fully understands
4 what rights he has and that this decision to testify he's
5 making freely and voluntarily and knowingly and
6 intelligently.

7 Mr. Johnson: I believe that he does.

8 The Court: All right. All right. Mr. Bryant, if you
9 change your mind between now and the time you testify, let me
10 know and we'll revisit this issue. Okay?

11 Mr. Bryant: All right.

12 The Court: All right. Y'all have a good lunch. We'll
13 be back here at 5 'til 2 and when we come back we'll --
14 y'all, I'm talking. When we come back, Mr. Johnson has
15 indicated that he's prepared to move forward. Now, Mr.
16 Johnson had indicated earlier we needed to make sure some of
17 your potential witnesses were transported here. Madam
18 Solicitor, have y'all made arrangements for that?

19 Ms. Campbell: Yes, sir.

20 The Court: Okay. Do you know whether that witness is
21 here that Mr. Johnson wants?

22 Ms. Campbell: Yes, sir.

23 The Court: All right.

24 Ms. Campbell: Everybody he's mentioned I've had them
25 transported.

1 **The Court:** Okay. All right. Y'all have a good lunch.
2 We'll see you back.

3 (Whereupon, a lunch break was taken.)

4 **The Court:** All right. Thank y'all. Please be seated.
5 Have we got the defendant? All right. Are we ready to go?

6 **Ms. Campbell:** Judge, one matter that did come up. At
7 the elevator at lunch, I was going down to G-1 and one of the
8 jurors got on the elevator with me, and I basically was rude.
9 I didn't mean to be, but I didn't want to say a word or do
10 anything. Could you just admonish the jury that generally
11 when we meet with them we can't interact?

12 **The Court:** Well, I would feel confident that they were
13 told at jury qualifications they're not allowed to interact
14 with anybody. Were you there?

15 **Ms. Campbell:** Yes, I was there at the jury
16 qualifications.

17 **The Court:** Did they tell them? I mean, I always tell
18 them that.

19 **Ms. Campbell:** They were told something similar to that
20 about talking to parties to the like litigants.

21 **The Court:** I tell them not to talk to anybody in the
22 courthouse other than to be polite.

23 **Ms. Campbell:** Well, I wasn't even polite.

24 **The Court:** Well, I'm shocked.

25 **Ms. Campbell:** Thank you, Judge.

1 **The Court:** Doesn't sound like our Ms. Campbell? What
2 is it you want me to tell them?

3 **Ms. Campbell:** Just that -- I think Mr. Johnson -- I
4 talked to him and he had the same experience where we just
5 try to avoid any kind of contact, that generally we can't---

6 **The Court:** Well, if you're on an elevator and they say
7 something, you just say, "I can't speak with you." So I
8 don't know what you said. You don't have to say it in a
9 rude, crude, horse-woman kind of way but, I mean, my
10 experience is that people that are into horses are -- they're
11 really nice.

12 **Ms. Campbell:** Thank you. All the people that are in
13 the horse world that I know are real nice.

14 **The Court:** Well, my daughter doesn't live with you
15 so... All right. I will tell the jury.

16 **Ms. Campbell:** Thank you.

17 **Mr. Johnson:** The only other thing, Your Honor, is that
18 I guess we need to remove the shackles from my client's legs
19 before the jury comes out.

20 **The Court:** All right. Let's go ahead and do that.

21 **Deputy:** May I suggest that the way we normally do it is
22 -- of course, normally we put him on the stand first so they
23 won't see it.

24 **The Court:** I want him to walk up. I don't...

25 **Deputy:** Yes, sir. Okay.

1 **Ms. Campbell:** There are -- if we could have at least a
2 deputy up there because he has had some negative attitude.

3 **Mr. Johnson:** Your Honor, that's not necessary. He's
4 not going anywhere.

5 **Ms. Campbell:** I'm not characterizing anything other
6 than when you reprimanded him earlier in the trial for his
7 outburst.

8 **The Court:** Ms. Campbell, if law enforcement believes
9 it's necessary, y'all can sit up there near him if you want.
10 If you don't think it's -- I doubt whether he's going
11 anywhere, but security is your bailey wake, not mine, so
12 y'all call it. But I'm not going to require -- I'm going to
13 let him walk from the table to the...

14 **Mr. Johnson:** Right.

15 **The Court:** Keep your seat. Keep your seat there until
16 your lawyer calls you as a witness, but if y'all want
17 somebody up there, we need to put a chair up there and sit
18 there -- I mean get there before we start.

19 **Ms. Campbell:** Thank you.

20 **Mr. Johnson:** Your Honor, I would -- I would object to
21 that. They have not indicated they needed anybody up there.
22 The only one that did that is the State.

23 **The Court:** I told them to make that decision, Mr.
24 Johnson, not -- I'm not -- it's totally their decision.

25 **Deputy:** He can sit up there next to the bailiff up

1 there.

2 Ms. Campbell: Or right here, down here.

3 The Court: Ms. Campbell, we'll let security make this
4 call.

5 Ms. Campbell: Got it.

6 Mr. Johnson: Could they---

7 The Court: Where do you want him, Graham? Do you want
8 somebody up there?

9 Deputy: I tell you what we'll do. We'll just place
10 somebody on the outside of the door.

11 The Court: That's fine.

12 Deputy: On the exterior right there.

13 Mr. Johnson: That's fine with me.

14 Deputy: That way it won't look imposing.

15 Mr. Johnson: Thank you.

16 The Court: We got -- I can count one, two, three, four
17 law enforcement -- five.

18 Deputy: I'll take this post over here.

19 (Pause in proceedings.)

20 The Court: All right. Y'all figured it out? Who is
21 going to be out there?

22 Deputy: Officer Williams.

23 The Court: Tell her do not leave until she's told that
24 he's finished testifying.

25 Deputy: Yes, sir.

1 **The Court:** All right. Do you know what he looks like?

2 **Deputy:** Yes, sir.

3 **The Court:** All right. All right. All right. Are we
4 ready to go? Let's bring the jury in. I think we agreed to
5 sequester the witnesses just during his testimony. Are your
6 witnesses being sequestered?

7 **Mr. Johnson:** Let me make sure the two witnesses I
8 talked to...

9 **Woman in the courtroom:** They're outside.

10 **Ms. Campbell:** Thank you.

11 **Mr. Johnson:** They're outside.

12 (Whereupon, the jury was brought into open court at 2:06
13 p.m.)

14 **The Court:** Okay. Ladies and gentlemen, I didn't
15 qualify the jury panel as a whole Monday morning, and I
16 assume Judge Lee did, but I'm not -- I'm not sure. But one
17 of the things I tell jurors when I qualify them and I'm going
18 to tell y'all: In the course of your jury service this week
19 you're going to be moving about the courthouse. You're going
20 to be coming in in the morning. You're going to come
21 upstairs. When we break for lunch, you're going to be going
22 out of the courthouse. You may be down in the canteen eating
23 lunch. When you go home at night... And in the course of
24 your moving about the courthouse, you might come in contact
25 with various and sundry people, some of which you know -

1 friends, acquaintances, people of that -- neighbors - some of
2 which you might have seen when you're in the courthouse.

3 I'm going to ask that you not have any interaction with
4 anybody you come in contact with up here at the courthouse.
5 It may be that that individual, even though they're a friend
6 of yours or they may be up here somehow doing business that
7 might come in front of you, even though you don't know that
8 -- they might be a witness in a case. They might be some
9 sort of a litigant in a case if you're on a civil case. They
10 might be a defendant in a criminal case. They might be
11 involved with the prosecution's office. They might be
12 involved with the defense counsel. People like everybody to
13 come in and speak to them and say hello, but no interaction
14 whatsoever with anybody that you come in contact with up here
15 at the courthouse, if you would.

16 Now, when we broke for lunch, the State had rested which
17 means, as I told you earlier, they had completed the
18 presentation of their evidence in their case in chief. The
19 defense now has the opportunity to put up any evidence that
20 the defense wishes to offer. As I told you before the trial,
21 the defendant has no burden in this case, doesn't have to do
22 anything, but the defendant also has the same rights that the
23 State has with respect to putting up any evidence, and so I'm
24 going to call on Mr. Johnson and see what Mr. Johnson
25 intends. Mr. Johnson?

1 **Mr. Johnson:** Your Honor, we intend on putting up
2 evidence.

3 **The Court:** All right. Would you call your first
4 witness then?

5 **Mr. Johnson:** I call Kenya Bryant to the stand, Your
6 Honor.

7 Kenyatta Bryant, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Have a seat in the witness box. State your
10 name for the record.

11 **The Witness:** Kenya Bryant.

12 **Mr. Johnson:** May it please the Court, Your Honor?

13 **The Court:** Yes, sir.

14 Direct Examination

15 By Mr. Johnson:

16 Q. Kenyatta, what's your age?

17 A. Twenty-two.

18 Q. Have you lived here your whole life?

19 A. Yes, sir.

20 Q. Well, at the time that you was charged with this crime
21 where exactly was you living?

22 A. With my mother.

23 Q. And who else was there?

24 A. My brothers, my brother's baby's mama.

25 Q. How many brothers do you have?

- 1 A. Three.
- 2 Q. What were the brothers' names?
- 3 A. Devontae, Jaquan, and Miquan.
- 4 Q. And what was this...
- 5 A. Crystal.
- 6 Q. Crystal?
- 7 A. Crystal Bethel.
- 8 Q. Okay. Did they have a baby?
- 9 A. Yes, sir.
- 10 Q. Now, did you know Drew?
- 11 A. Yes, sir.
- 12 Q. Explain to the jury how you got to know Drew.
- 13 A. I know Drew for like the past two or three years. Me
- 14 and Drew had ties through our relations, saying he would buy
- 15 stuff from me every now and then. He bought them every now
- 16 and then---
- 17 Q. All right. Now, I'm going to need you to -- I want you
- 18 to slow down because she has to record---
- 19 A. Okay. I'm sorry.
- 20 Q. ---and the jury has to understand.
- 21 A. Okay. Me and Drew had ties for like two or three years.
- 22 Q. Okay. When you say ties, what do you mean?
- 23 A. Like as in drug-relation ties. I used to serve him
- 24 drugs every now and then. He'd call me every now and then
- 25 when he needed some.

1 Q. So over those two or three years, how many times would
2 you say you got -- you met Drew?

3 A. I can't count how many times, to be honest. It was a
4 good bit of times though.

5 Q. Okay. Was there a time that Drew ever got a chance to
6 be around you and your family?

7 A. Yeah. Drew done met my grandmama before, my brothers
8 before. He done saw my mother before. He done met my great
9 grandmother before. He know my family. He done met my
10 cousins before.

11 Q. Now, I guess it was just a business-type relationship
12 you had with Drew?

13 A. Yeah, but every now and then I'd call him when I need a
14 ride somewhere or my grandma needed to go get something to
15 eat, you understand. I'd call him to come pick me up and
16 take me to go get my grandmama something to eat, something
17 like that.

18 Q. Okay. Would he come over?

19 A. Yeah, he'll come over. Every time I call him, he'll
20 come. If I'd been in Charleston, he would come get me. He
21 would come get me.

22 Q. Did you know about his girlfriend and stuff like that?

23 A. No. He told me -- always indicated that he stayed with
24 a female, but he -- it's like he said like a lady friend. It
25 wasn't nothing too major but like a lady friend.

1 Q. Now, on the night that this occurred, do you remember
2 that night?

3 A. Yes, sir.

4 Q. All right. Let's start from the beginning. When did
5 you first have contact with Drew?

6 A. He called me. He said that he was coming to town. Do I
7 got something good for him?

8 Q. Slow down. Something now?

9 A. I said he called me, asked me do I got anything good for
10 him because he was on his way in town.

11 Q. What did you tell him?

12 A. I tell him, "Yeah."

13 Q. Then what happened?

14 A. Then he -- he didn't know -- he didn't know exactly
15 where I lived at off West Beltline, but I told him I stayed
16 -- I stayed near West Beltline. Call me when he get close.
17 So he called me when he got close, and I told him where to
18 meet me at. When I told him where to meet me at, I kept on
19 saying back and forth on the streets, back in the back road.
20 So we maybe called -- we maybe talked three or four times
21 before he came.

22 Q. All right. Before he -- before we talk about when he
23 arrived---

24 A. Yeah.

25 Q. ---was there somebody with you---

1 A. Yeah.

2 Q. ---when he called?

3 A. Before -- before he arrived, I was in the house with my
4 family, my brothers and them, Cash. Yeah, I'll admit, yeah,
5 I was going to serve him some gank.

6 Court Reporter: I'm sorry.. Repeat that again.

7 The Witness: That I was in the house with my brothers
8 and family and Cash, in there drinking, chilling. I do admit
9 that I did serve -- I did shave the pills down with Excedrin.
10 I do admit that.

11 By Mr. Johnson:

12 Q. Well, when you say Cash, are you referring to Mr.
13 Holloway?

14 A. Yeah, Mr. Holloway.

15 Q. Holloway?

16 A. Yes, sir.

17 Q. Okay. So that's Cash. When you talk about Cash, that's
18 who you're talking about?

19 A. Yes, sir.

20 Q. Okay. Who has been -- who has also been charged in this
21 matter; is that correct?

22 A. Yes, sir.

23 Q. That was the gentleman that came and testified on the
24 stand yesterday?

25 A. Yes, sir.

1 Q. Okay. So do you have a conversation with Cash?

2 A. Do I have conversation with Cash?

3 Q. Did you have a conversation with Cash about what you was
4 going to do before -- before Drew arrived?

5 A. Yes, sir.

6 Q. And what exactly was that conversation?

7 A. That I was going to serve him some gank.

8 Q. When you say serve, what do you mean?

9 A. Like as hand to hand, send Cash in with money, but Cash
10 indicated that he had some real dope, but come to find out
11 like y'all -- like the investigator say that it was wax. So
12 I had put that with the pills I had.

13 Q. So when you say pills, what kind of pills did you have?

14 A. Like Tylenols. Tylenols. I shave Tylenol pills.

15 Q. Okay. And then what? You shaved them down for what
16 purpose?

17 A. To make them look like crack cocaine.

18 Q. So he came to the house.

19 A. Yeah.

20 Q. At any time did you or Cash, as you call him, have any
21 conversation about you was going to rob him?

22 A. No, sir.

23 Q. Did you have any conversations about you was going to
24 shoot him?

25 A. No, sir.

1 Q. Did you have a gun?

2 A. No, sir.

3 Q. Let me ask you this: What kind of past criminal record
4 do you have?

5 A. None at all. Never been to jail before. I only went to
6 jail for a disorderly conduct just for a night.

7 Q. You had a what now?

8 A. I had disorderly conduct. That was only for a night.

9 Q. For a night?

10 A. Yeah, for a night.

11 Q. A night?

12 A. Yes, sir.

13 Q. Okay. So you spent time in jail one night?

14 A. Yes, sir.

15 Q. For disorderly conduct?

16 A. Yes, sir.

17 Q. So when the officer arrived -- I mean the officer --
18 when Drew arrived, what happened first?

19 A. I approached the door, the driver's side door. He let
20 the window down, and he indicated -- he asked me did I have
21 change for a hundred. I indicated no. So me and Cash got in
22 the car.

23 Q. All right. Let's stop right there.

24 A. Okay.

25 Q. Drew came to your house.

1 A. Yes, sir.

2 Q. And you approached the car first before y'all got
3 inside?

4 A. Yes, sir.

5 Q. What side of the car did you walk to?

6 A. The driver's side.

7 Q. Was the window up or down?

8 A. No, he had it halfway down and I was leaning on it,
9 talking to him about the deal we was fixing to make, what he
10 had indicated, and asked me do I have change and I indicated
11 no. So, therefore, we led to the Hot Spot, the store.

12 Q. So you walked -- just for clarification again, you
13 walked up to the car?

14 A. Yes, sir.

15 Q. And you leaned forward.

16 A. Yes, sir.

17 Q. Did you touch it with your hands?

18 A. Yes, sir.

19 Q. Then you went back and got Cash?

20 A. No, Cash is out there standing out there. Like I'm at
21 the car. Cash, back seat. But when he said he had change
22 for a hundred, that indicated we had to go to the store and
23 get change because I didn't have that type of change that
24 night.

25 Q. Okay. So what did you do then?

- 1 A. We got in the car.
- 2 Q. And then what happened?
- 3 A. Went to the Hot Spot.
- 4 Q. To the Hot Spot?
- 5 A. Yes, sir.
- 6 Q. How far is that from your house?
- 7 A. Maybe five -- I ain't going to say no more than ten
- 8 minutes. Maybe five to ten minutes.
- 9 Q. Okay. And where exactly did he park when he went to the
- 10 Hot Spot?
- 11 A. To the gas -- to the gas pump.
- 12 Q. Was the car running or was it -- was it off?
- 13 A. It was running.
- 14 Q. It was running?
- 15 A. Yes, sir.
- 16 Q. Okay. What happened then?
- 17 A. He came back out. He say he got to get gas because they
- 18 won't give him change for a hundred. I then cut the car off.
- 19 Q. So you cut the car off---
- 20 A. Yes, sir.
- 21 Q. ---while you was sitting at the Hot Spot?
- 22 A. Yes, sir.
- 23 Q. Did you -- I assume that you -- did you touch something?
- 24 A. Yeah, I had to touch the key to turn the car off.
- 25 Q. So you turned the car off.

1 A. Yes, sir.

2 Q. He got his gas?

3 A. Yeah. Yes, sir.

4 Q. Then what happened?

5 A. Before he got his gas -- before he got his gas, before
6 he got out of the car, he had got his money from like the
7 glass thing up there. What you call that?

8 Q. The visor?

9 A. Yeah, the visor, but Cash indicated that he saw a lot of
10 hundreds and indicated---

11 Q. Wait a minute. Slow down again now. You're speeding
12 up. So he got his money from the visor.

13 A. Yes, sir.

14 Q. And then Cash said what?

15 A. He said -- he indicated that he's fixing to get his --
16 I'm fixing to get his ass.

17 Q. Why?

18 A. Because he saw the money, I guess. Then -- and
19 basically, man, he was high at the time and drunk off of Four
20 Lokos and off pills at the time.

21 Q. Wait a minute.

22 **Court Reporter:** Repeat that, please.

23 By Mr. Johnson:

24 Q. You're going to have to -- you're going to have to stop.
25 Slow down. Start over again.

1 A. Yes, sir.

2 Q. Drew reached and got the money.

3 A. Drew reached and got the money, and Cash seen the money
4 but I didn't see the man get the -- I didn't see the man get
5 the hundred dollars -- the hundred-dollar bills. And Cash
6 indicated, "I'm fixing to get his ass."

7 Q. When you say indicated, did he say something?

8 A. Say, yes. Yes, sir.

9 Q. What did he say?

10 A. "I'm fixing to get his ass." I got to get his ass. I'm
11 fixing to get his ass, either one. And I told him, "Man,
12 don't do that shit." Excuse my language. That's what I tell
13 him.

14 Q. What did you tell him?

15 A. "Man, don't do that shit."

16 Q. And what did he say?

17 A. He really didn't say nothing but how he -- how he said
18 it, like he'd been joking, so I ain't took him serious.

19 Q. Okay. So what happened then?

20 A. We began riding on Beltline. We made the exchange for
21 the gank.

22 Q. You did what now?

23 A. We made the exchange for the gank.

24 Q. For the drugs?

25 A. Yeah. Yeah.

- 1 Q. How much did he give you?
- 2 A. He gave me five ten-dollar bills.
- 3 Q. Five ten-dollar bills.
- 4 A. Yes, sir.
- 5 Q. And what did you do with the money?
- 6 A. Put it in my pocket.
- 7 Q. Did you -- did you put all of it in your pocket?
- 8 A. Yeah. I gave Cash ten dollars for the so-called dope I
- 9 thought was real.
- 10 Q. Uh-huh.
- 11 A. Yeah. So at that time we're at the train track. The
- 12 train is going.
- 13 Q. You're at the train track?
- 14 A. Yeah.
- 15 **Mr. Johnson:** Your Honor, can I approach the witness?
- 16 **The Court:** Sure.
- 17 **Mr. Johnson:** This is State's exhibit 34 which is a
- 18 diagram. Your Honor, if possible, could he step down so he
- 19 could direct us?
- 20 **The Court:** All right.
- 21 **By Mr. Johnson:**
- 22 Q. Just one minute. Okay. Now, this is Two Notch Road.
- 23 A. Yeah.
- 24 Q. Do you recognize your road in here where Cash was at?
- 25 This is Brady Street here.

1 A. Yeah.

2 Q. And I guess your house is somewhere here?

3 A. There's right there.

4 Q. Right.

5 A. All right. The circle coming off---

6 Q. Slow down.

7 Court Reporter: Wait, wait, wait, wait.

8 Mr. Johnson: Wait a minute. Slow down. Slow down when
9 you're talking.

10 Bailiff: You need to switch with him.

11 Mr. Johnson: Yeah.

12 By Mr. Johnson:

13 Q. Go on.

14 A. This is right here; right? So the
15 circle---

16 Q. Did it---

17 A. It goes...

18 Q. Now, this is the---

19 A. Where you come off Beltline.

20 Court Reporter: Wait, wait, wait, wait.

21 Mr. Johnson: Slow down.

22 Court Reporter: I can't see him, so his voice is going
23 into the board.

24 Mr. Johnson: Okay.

25 Court Reporter: If he could maybe step that way so I

1 can -- so his voice can project towards me.

2 By Mr. Johnson:

3 Q. Go slow up here.

4 A. Yeah.

5 Q. Take it a step at a time. This is Two Notch Road.

6 A. Yes, sir.

7 Q. This is Carnegie Street?

8 A. Yeah.

9 Q. And then you got Brady Street.

10 A. Yeah.

11 Q. This is the street that runs behind---

12 **Ms. Campbell:** Objection, Your Honor, to him testifying.

13 **The Court:** Sustained.

14 **Ms. Campbell:** He can let the witness testify.

15 **The Court:** Don't lead.

16 **Mr. Johnson:** I'm sorry, Your Honor. This is Brady
17 Street here---

18 **Ms. Campbell:** Objection, Your Honor.

19 **The Court:** All right. He's just making a point of
20 reference. Point out some place and then ask a question.

21 By Mr. Johnson:

22 Q. What is this?

23 A. Brady Street.

24 Q. Okay. Do you recognize that street there? And that
25 that's Boone Street here.

1 A. I don't recognize that street. I know Brady. I know
2 Carnegie Street and .

3 Q. Okay. Point out where your house is located.

4 A. Right in here between -- between here.

5 Q. Between here. Just point to a spot on the board where
6 you think your house is located.

7 A. I ain't -- I ain't going to say I recognize it because I
8 never really understand how the chart here goes. I just know
9 I stay in a circle.

10 Q. The car was found on Brady Street here.

11 A. Okay. Yeah.

12 Q. Facing this way.

13 A. All right.

14 Q. Now, from where the car was found, where would your
15 house be?

16 A. My house would be down the street from it.

17 Q. Where? Point to it.

18 A. You're saying the car was found right here.

19 Q. Facing that, going that...

20 A. Where would my back street be located at?

21 Q. (Mr. Johnson points.)

22 A. Okay. My house would be like either right there or
23 right here.

24 Q. Okay. In this area.

25 A. Right. Either right here or right there, one of these

1. areas right here.

2 Q. All right. And was there a fence in the back?

3 A. Yes, sir.

4 Q. Okay. All right. If the -- where did the car stop when
5 you came back?

6 A. Okay. The car stopped at like somewhere over here
7 because I didn't want him to know where I lived at.

8 Q. Okay. So you passed your house?

9 A. Yeah, I passed my house.

10 Q. Back up so the jury can see. I'm going to put my hand
11 to it right here. Is that about where the car stopped?

12 A. Yeah.

13 Q. What happened when the car stopped there?

14 A. Cash indicated that he needed a -- he needed indicated
15 that -- he said, "Tell your people to get me a cigar," and he
16 said, "I don't know why I didn't get the cigar when I was at
17 the Hot Spot."

18 Q. So he asked for a cigar?

19 A. Asked me to tell my people, Drew, to go get him a cigar.

20 Q. So when he said your people, he meant Drew?

21 A. Yeah.

22 Q. So then what happened then?

23 A. Went to the El Cheapo on Two Notch.

24 Q. The El Cheapo on Two Notch?

25 A. Yes, sir.

1 Q. And what happened then when you got to El Cheapo?

2 A. Cash didn't have an I.D. I went in there and got him a
3 grape Dutch Master.

4 Q. When you say a grape Dutch Master, what is that? A
5 cigar?

6 A. Yes, sir.

7 Q. Then what happened?

8 A. We went back to the same spot located right there.

9 Q. Okay. Right here where you have your finger.

10 A. Yeah.

11 Q. All right. Then what happened?

12 A. When I -- when I put my feet out the door, Cash put the
13 gun to the man's head and told him to give him everything.

14 Q. Where was Cash sitting?

15 A. Behind him.

16 Q. Behind the driver?

17 A. Behind the driver, yes, sir.

18 Q. So he put the gun to the left side or right side of the
19 man's head?

20 A. I think the right side.

21 Q. Okay.

22 A. I don't want to tell you a lie. I think the right side
23 because -- okay. The right side. The right side.

24 Q. Okay. And what happened next?

25 A. The man was like -- the man said, "Hell no. Fuck you,

1 nigger."

2 Q. All right.

3 A. Cash began choking him. They began to struggle.

4 Q. Cash was choking him from the back seat?

5 A. Yeah.

6 Q. What was you doing?

7 A. Sitting right there.

8 Q. Why didn't you jump out or went to try to stop him?

9 A. Because the car was in motion during that time.

10 Q. The car started rolling?

11 A. The car was still in motion at the time. It didn't make

12 -- it didn't make it to a complete stop until -- it didn't

13 make it to a complete stop 'til he got up the street.

14 Q. Okay. So the car started rolling down the street?

15 A. Yeah.

16 Q. So what was going on then?

17 A. They were tussling and fighting.

18 Q. They were fighting.

19 A. Yeah.

20 Q. Are there any noise being made or anything?

21 A. Yeah, Drew beeping the horn -- the horn a couple of
22 times but they're tussling and fighting. When Drew jerked it
23 off when it was going, some way somehow Cash -- the gun out
24 of Cash hand.

25 Q. The gun fell?

1 A. Yeah.

2 Q. Where did it fall to?

3 A. On the floor panel in front of the...

4 The Court: Do you need him with that diagram anymore?

5 Mr. Johnson: Yes, I do, Your Honor.

6 The Court: All right. Well, he's got to be -- speak
7 more clearly when he's...

8 By Mr. Johnson:

9 Q. Move that way a little bit so she can hear you. Okay.
10 Let's start over again. So...

11 A. Yeah.

12 Q. So the gun fell.

13 A. Yes, sir.

14 Q. What happened then?

15 A. Before the gun -- when the gun fell, Cash -- when the
16 gun fell, Cash (unintelligible words spoken) got the key out
17 of the ignition when the gun fell. When the gun fell, Cash
18 took the key from out of the ignition. About that time I
19 gets out of the car and gets to running down the street. As
20 I look back, I saw Cash getting out of the back seat going to
21 the halfway-open door from the driver's side and began
22 fighting him.

23 Q. All right. So let's stop there.

24 A. Thank you.

25 Q. I need you to go back up to the stand. Let's go back

1 and make sure the jury understood exactly what you were
2 saying.

3 A. Yeah.

4 Q. The car never came to a complete stop when you came back
5 the second time; is that correct?

6 A. No. It -- when it stopped, by Cash pulling the gun out
7 on him, he jerked -- he started driving off.

8 Q. He pressed the gas you meant?

9 A. Yeah.

10 Q. And what was going on at that time? Were they fighting?

11 A. Cash put the gun on him. That's when he -- Cash and him
12 started tussling. Cash started choking him and things like
13 that.

14 Q. Did you hit the victim or---

15 A. I ain't never touched---

16 Q. ---hit Drew?

17 A. No, I ain't never touched him. I ain't got no motive to
18 touch him for it.

19 Q. Did you try to stop Cash?

20 A. I told him one time, which I asked him what he's doing
21 when he first did it; I do admit to that. But at the time I
22 be frightened. See, he's trying -- he's trying to rob him.
23 Imagine what he'll do to me.

24 Q. So you didn't do anything.

25 A. I ain't touch the man at all. I didn't touch him. I

1 didn't do nothing. I ain't help him do nothing at all.

2 Q. The car goes down the street.

3 A. Yeah.

4 Q. And you said some noise was being made?

5 A. Yeah.

6 Q. What kind of noise?

7 A. Horns type of -- it was kind of like he was beeping on
8 the horn.

9 Q. Then what happened?

10 A. Cash went -- he was beeping on the horn before then, and
11 Cash took a key from out of the ignition. He began beeping
12 on the horn for help again.

13 Q. Explain this to me: How could Cash -- if he's in the
14 back seat---

15 A. Yeah.

16 Q. ---and he's tussling with Drew, how could he take the
17 ignition out of the key -- I mean the key out of the
18 ignition?

19 A. I'm going to tell you how. Because, you know, the
20 emergency brake -- you can't -- you can't stop a car when --
21 you can't cut a car off when you're parking. When he mashed
22 the emergency brake, the key that he took off there, I'm
23 thinking that he took out of the ignition, it broke off.

24 Q. All right. But let's go back to that. You didn't say
25 anything about emergency brake, so start---

1 A. Yeah, because I indicated it in my statement, you know,
2 which somebody say I'm lying or something.

3 Q. That's fine, but right now you're telling the jury what
4 happened, so you can't leave anything out.

5 A. Okay. Yeah.

6 Q. They're fighting, and Cash is in the back seat.

7 A. Yes, sir.

8 Q. Then what happened?

9 A. He began---

10 Q. Tell me -- tell the jury everything that happened.

11 A. Cash began choking the victim. When he began choking
12 the victim, they get to struggling. Cash reached over and
13 put the thing -- pulled the thing up. What you call it? The
14 emergency brake?

15 Q. Is it the emergency brake?

16 A. Pulled the emergency brake up, took the key which when
17 he took the key, thinking the car was going to turn off, the
18 car broke -- the key broked off. Boom. When the key broked
19 off, they began -- they're still fighting. They're still
20 fighting it out.

21 Q. Is the car still rolling?

22 A. No, the car is going slow, at a slow pace now. It's at
23 a slow pace as it's fixing to stop. Cash gun fell on the
24 floor panel. As the gun fell on the floor panel, I gets 'em
25 out of the car.

1 Q. I didn't understand what you meant. You said you got
2 out of the car?

3 A. Yeah, I gets 'em out of the car.

4 Q. Okay.

5 A. I began to flee the scene, run, as in running. As I
6 look back, Cash is getting out the back seat on to the
7 driver's side. The driver's side door is halfway open
8 already. Me and Drew -- Drew had opened the door or
9 something. I get down the street, get to my house. When I
10 get on the porch, I hear a gunshot.

11 Q. Okay. What happened next?

12 A. I went in the house, took a shower. A couple of minutes
13 later, Cash home.

14 Q. Cash came to the house?

15 A. Yeah.

16 Q. Now, who was at the house when Cash got there?

17 A. My brother, my brother-in-law Quan, my brother Jaquan,
18 my brother Davontae, my cousin Snoop, my niece Mykia
19 (phonetic), and my brother's baby's mama, Crystal Bethel.

20 Q. Okay. Now, what happened then?

21 A. After that, he came there and he be like, "I had to get
22 him," pacing nervously saying---

23 Q. When you say, "I had to get him," who said that?

24 A. Cash saying, "I had to get him," pacing nervously,
25 pacing like -- like he done did something -- like he done did

1 something crazy of sorts. He had -- he had some money. He
2 had a little couple of dollars, bragging about how he got to
3 (unintelligible words spoken).

4 Q. Did you see how much money he had?

5 A. A couple hundred-dollar bills. A couple hundred. He
6 had his book bag with him saying -- stating he was going to
7 go to his baby's mama's house and he left.

8 Q. What did you do then?

9 A. I went back to the scene after that. I went back to the
10 scene.

11 Q. You went back to the scene?

12 A. Yes, sir.

13 Q. Why did you go back to the scene?

14 A. Because my phone was there.

15 Q. Your cell phone was there?

16 A. Yes, sir.

17 Q. And why was that important?

18 A. Because I felt like if I left my cell phone there that
19 the police would trace back my phone on the scene thinking I
20 had something to do with it.

21 Q. So when you got back to the scene, what did you do?

22 A. I went on the driver's side and reached over the victim
23 to see if my phone was there. Then I went on the other side
24 and got my phone from off the floor.

25 Q. Okay. Then after you did that, what did you do?

1 A. I went home and called my cousin and told my cousin what
2 happened. He replied you better hope that your -- that that
3 man take the charge.

4 Q. When you that man take the charge, who are you referring
5 to?

6 A. As in that Cash take the charge for what he did.

7 Q. Then what happened?

8 A. Then that's it. That's the end of the story.

9 Q. All right. Why, when the police called you, did you not
10 tell them who you really was or why didn't you go to the
11 police first of all before the police found you?

12 A. Because at the time I was kind of ignorant and not
13 thinking right, and I felt like if I didn't do it or -- if I
14 didn't do it, I shouldn't speak on it, you know, and I wasn't
15 thinking right at the time.

16 Q. So you didn't think that, you know, there was somebody
17 that could have been hurt or dead? Did you feel like you had
18 a responsibility to do something?

19 A. Not really and kind of I did though, but I can't -- I
20 wouldn't actually say no, but kind of and kind of didn't
21 though.

22 Q. Were you scared?

23 A. Yeah, I was kind of frightened at the time because if he
24 was capable of doing that to that man, imagine what he's
25 capable of doing to me.

- 1 Q. All right. Then what happened?
- 2 A. Then---
- 3 Q. Did the police come?
- 4 A. Yeah.
- 5 Q. So they called you first; right?
- 6 A. They called me. I gave them a fake name.
- 7 Q. Why did you do that?
- 8 A. Because I felt like if I ain't had nothing to do with
- 9 it, I ain't had to tell them nothing. And I felt like why I
- 10 got to tell them something when I didn't have nothing to do
- 11 with it, thinking dumb at the time.
- 12 Q. Okay. So when did you next come in contact with the
- 13 police?
- 14 A. When I called Shaqwaja.
- 15 Q. Called who?
- 16 A. Shaqwaja.
- 17 Q. Who is that?
- 18 A. Boomer.
- 19 Q. Who is that?
- 20 A. The girl who testified here yesterday.
- 21 Q. Okay. And what did you tell her?
- 22 A. I asked her -- when I got on the phone with her, she be
- 23 crying saying something about what you did, this and that,
- 24 and Thursday this man come to my school but not knowing -- he
- 25 got on the phone. That's when I gave him the fake name. The

1 next time I came in contact with him was through my mama
2 because my mama said, "The investigators are over here. Come
3 back home. You ain't in trouble." At the time I was at
4 Kim's looking at phones. I walked across the street. When I
5 walked across the street, they was already at the light with
6 -- the car door was open, standing out waiting on me.

7 Q. Okay. Did you run?

8 A. No, I ain't run.

9 Q. So you walked up to them?

10 A. Yes, sir.

11 Q. And what -- what happened then?

12 A. I went in the -- I got in the back seat of the car.

13 Q. So you volunteered to go down and talk with them?

14 A. Yes, sir.

15 Q. Okay. And what did you tell them? Did you tell them a
16 bunch of lies and stuff at first?

17 A. No. At first I be jiving around with -- I -- after that
18 I told the truth though. After that I told the truth. I
19 been jiving around, but I wouldn't say I really lied that --
20 I told -- I told a couple of untruth statements, but I told
21 them -- I got down to business and told the truth though.

22 Q. Well, I mean, this is serious charges. Why would you
23 jive around with something like this?

24 A. Once again, I be scared. If I tell on him, he might do
25 something to me.

1 Q. All right. So once you did tell the truth...

2 A. Yeah.

3 Q. Was that basically what you just told the jury?

4 A. Yeah. Yes, sir.

5 Q. Did the police promise you or tell you anything?

6 A. No, sir. The only thing they told me, you know, if I
7 wasn't the shooter, then I -- if I wasn't the shooter, then I
8 would be a witness. I asked him if I wasn't the shooter,
9 would I -- would I be in trouble? He was like, "No. You
10 will be considered as a witness."

11 Q. Okay. Now, they say they found some blood on your hat
12 -- on your cap that they showed during the trial.

13 A. Yeah.

14 Q. Let's talk about the cap. When you went down, you had
15 the cap with you?

16 A. Yes, sir.

17 Q. Did you stuff it behind the seat?

18 A. No, sir.

19 Q. How did it end up being in the truck?

20 A. I left it in the truck.

21 Q. Why did you leave it in the truck?

22 A. Because I ain't need to wear it in the building. I
23 don't wear hats in the building.

24 Q. Okay. So you left it in the truck?

25 A. Yes, sir.

1 Q. Now, when did you first tell the police that you wanted
2 your hat back?

3 A. As soon as we leave. As soon as we enter out of the
4 building, I see that we weren't riding in the same truck. I
5 asked for my hat back.

6 Q. I have a hard time understanding that, so say that
7 again.

8 A. I said as soon as we left from when I got interrogated.
9 I asked for my hat back.

10 Q. Okay. And did you tell them that you left your---

11 A. Yes, sir.

12 Q. ---hat somewhere?

13 A. Yeah, I tell them.

14 Q. And where did you tell them that the hat was?

15 A. In the back seat.

16 Q. In the back seat of the truck?

17 A. Yes, sir.

18 Q. And who did you tell that to?

19 A. What his name is?

20 Q. Who are you pointing at? On the end?

21 A. Yeah.

22 Q. That's Major Smith.

23 A. Major Smith.

24 Q. Okay. All right. Then when -- now, later on I guess
25 you went back home.

1 A. I went back home, and the same truck that my hat was in,
2 it was at my house. I walked up on that truck and asked for
3 my hat. The reply to me -- they said, "You're worrying about
4 that hat. You got bigger things to worry about."

5 Q. So they didn't look for your hat at that time.

6 A. No. No.

7 Q. Then what happened?

8 A. Then what else happened after that?

9 Q. Did you get word that there was a warrant for your
10 arrest?

11 A. Yeah. No, this is what they -- this is what they tell
12 me. They say, "Do you want to turn yourself in before we
13 issue an arrest warrant for you?" I said, "I'm going to turn
14 myself in." They said can you turn yourself in within a
15 certain amount of time. I turned myself in.

16 Q. Okay. So when you got down to the jail -- I mean, did
17 you go to jail or did you go to---

18 A. Headquarters.

19 Q. The headquarters?

20 A. Yes, sir.

21 Q. On Two Notch?

22 A. Yes, sir.

23 Q. And you went down and you turned yourself in, and that's
24 when you were sitting in the holding cell?

25 A. No. I mean, Mr. Roberson -- me and Mr. Roberson was in

1 the office, and Mr. Roberson was asking them, "Why are you
2 locking my client up?"

3 Q. You can't say what Mr. Roberson said.

4 A. Oh. Well---

5 **Ms. Campbell:** Objection, Your Honor. He can say
6 whatever.

7 By Mr. Johnson:

8 Q. That's fine. Keep talking.

9 A. Anyways, Mr. Roberson was talking to them. They was
10 talking about the situation that's been going on and he had
11 up and left me up in there with them. Then later, later
12 after that, they did a D.N.A. swab, got my D.N.A.

13 Q. Did you volunteer it, your swab to them?

14 A. No. They showed me a pink piece of paper saying
15 something about a search warrant for D.N.A. or something.

16 Q. Okay. All right. Now, when did you tell them the
17 second part of -- the verbal statement that you made to them
18 when you explained about the fingerprints?

19 A. When I had been in the holding tank.

20 Q. Explain how that came about.

21 A. I felt like I had a confession to make.

22 Q. Why?

23 A. Because later that confession might could have bit me in
24 my behind if I didn't tell the truth.

25 Q. Did you hear the police talk about they had your

1 fingerprints that day?

2 A. No, sir. I just heard them about -- I just heard them
3 talking about -- talking about something about the scene, but
4 I ain't hear in particular about some fingerprints on no
5 window or fingerprints in the car or something like that
6 though.

7 Q. Okay. So when you told them the second story about
8 going back the second time, was that in response to anything
9 they said to you?

10 A. No, sir. That was just a freely -- freely from the
11 heart telling the truth. Yes, sir, that's where that came
12 from.

13 Q. Did you have -- let me ask you two questions.

14 A. Yeah.

15 Q. Did you have the intent or did you rob Drew?

16 A. No, sir.

17 Q. Did you shoot Drew?

18 A. No, sir.

19 Q. Did you have any intent on harming Drew whatsoever?

20 A. No, sir. I didn't ever have a motive to hurt Drew or to
21 rob Drew. For what? We conduct business very, very well.

22 Why should I hurt a man that spends money with me daily?

23 Q. Let's talk about your co-defendant.

24 A. Yeah.

25 Q. Who came and said that you did the shooting.

1 A. Yeah.

2 Q. Can you explain to the jury why he would come in here
3 and lie and---

4 Ms. Campbell: Objection, Your Honor. Speculation.

5 The Court: Sustained.

6 By Mr. Johnson:

7 Q. Do you have any personal knowledge---

8 A. Yeah.

9 Q. ---as to why the co-defendant would lie against you?
10 Did he say anything to you?

11 A. Did he say anything like what?

12 Q. Did the co-defendant say anything to you as it relates
13 to what he was going to do concerning these charges?

14 A. No, not really. No.

15 Q. Okay. Did -- did you see the co-defendant the next day
16 with the gold that they referred to in the trial?

17 A. He had a chain but -- he had a gold chain, but he ain't
18 had the gold teeth though.

19 Q. He didn't have the gold teeth?

20 A. No, sir.

21 Q. Did he tell you about it or anything?

22 A. Yeah, he told me about it. He told me he was fixing to
23 eat.

24 Q. Told you what now?

25 A. Like he was fixing to eat, like he was fixing to get on

1 the ground like as in make money.

2 Q. I didn't understand that.

3 A. He said he was fixing to eat as in like get on the
4 ground and make money or something like that. That term is
5 like as in selling drugs while he's hustling.

6 Q. So did he have -- the money that he had the next day,
7 did he have it the day before? Did he have any money---

8 A. No. No.

9 Q. ---before this happened?

10 A. No, he had no money before this happened.

11 Q. And you know that personally---

12 A. I know this for a fact. I know this for a well-known
13 fact.

14 Q. How?

15 A. Because he be at my house with my brothers all the time.

16 Q. Now, he's best friends with your brother?

17 A. My brother-in-law, Quan.

18 Q. Marquan?

19 A. Yes, sir.

20 Q. How long have they been best friends?

21 A. They've been best friends since I lived with my mama.

22 Q. How long ago was that?

23 A. I never -- I wasn't staying with my mama. I was staying
24 with my great grandmama, but when I -- when I moved over
25 there they was already friends.

1 Q. Okay. Was that six months?

2 A. I don't know how long she been staying there.

3 Q. A year?

4 A. Probably no longer -- no more than six or seven months.

5 Q. Okay. But they always be together?

6 A. They always be together every day though.

7 Q. Is there anything that you want to tell the jury that I
8 did not ask you that you want them to know?

9 A. Well, not really, but I tell you one thing: That I
10 didn't rob and kill that man. I tell you that. That's a
11 well-known fact.

12 Mr. Johnson: I have no other questions.

13 The Court: Ms. Campbell?

14 Ms. Campbell: Thank you, Your Honor.

15 Cross-Examination

16 By Ms. Campbell:

17 Q. Let me talk about a few things first. Your relationship
18 with the victim in the case, you had been knowing him for a
19 couple of years?

20 A. Yes ma'am.

21 Q. And you just said in your own testimony that you had no
22 motive to kill him; right?

23 A. Yes, sir -- I mean, yes, ma'am.

24 Q. Because he was a friend; right?

25 A. Yeah.

1 Q. And you'd been knowing him longer than you knew Cash.

2 A. Yeah.

3 Q. And you considered him an acquaintance. As you said,
4 he'd spent money. He bought stuff from you.

5 A. Yeah.

6 Q. Back when this happened, were you employed?

7 A. No.

8 Q. And you're 20 -- how old now? Twenty-two?

9 A. Twenty-two.

10 Q. So back when this happened, you were around 21?

11 A. No -- yeah. Yeah. Yeah, you're right. Yeah, you're
12 right. I was 21. You're right.

13 Q. And you didn't have a job?

14 A. No. At the time, no, I didn't.

15 Q. What did you do for money?

16 A. What I do for a living?

17 Q. Yes, sir.

18 A. I'll admit to the jury that I sell drugs for a living.
19 I admit to that.

20 Q. Okay. And you said -- I think in your statement you
21 said on occasions you would sell drugs to Drew and Drew would
22 sell drugs to you.

23 A. He would sell weed to me, yeah.

24 Q. Weed to you? And in your statement, as a matter of
25 fact, the only thing -- the only thing you ever said you sold

1 to him was weed; right?

2 A. Yeah, I said that.

3 Q. But you also mentioned in your testimony here today that
4 you had had some kind of -- not bond with Drew but he'd met
5 your family?

6 A. Yeah, he did.

7 Q. Did you consider him more than an acquaintance, like a
8 friend?

9 A. More like a friend. More like a business partner.

10 Q. Business partner?

11 A. Yeah, nothing too major. Nothing too -- nothing too
12 big, you know.

13 Q. But you knew him well enough that when you got your new
14 phone -- because you'd only had it a couple of months; right?

15 A. Yeah.

16 Q. That you called him up to make sure he had your number?

17 A. I do that to everybody when I get a new number.

18 Q. Everybody that you sell to or just everybody in general?

19 A. Everybody in general.

20 Q. Including the people you sell to?

21 A. Including the people I sell to, including friends,
22 family, everybody.

23 Q. Let me talk to you a little bit about your relationship
24 with Johnathan Holloway. You called him Cash?

25 A. Yes, ma'am.

1 Q. He was best friends with your brother.

2 A. Yes, ma'am.

3 Q. Would he come to your house often?

4 A. Yes, ma'am.

5 Q. And how long had you been living in the house when this
6 happened?

7 A. I want to say I stayed at my mama's for a couple of
8 nights.

9 Q. But you'd been in and out months and months before that,
10 but your -- all your other brothers lived there, didn't they?

11 A. Yeah.

12 Q. So you would see him on almost a daily -- at least
13 three-or-four-times-a-week basis prior to you moving up
14 there.

15 A. Uh-huh.

16 Q. And he was best friends with your brother, Miquan?

17 A. Yeah.

18 Q. And that night your brother Miquan was home, wasn't he?

19 A. Yeah.

20 Q. But Cash was hanging with you.

21 A. Cash business was at my house. Do you want me to tell
22 you the reason why he been at my house at that time?

23 **Court Reporter:** I'm sorry. Repeat that.

24 **The Witness:** I said: Do you want me to tell you the
25 reason he been at my house?

1 By Ms. Campbell:

2 Q. Yeah.

3 A. The reason why he been at my house because he'd been
4 high off pills. When he got -- when he high off pills, he
5 can't be in his house because he don't want his family to
6 know that he mess around with pills.

7 Q. Okay. Let me get this straight, and I'll get back to
8 that. On that night in question, were you -- I guess your
9 job was selling drugs. So you were basically -- when Mr.
10 Decker called you, you were doing your job.

11 A. No, I was chilling, drinking, chilling with my brother
12 and them.

13 Q. You weren't high on pills.

14 A. No. No.

15 Q. You hadn't been smoking marijuana that night?

16 A. I'd been drinking that night and smoking. Yeah, I'd
17 been smoking that night.

18 Q. Smoking marijuana.

19 A. Yeah.

20 Q. Drinking alcohol.

21 A. Yeah.

22 Q. What about your brothers? Were they doing the same?

23 A. They were chilling. My -- not all my brothers. My
24 brother Willie that's old enough, yeah, he was.

25 Q. But the ones who are under age don't break the law and

1 do that.

2 A. No.

3 Q. And on that night where were y'all drinking and smoking
4 your marijuana? Was that in the house?

5 A. Yeah.

6 Q. Where was your mama?

7 A. My mama wasn't even there.

8 Q. She wasn't there.

9 A. No.

10 Q. Cash came over and he'd been there all night?

11 A. Yeah, Cash been there---

12 Q. He was high on pills.

13 A. Yes.

14 Q. Smoking.

15 A. Yes.

16 Q. Drinking.

17 A. Yep. Four Lokos I believe he drank.

18 Q. What?

19 A. Four Lokos.

20 Q. What were you drinking?

21 A. Four Lokos.

22 Q. Is that a beer or...

23 A. It don't really get you drunk. It don't get me drunk,
24 but it probably got -- it got them drunk though.

25 Q. Got them drunk---

1 A. It's like a---

2 Q. ---but you didn't get drunk.

3 A. It's like a -- it's like a -- more like an energy drink
4 with like a little bit of alcohol in it.

5 Q. An energy drink with a little bit of alcohol in it?

6 A. Yeah.

7 Q. How long had y'all been drinking that night?

8 A. I only drunk like a half a can. They had been drinking
9 all night.

10 Q. How long -- okay. So you hadn't been drinking much, but
11 they had.

12 A. Yeah.

13 Q. How long had they been smoking and you'd been smoking?

14 A. For a little -- for a little minute, but we don't smoke
15 -- keep on smoking like -- we smoke like two or three blunts,
16 something like that.

17 Q. Two or three blunts?

18 A. Yeah.

19 Q. And who was providing the drugs then?

20 A. It wasn't me. It was my brother Willie.

21 Q. Are your brothers in the same business you are?

22 A. No.

23 Q. That night your mom's not home, they're home, and you
24 and Cash end up there in the house along with your brothers.

25 A. Yes, ma'am.

1 Q. But Cash wasn't really with you that night.

2 A. He's been at the house because once again I tell you
3 that he doesn't stay in his house when he off them pills.

4 Q. Because he had to be at your house because he's high on
5 pills.

6 A. Yeah, because he ain't---

7 Q. So were you irritated with him because he was high?

8 A. No.

9 Q. It was okay?

10 A. Yeah.

11 Q. He was there to see your brother Miquan?

12 A. He was there to be there because he couldn't go to his
13 mama's house because he be high off pills.

14 Q. Okay. And I'm just trying to clarify something.

15 A. Yeah.

16 Q. Was he friends with you or Miquan?

17 A. Miquan, but he be kind of like a friend of mine's a
18 little bit, too.

19 Q. Okay. That's what I'm getting... He'd been a friend of
20 yours, too; isn't that right? On that night you get a phone
21 call from Andrew Decker.

22 A. Yeah.

23 Q. And you mentioned that he didn't know where you lived,
24 so you had to give him directions; right?

25 A. Yeah. He know what side of town that I stayed on, but

1 he didn't know specifically where I stayed at.

2 Q. So did you give him directions?

3 A. Yeah.

4 Q. But you said earlier you didn't want him to come to your
5 house.

6 A. I gave him directions close to my house.

7 Q. Close to your house, but you didn't want him to come to
8 your house.

9 A. I don't let nobody come to my house.

10 Q. So where was it when you first met up with Andrew
11 Decker?

12 A. On the back road.

13 Q. On the back road.

14 A. Yeah.

15 Q. Right where everything ended up happening.

16 A. No.

17 Q. Near where everything ended up---

18 A. Down the street from anything -- where everything --
19 right close to my house.

20 Q. Behind your house?

21 A. No, not behind my house. It was farther up from my
22 house.

23 Q. Okay. And how far a walk was that from your house?

24 A. Not -- not less than 30 -- 30 seconds.

25 Q. And on that night in question, you weren't with Cash.

1 He was just over at your house because he was high on drugs
2 and couldn't go home like that.

3 A. Yeah.

4 Q. But then you decided to take him with you to make a drug
5 deal with one of your customers?

6 A. No. See, I wasn't going to make a drug deal. I was
7 going to serve Drew out there, but he didn't have change, so
8 that's why we went to the store.

9 Q. Why was Cash with you? He wasn't your friend.

10 A. He was like a homeboy of mine's. I trusted him to be
11 around him.

12 Q. Okay. He's a homeboy now. He's high on drugs, alcohol,
13 marijuana, and you took this homeboy with you that night to
14 serve Andrew Decker.

15 A. Yeah.

16 Q. Why would you take him with you?

17 A. Because he had something -- he had -- he had put
18 something in it on the fake dope. That's why I took him with
19 me, but we wasn't intending to ride to the store. Once
20 again, I was going to serve him there. I didn't have change
21 for a hundred, so we rode to the Hot Spot.

22 Q. Were you taking him with you for back-up?

23 A. For what? I ain't got no--

24 Q. You weren't scared of Andrew, were you?

25 A. For what? I ain't got no motive to hurt Andrew or do

1 anything -- anything to Andrew. He's a friend. He's
2 friendly, so why I be scared -- what would I be scared of
3 Andrew for?

4 Q. I'm just asking the question. Why did you take Cash
5 with you?

6 A. Because he went in on the deal with me on the gank.

7 Q. On the gank?

8 A. Yeah.

9 Q. And earlier you said he had real drugs, but now you're
10 saying he had gank or was it your gank?

11 A. See, earlier what I said is that he told me that it was
12 real drugs, but come to find out from your investigators over
13 there that it was candle wax with dope residue around the
14 back.

15 Q. So the purpose of going there that night with your back-
16 up was not to rob anybody. It was just to serve him fake
17 drugs.

18 A. Yeah.

19 Q. Is that what you usually do with your customers?

20 A. No.

21 Q. But on the night in question you did that.

22 A. Because I ain't had no dope at the time.

23 Q. And you needed money.

24 A. No, not really needed money at the time, but I needed
25 some money, yeah.

1 Q. Were you working?

2 A. Was I working? No, I didn't have nothing to work with.

3 Q. You just said you didn't have any dope. You don't work.

4 You're drinking and smoking. That's expensive.

5 A. Yeah. No, not really. Four Lokos ain't but a dollar

6 and some change.

7 Q. And you needed money.

8 A. I ain't needed money.

9 Q. Well, why else would you sell him fake drugs?

10 A. Who turns down money, Ms. Campbell? Do you turn down
11 money?

12 Q. Can you answer the question and then you can talk to me?

13 A. Yeah.

14 Q. Why else would you sell fake drugs if you didn't need
15 the money?

16 A. Because I don't turn down no money.

17 Q. You don't turn down what?

18 A. I won't turn down no money.

19 Q. And you just happened to take Cash with you.

20 A. Once---

21 Q. Had you ever taken him with you before to do your sales?

22 A. That's the first time -- the first time Cash ever saw
23 Drew. That was the first time Cash ever saw Drew.

24 Q. That's right. Did you usually take back-up to make your
25 sales to customers you trusted?

- 1 A. If you went half in on me I will.
- 2 Q. So you go there back behind the place; right?
- 3 A. Yeah.
- 4 Q. And y'all get in the car and---
- 5 A. No. Before I get in the car, I approach the car.
- 6 Q. Do your customers in your drug transactions usually come
- 7 to you with hundred-dollar bills needing change?
- 8 A. Some. Some do; some don't.
- 9 Q. Do you usually have change?
- 10 A. It's depending. It's depending. If it's a junky,
- 11 they're going to smoke -- a smoker is a person that keeps
- 12 their priorities because their priorities---
- 13 Q. Wait, wait, wait. Repeat that again.
- 14 A. I said a junky is a person that keep their priorities
- 15 together, and a smoker is a person that comes -- comes with
- 16 you with good money. They always come to you with good
- 17 money.
- 18 Q. Did Drew always come to you with good money?
- 19 A. Yeah.
- 20 Q. And so on this night in question you chose to take back
- 21 and sell your good customer fake drugs.
- 22 A. Once again, I didn't chose the back-up.
- 23 Q. So you took Cash with you, and you went down to meet
- 24 him.
- 25 A. I took Cash there to meet him.

1 Q. And your testimony is Cash was high and he couldn't even
2 go home he was so high.

3 A. Yeah.

4 Q. And then y'all got in the car.

5 A. Yeah. Before I got in the car, once again I approached
6 the car.

7 Q. And you were in the front seat.

8 A. I approached the car and talked to him first.

9 Q. You approached the car and talked to him?

10 A. Yeah.

11 Q. And what is -- is that when you talked about the change?

12 A. He indicated -- he asked me did I have change for a
13 hundred.

14 Q. So you all then got in the car and ran to the Hot Spot.

15 A. Yeah.

16 Q. And you got -- according to you, he put money in his gas
17 tank at the Hot Spot.

18 A. Yeah.

19 Q. Have you had an opportunity -- you've gotten the
20 discovery in this case; right?

21 A. Yeah.

22 Q. Have you had an opportunity to look at the video from
23 that night at the Hot Spot?

24 A. I ain't---

25 Mr. Johnson: Objection, Your Honor.

1 **The Witness:** I ain't never hear about no video.

2 **Mr. Johnson:** Objection. There was no video of him
3 entered anywhere in this case.

4 **The Court:** I don't know. She can ask the question.

5 **Ms. Campbell:** Thank you, Your Honor.

6 **The Witness:** No, I ain't never heard about no video in
7 this case.

8 By Ms. Campbell:

9 Q. Did you -- were you in here when Investigator Rob Martin
10 testified earlier today?

11 A. Yeah, but ain't nobody -- so you're saying his word is
12 credible?

13 Q. I'm asking for answers, not---

14 A. Yeah, I heard what he said.

15 Q. And y'all weren't on the video.

16 A. I never got out of the car.

17 Q. The car wasn't on the video.

18 A. So -- so basically you're saying that we're lying about
19 going to the Hot Spot.

20 **Mr. Johnson:** Your Honor, objection again. She's
21 testifying to something that hasn't been in evidence.

22 **The Court:** She's asked him a question. Answer the
23 question, please.

24 **Ms. Campbell:** Thank you.

25 By Ms. Campbell:

1 Q. Because that's when you were very specific today to say
2 it's the exact moment that you touched that key where your
3 D.N.A. is.

4 A. Yeah.

5 Q. When you turned off the car. But you haven't viewed
6 that video.

7 A. I ain't never heard of a video. Y'all never mentioned a
8 video, never said nothing about a video until today.

9 Q. And your testimony is you go back to that back road
10 because you don't want him anywhere near your house; right?

11 A. Yeah.

12 Q. And then you were getting ready to get out of the house
13 and I couldn't understand you, but did you say that the car
14 had almost come to a stop or did it come to a stop on that
15 back road?

16 A. It came to a stop on that back road.

17 Q. It came to a stop?

18 A. Yeah.

19 Q. And that's when you, I think, said - I could have
20 misunderstood you, so don't let me misquote - that you put
21 your foot out to get out?

22 A. Yeah, I said that before.

23 Q. And at that exact moment is when the co-defendant, Cash,
24 had a gun in one hand. Which hand did he have the gun?

25 A. The right hand.

1 Q. The right hand is what you testified to.

2 A. Yeah.

3 Q. And then he grabs him around the throat with the left
4 hand?

5 A. Yeah.

6 Q. And a struggle starts.

7 A. Yeah.

8 Q. And you did what?

9 A. Got -- got back -- put my feet in the car and shut the
10 door.

11 Q. You put your feet in the car and shut the door?

12 A. Yeah.

13 Q. Because the car is stopped. You're seeing this person
14 produce a gun. He's high. He's on drugs. He's out of
15 control. He's attacking your friend, your customer, and you
16 got back in the car.

17 A. I never was out of the car. The car got in motion when
18 Cash put the gun out and Drew jerked the car off and drove
19 off.

20 Q. And in this -- while this commotion is going on, Drew is
21 able to put the car back in gear?

22 A. Yeah. As a matter of fact, no, I take that back.

23 Q. Okay. You take that back.

24 A. He never -- he never had the car in park.

25 Q. He never had the car in park?

1 A. He was dropping us off. We was fixing to get dropped
2 off. Remember my telling you we was fixing to get dropped
3 off from coming to El Cheapos?

4 Q. This is your story.

5 A. Yeah.

6 Q. And then the car just meanders down the street. Is it
7 going fast or slow?

8 A. It's not -- it's not really going fast; it's not really
9 going slow.

10 Q. He's honking the horn.

11 A. Yeah.

12 Q. And he's got the gun in his right hand up to Drew's
13 head; right?

14 A. The gun fell as they be going down the street.

15 Q. I'm getting to that.

16 A. Yeah.

17 Q. So then the gun falls.

18 A. Yeah.

19 Q. And you said it falls in the floorboard of the front
20 seat---

21 A. Yeah.

22 Q. ---is your story now.

23 A. Yeah.

24 Q. And at that point you say what?

25 A. What?

1 Q. What did you say?

2 A. What did I say?

3 Q. What did you say to Cash?

4 A. What did you say now?

5 Q. Did you say anything to Cash?

6 A. Yeah.

7 Q. Let me ask you this: You were scared; right?

8 A. Yeah.

9 Q. Because this high person that you've been friends with
10 for a while, but he's really your brother's friend, has
11 produced a gun and is threatening your friend, Andrew Decker,
12 and has a gun to his head and is struggling with him and the
13 gun drops and he's where in the car?

14 A. In the back seat.

15 Q. So he's in the back seat.

16 A. Yeah.

17 Q. And you're in the front seat.

18 A. Yeah.

19 Q. And Drew is in the front seat.

20 A. Yeah.

21 Q. So Drew can't move because he's got Drew still in a
22 strangle hold; right?

23 A. Yeah.

24 Q. So did you get the gun?

25 A. No.

1 Q. Did you attempt to get the gun?

2 A. No, ma'am.

3 Q. Why not?

4 A. Because I wasn't trying to get into that because
5 anything could have happened. Anything could have escalated.

6 Q. It wasn't your business?

7 A. I ain't saying it wasn't my business, but I wasn't
8 fixing to put my life in jeopardy.

9 Q. So at that point when the gun dropped you jumped out.

10 A. Yeah.

11 Q. But not really because before you testified that at the
12 same moment that the co-defendant who you described from the
13 back seat who is in a -- it's a pretty violent struggle at
14 this point.

15 A. Yeah. You're right.

16 Q. Drew is actually bigger than you or Holloway.

17 A. Uh-huh. Holloway is actually bigger than me, too.

18 Q. Uh-huh. And it's a struggle going on.

19 A. Yeah.

20 Q. But somehow, according to your testimony, prior to you
21 leaving that car, Cash is able to reach across Drew who is
22 violently struggling with him, is able to reach around to the
23 steering wheel, cut off the car, pull out the keys, break the
24 key, and leaves no D.N.A.

25 A. See---

1 Q. But yours is there.

2 A. The key got broken because he left the emergency brake
3 up. Once again, you can't turn a car off when it ain't in
4 park.

5 Q. And -- but at the same time he was able to get the gun
6 back?

7 A. Who? Cash?

8 Q. Uh-huh.

9 A. I wasn't there to see that. The only thing I saw: When
10 I ran, I looked back and he was in the driver's side of the
11 car fighting the man.

12 Q. And you ran because you were scared.

13 A. Yeah.

14 Q. Right?

15 A. I ran because I was scared and I feel like---

16 Q. This---

17 Mr. Johnson: Your Honor, she's not letting him finish
18 his answer.

19 The Court: Let him finish.

20 Ms. Campbell: Yes, sir.

21 By Ms. Campbell:

22 Q. Go ahead.

23 A. Yeah, I ran because I be scared and I be frightened.

24 Q. Okay. Who were you scared of?

25 A. Cash.

1 Q. And why were you scared of Cash?

2 A. Because he done went in that rage all of a sudden out of
3 the blue.

4 Q. So at that point you run. You're running for your life
5 because you don't know what's happening back there, do you?

6 A. No. The only thing I---

7 Q. You run home and you tell your brother---

8 Mr. Johnson: Your Honor, once again she's not letting
9 him finish.

10 The Witness: No, I don't tell them nothing.

11 By Ms. Campbell:

12 Q. All you do is take a shower.

13 A. Yeah, I took a shower.

14 Q. Why did you have to take a shower?

15 A. Because I wanted to take a shower. I was sweating.

16 Q. What about the blood?

17 A. What blood?

18 Q. The blood that was all over you, all over your hat.

19 A. The blood came from my hat. I don't know how it got on
20 there, but I -- it had to come on there when I went back to
21 the scene to get my phone.

22 Q. Of course.

23 A. Yeah.

24 Q. You're still scared. You're back at your house. You
25 hear the gunshot, so you know something bad is going on;

1 right?

2 A. I know something went bad, but I don't know who got
3 shot. I don't know who's been shot or who got shot.

4 Q. So at that point you call the police.

5 A. No, I didn't.

6 Q. Well, you don't know if it's your one friend that got
7 shot that's high and homicidal or your other friend that got
8 shot that you've been serving fake drugs to, but you didn't
9 call the police because you weren't involved, were you?

10 A. No, ma'am. If I was involved, I would have been right
11 there.

12 Q. If you were involved what?

13 A. If I was involved, I would have been right there? Right
14 or wrong?

15 Q. I'm talking about your story, not what happened.

16 A. Oh, I thought you asked me was I involved with the
17 crime.

18 Q. So once you got out of the shower and you got your mind
19 clear and your body clean, at that point did you think: I
20 need to call the police?

21 A. No.

22 Q. Would you want someone to call the police if you were
23 involved in gunshots?

24 A. Yeah. If they feel like their life is right, if they
25 choose not to call the police, well, they choose not to call

1 the police because they feel like their life might get in
2 jeopardy.

3 Q. So you're scared. You've taken a shower. You've heard
4 the gunshot, and at that point you see Holloway again that
5 night, Cash?

6 A. Yeah, he came back to the house after I took a shower.

7 Q. And at that point there's a baby in your house? He's
8 just produced a gun?

9 A. Yeah.

10 Q. He may have shot someone?

11 A. Yeah.

12 Q. In fact, he tells you that, right, according to you?

13 A. Yeah.

14 Q. And you don't think you need to protect those people?

15 A. You've got to think about it. If he shot that man,
16 imagine what he'll do to my family.

17 Q. So you want to get as far away from him as you can.

18 A. He left. He didn't stay there that long.

19 Q. Because you don't want anything more to do with him
20 because you are scared what he could do to you or your
21 family; right?

22 A. Well, he could do to my family the same thing he did to
23 Andrew Decker. The same thing he did to him he could do to
24 my family.

25 Q. So in order to protect your family, you don't think the

1 right thing to do is to call the police, get help, get this
2 person in custody?

3 A. So why would I---

4 Q. But at that point I guess you didn't know he had shot
5 him until he told you.

6 A. Yeah, I didn't know who -- I didn't know who got shot
7 until he came and told me.

8 Q. So your reaction when you've been told that he shot your
9 friend, Andrew Decker, in the head and then he leaves the
10 scene -- your reaction is to go back and get, your testimony
11 is here today, your phone?

12 A. Yeah.

13 Q. It wasn't the victim's phone you got out of his pocket?

14 A. No. I don't know how they understand I said that. They
15 must have misheard what I said.

16 Q. And I'll get to your statement in a minute. And then
17 your story is you go to bed? I didn't hear that part.
18 Anything else happen that night?

19 A. Anything happen that night? What you mean did anything
20 else happen that night? After I go to bed? No, I went to
21 sleep.

22 Q. And the next day when you woke up, did you go to your
23 mother? Was your mother home?

24 A. No.

25 Q. And did you tell your mom, "We're in trouble, that this

1 person who has been one of our best friends for months on end
2 is dangerous"?

3 A. No, I ain't tell her, but she be mad after she found out
4 though.

5 Q. That's after the police got involved. So you didn't
6 tell your mother. You didn't tell your brothers.

7 A. I didn't have to tell my brothers. Cash came in and
8 said it himself.

9 Q. You said you called some cousin. What cousin is that?

10 A. My cousin, Ryan Stone.

11 Q. Ryan Stone?

12 A. Yeah.

13 Q. Did you tell him and did he tell you to go to the
14 police?

15 A. No, he tell me that my -- I better hope that Cash, Mr.
16 Johnathan Holloway, will man up to the charge. That's what
17 he tell me.

18 Q. Because you weren't manning up to the charge.

19 A. Manning up for what? I ain't had no motive to do
20 nothing. I ain't had nothing to do with it.

21 Q. You were the one selling him the fake drugs.

22 A. Yeah, I admit it. I admit to that. I told the jury
23 that I did that.

24 Q. So then over the course of the next day, the police, I
25 believe, make contact with you; right?

1 A. Yes, ma'am.

2 Q. You're walking down the street.

3 A. Yes, ma'am.

4 Q. Because they were rolling up to your house. They would
5 drive right by you. You may not have known who they were.

6 A. Yeah.

7 Q. And who were you with?

8 A. Cash.

9 Q. I thought you were scared of him.

10 A. He was walking to the store; I was walking to the store.
11 I went into Kim's. He was going to Piggly Wiggly.

12 Q. Y'all were walking together and the police saw you;
13 right?

14 A. We was walking to the store.

15 Q. But you were still scared to death of him.

16 A. He was walking to the store. I was walking to the
17 store.

18 Q. Were you still scared of him or had you gotten over it
19 at this point?

20 A. I didn't get over it, but I'm not fearing no man at all.
21 But at the time I was walking to the store he was walking to
22 the store.

23 Q. And then the police came and you went with them.

24 A. I went with him.

25 Q. And you just left your hat on the back seat of Rob

1 Martin's car.

2 A. Yeah.

3 Q. Not because you were worried about the blood that was on
4 there but because you don't like to wear hats indoors.

5 A. See, I never know that there be blood on the hat.

6 Q. I know you didn't.

7 Court Reporter: I'm sorry. What was your answer?

8 The Witness: I never know that there be blood on the
9 hat.

10 By Ms. Campbell:

11 Q. And was that the hat you were wearing the night he was
12 shot?

13 A. That's the hat I've been wearing way before the night --
14 the night -- the night the man had been shot. I've been
15 wearing that hat.

16 Q. That was the only night you're testifying that you saw
17 Andrew Decker -- the only night that he was shot and blood
18 was flying through the air; right?

19 A. What did you say?

20 Q. That was the only night Andrew Decker was shot, wasn't
21 it?

22 A. Yeah.

23 Q. That's the only night you could have gotten the blood on
24 your hat because once you found out he'd been shot, you went
25 back to check on him?

1 A. I went back to get my phone from the scene.

2 Q. So you left him there, and I believe in one of your
3 statements you even said that you saw the light on all night.

4 A. Yeah, I said that. From my own window I could see down
5 the street.

6 Q. And the next day it just happens this man you're so
7 afraid of that you're worried about what he's going to do to
8 your family and to all this, y'all happen to be hanging out
9 together---

10 A. We wasn't hanging out. He was going to the store; I was
11 going to the store, once again.

12 Q. Okay. You just happened to coincidentally be walking
13 down the street with him at the same time but not hanging out
14 with him. The police contact you; right---

15 A. Yes, ma'am.

16 Q. ---before they saw you that day, on the phone. On whose
17 phone?

18 A. My phone.

19 Q. And whose phone are they calling from that you call back
20 when you first make contact with the police?

21 A. Shaqwaja.

22 Q. And what's your relationship with Shaqwaja?

23 A. We was talking at the time.

24 Q. What's that mean?

25 A. As in boyfriend/girlfriend.

- 1 Q. Boyfriend/girlfriend?
- 2 A. Yes, ma'am.
- 3 Q. And you call and they put the police officer on the
4 phone.
- 5 A. Yeah.
- 6 Q. And you know at this point that your good friend has
7 been murdered by this homicidal maniac who lives next door to
8 you. So when you get the police on the phone, you tell them
9 what happened. You're innocent; right?
- 10 A. Yes, ma'am.
- 11 Q. That's what you keep saying.
- 12 A. Yes, ma'am.
- 13 Q. Do you tell them what happened?
- 14 A. No, I ain't tell them what happened. I---
- 15 Q. Why did you tell them a false statement? Why did you
16 tell them your name was John Riley and give a false address
17 and a false date of birth?
- 18 A. Because I wasn't trying to indicate (sic) myself in what
19 they had -- what they had going on in something like that.
- 20 Q. You wanted to know what evidence they had against you?
- 21 A. Do I want to know what evidence they had against me?
22 Are you asking me do I know what evidence they had against
23 me?
- 24 Q. You tell me.
- 25 A. I'm asking you. I misheard what you said.

1 Q. At that point they ask who you are, and you tell them
2 you're John Riley and you give them a false date of birth and
3 you give them a false address. Why are you hiding from them?
4 You're innocent, according to you.

5 A. Yeah.

6 Q. Then the next time you make contact with them, you go
7 down to the sheriff's department and you have your hat on
8 which you happened to leave in the back of the car.

9 A. I didn't had it on, Ms. Luck Campbell. I had it in my
10 hand.

11 Q. You had it in your hand; I'm sorry.

12 A. Yeah.

13 Q. You had the hat with you. Don't let me misquote you.

14 A. Yes, ma'am.

15 Q. And at that point you just happened to leave it in the
16 back of the car.

17 A. I set it down in the car.

18 Q. Uh-huh. But you didn't hide it under the seat so that
19 when you got a ride home in that same car you could get it
20 back out, did you?

21 A. What you say?

22 Q. Did you hide it under the seat so that when you got a
23 ride home---

24 A. No, ma'am.

25 Q. ---because you thought you were riding in that same car,

1 you could get it back out and the police would never see it?

2 A. No, ma'am. Hey, look---

3 Q. You go into the---

4 Mr. Johnson: Your Honor, she's not allowing him to
5 answer.

6 The Court: Mr. Johnson, he delayed his conversation --
7 I mean, his response. If he's got something else to say --
8 have you got something else you want to say?

9 The Witness: No. Don't worry about it, sir.

10 The Court: I'm not worried about it.

11 By Ms. Campbell:

12 Q. Basically you go in there and Investigator Martin, who
13 is right there, starts talking to you about the phone
14 numbers.

15 A. Yeah.

16 Q. And whether or not you know that 665 phone number that
17 belongs to Drew; right?

18 A. Yeah.

19 Q. And what do you tell him?

20 A. I tell him -- I tell him -- I tell him a story.

21 Q. You told him a story. And what's the difference when
22 you're jiving someone versus a story versus a lie?

23 A. Well, whether you call it a lie, jiving around, whatever
24 you want to call it, I didn't tell the truth at the time.

25 Q. Okay. And that's the second time you lied to the police

1 that day; right?

2 A. Second time?

3 Q. Yeah. You---

4 A. Yeah, that's the second time because the phone -- you're
5 right.

6 Q. Are you trying to feel them out about what they know?

7 A. No. No.

8 Q. What evidence they have?

9 A. No.

10 Q. And they talked to you about how long you'd had the
11 phone and how many times you talked to Drew.

12 A. Yeah.

13 Q. And you told them the only time you talked to Drew was
14 suddenly last night. He called you out of the blue.

15 A. Yeah. I ain't talked to him ever since I had got that
16 phone. I called him to give him my new number.

17 Q. And -- well, first, though, you didn't tell them that.
18 You told them you hadn't talked to him in months; isn't that
19 right?

20 A. Yeah, I tell them that I haven't talked to him in
21 months, but I also told them that I called him and told him
22 my new number.

23 Q. Okay. That's when you admitted to lying again.

24 A. Lying? That's not really a lie.

25 Q. Well, it wasn't the truth, so what is it?

1 A. That I slipped and forgot that I gave him my new number;
2 that's what it is.

3 Q. Okay. Then they asked you why you were talking to Drew
4 the night before, and you said that you had talked to Drew on
5 the phone and Drew wanted some hard, which meant crack
6 cocaine; right?

7 A. Yes, ma'am.

8 Q. And that you had referred him to a guy named Mike who
9 stays on Carnegie and lives in a trailer with a dog.

10 A. Yeah.

11 Q. That wasn't the truth either.

12 A. No, ma'am.

13 Q. Why aren't you telling them the truth?

14 A. Because I thought if I tell them Cash that he'll be mad
15 at me -- mad at me, and I was frightened to tell them. After
16 awhile, I figured I didn't have nothing to do with it, so
17 that's why I told the truth.

18 Q. So you got unscared?

19 A. I told the truth. If I ain't had nothing to do with it,
20 the truth will set you free, ain't it?

21 Q. That -- this isn't a game.

22 A. I didn't say it was a game, Luck Campbell.

23 Q. They told you that Drew had been shot, and that's when
24 you asked them, "What if I didn't shoot him?"

25 A. Yeah.

1 Q. And they told you if you didn't participate in the
2 murder you'd be a witness; right?

3 A. No. They said if you wasn't the shooter, you will be
4 considered -- considered as a witness.

5 Q. And then immediately you brought up the name Cash.

6 A. I told them what happened.

7 Q. That Cash wanted to rob Drew and that you ran.

8 A. Yep.

9 Q. Then they advised you of your rights; right?

10 A. Yeah.

11 Q. And then you give them an abbreviated version about what
12 happened that night.

13 A. Yeah.

14 Q. That Drew called looking for some hard or some crack
15 cocaine.

16 A. Yeah.

17 Q. That you didn't -- that Cash had some fake stuff, so you
18 knew it was fake then; right?

19 A. I had to make the pills first.

20 Q. Okay. You had make to fake stuff. So they agreed to
21 make Drew and sell him fake drugs. So back then when you
22 were being interviewed by Captain Smith and Rob Martin,
23 having just been advised of your rights, having told several
24 lies, you then tell them that your plan was with Cash to sell
25 him fake drugs.

1 A. That's the only -- that's the only thing that was
2 planned was to sell fake drugs on Mr. Decker. I never
3 planned anything else or thought about anything else.

4 Q. Okay. You even described it as Tylenol pills and wax in
5 a baggy with some real crack residue.

6 A. See, Cash was telling me that the bag he had was for
7 real dope. That's why I thought it was real, what Cash had.
8 I had the Tylenol.

9 Q. So then you were going to make a deal, but Drew only had
10 a hundred and needed change.

11 A. Yeah.

12 Q. That you went to the Hot Spot.

13 A. Yeah.

14 Q. When Drew was getting his money, he stored it in a
15 compartment above the rear-view mirror. He had a couple of
16 hundreds. So then you were admitting that you knew that the
17 money was up there.

18 A. I told -- on my statement I said that Cash say he saw a
19 couple of hundreds.

20 Q. And that's when Cash told you he wanted to rob---

21 A. No, he said, "I'm going to get his ass. I'm fixing to
22 get his ass."

23 Q. Back then you told them that -- you said he wanted to
24 rob Drew for his money.

25 A. Basically the same thing. If he say he's fixing to do

1 something -- street terms.

2 Q. So at that point when you know he's trying to rob your
3 friend, Drew, what did you do?

4 A. What did I do?

5 Q. Yeah. What did you do?

6 A. I didn't do nothing.

7 Q. Then you talk about getting the grape cigar at the El
8 Cheapo, and then you talk about the seating arrangement. Who
9 is in the front and who is in the back?

10 A. I'm in front.

11 Q. Specifically, they asked you about the pistol Cash had,
12 and you were able to give a detailed description of that
13 pistol---

14 A. Because I saw it earlier that day.

15 Q. You saw it earlier that day---

16 A. I saw it earlier that day and earlier that night.

17 Q. You described it as a black semiautomatic Taurus
18 Millennium that had a third name on the slide and that it was
19 a .40 caliber.

20 A. Yeah.

21 Q. You're good with guns?

22 A. (Witness nodded head up and down.) Not good with guns,
23 but I'm from the hood. I seen all type of guns.

24 Q. And you were able to give them that much information
25 about a gun you'd seen once earlier that day.

1 A. Yeah, of course, if he showed me.

2 Q. Did you know Holloway had the gun with him that night
3 when y'all went to serve your client and friend, Drew?

4 A. Once again, I told you earlier that he showed me the gun
5 earlier that night. I didn't know if he still had it on him
6 at the time.

7 Q. Okay. So that's your story now?

8 A. What you mean that's my story now? That was my story
9 before.

10 Q. Cash grabbed Drew from behind and was holding him in a
11 choke hold with a gun pointed at his head and demanded money.

12 A. Yeah.

13 Q. Drew began to fight, and the pistol fell to the driver's
14 area. The car was running. Cash grabbed the keys from the
15 ignition. You then got out of the car and ran home.

16 A. Yeah.

17 Q. Do you remember going then out to the storage warehouse
18 where the car was with Investigator Martin?

19 A. Yes, ma'am.

20 Q. And Major Smith?

21 A. Yes, ma'am.

22 Q. And when you got out there, you told them a different
23 story?

24 A. No.

25 Q. Do you remember demonstrating to them what had happened,

1 how Drew had been fighting with him outside the car?

2 A. Yeah. By me knowing that, when I was running and looked
3 back and saw what I saw.

4 Q. That's the first I've heard that one.

5 A. So I ain't said it in my statement. When I ran up, I
6 looked back. Cash was on the driver's side fighting him. I
7 didn't say that? Yes or no?

8 Q. No, you didn't say that. You said you were on the porch
9 when you heard the shot.

10 A. See, once again, I said that after that when I -- when I
11 got home on the porch, I heard a gunshot. What I tell you in
12 my statement at -- when I got out of the car and ran and
13 looked back, I saw Cash on the driver's side fighting the
14 man. I did tell you that.

15 Q. That day you said that you saw him actually pull the
16 trigger.

17 A. No, I didn't. I never said anything like that.

18 Q. Then you gave a written statement, and I don't have to
19 go through that because that's in the thing, where you give
20 some of the same details and some different ones. Why does
21 it keep changing?

22 A. What keep changing?

23 Q. Your story.

24 A. What story?

25 Q. Do you remember being at the sheriff's department after

1 you, I think, turned yourself in?

2 A. Yeah.

3 Q. With somebody named Mr. Roberson?

4 A. Yes, ma'am.

5 Q. He came with you?

6 A. Yes, ma'am.

7 Q. And when you turned yourself in, do you remember them
8 executing a search warrant that meant you had to give up your
9 D.N.A.?

10 A. Yeah, I remember that.

11 Q. And they actually swabbed the inside of your cheek to
12 get that D.N.A.?

13 A. Yes, ma'am.

14 Q. Do you remember being there for a conversation about a
15 fingerprint that was being matched on the driver's side door?

16 A. No. I remember him talking about something about the
17 case, what was going on, but I never heard nothing about no
18 fingerprint.

19 Q. You didn't hear anything about a fingerprint?

20 A. No.

21 Q. So it didn't come to your mind at that point that it was
22 very important that you somehow explain away why your
23 fingerprint is on the driver's door that you've just said in
24 six different statements that you never went to?

25 A. No. I told the truth.

1 Q. And that's when you were hammering on the door. Do you
2 remember Curtis Wilson?

3 A. Yeah, I remember that.

4 Q. He's on T.V.? W.L.T.X.?

5 A. Yes, ma'am.

6 Q. Came and got you and got in contact with you, with
7 Investigator Martin, and you told him that you wanted to tell
8 him something to explain the fingerprints? Do you remember
9 that?

10 A. Yes, ma'am.

11 Q. But it wasn't because you had just heard that they had
12 your fingerprints on the driver's door.

13 A. Which I already know I had fingerprints on the door
14 because I already know that I already been back to the scene.

15 Q. The last question they asked you on the first statement
16 where you didn't put in that you went back to the scene was,
17 "Is there anything else you need to tell us?" And you said,
18 "No"?

19 A. Yeah, I said that. I later told the truth though.

20 Q. And that's when you told them suddenly that you went
21 back, and in that statement you said you didn't go back to
22 your get your phone but that you touched the door when you
23 went back to get the victim's phone out of his pocket which
24 was pulled out so that the police couldn't link you to this
25 crime you didn't commit.

1 A. No, I tell them that I went back and get my cell phone
2 because my cell phone be on the scene so the police won't
3 link me to the scene. That's what I tell them.

4 Q. Beg the Court's indulgence. Because you were trying to
5 distance yourself from the cell phone number you had?

6 A. No, I didn't want my phone to be on the scene because my
7 phone being on the scene, that would have been -- people
8 would have thought I did it for real.

9 Q. So you wanted to make sure nobody thought you did this
10 for real.

11 A. I don't want to be accused for this crime that I didn't
12 at all -- because I didn't do it. I didn't have no motive
13 for doing nothing like that.

14 Q. You testified that you were at Kim's over there looking
15 for a phone? Why did you need a new phone? Why did you need
16 to get rid of the 917 phone?

17 A. Why did I need to get rid of the 917 phone? I was
18 looking for a new phone. Maybe I wanted a new phone.

19 Q. Do you know a Dwight Davis?

20 A. Yeah.

21 Q. Do you remember a couple of weeks ago or in the last
22 month talking to him?

23 A. Yeah.

24 Q. Do you remember telling him that he needed to help you
25 in your trial and you'd help him in his?

1 A. No, I ain't never tell him nothing like that. How can I
2 help a man in a trial when I don't know anything about his
3 case, Ms. Campbell?

4 Ms. Campbell: Beg the Court's indulgence. Thank you,
5 Your Honor.

6 The Court: Mr. Johnson, anything further?

7 Mr. Johnson: I have no other questions, Your Honor.

8 The Court: All right. Thank you. You may step down.
9 Call your next witness.

10 Mr. Johnson: Your Honor, at this time we call Crystal
11 Bethel.

12 The Court: Do we not have a bailiff in the back
13 anymore?

14 Bailiff: Yes, sir. He just stepped out there for a
15 minute.

16 The Court: Well, I want to get a bailiff back there. I
17 want to lock these doors. There's too much coming and going.
18 Y'all are not coming in this courtroom. Y'all stay out.
19 Deputy, can you lock these doors for me? We got too much
20 activity in this courtroom. Out.

21 Crystal Bethel, after being duly sworn, testified
22 as follows:

23 The Clerk: Have a seat in the witness box, and state
24 your full name for the record, please.

25 The Witness: My name is Crystal Bethel.

1 **The Court:** Thank y'all.

2 **Mr. Johnson:** May it please the Court?

3 **The Court:** Yes, sir.

4 Direct Examination

5 By Mr. Johnson:

6 Q. Good afternoon, Crystal.

7 A. Hey.

8 Q. How are you doing?

9 **The Court:** I'm sorry. What's the last name?

10 **Mr. Johnson:** Crystal Bethel.

11 By Mr. Johnson:

12 Q. Crystal, what is your relationship to Kenyatta?

13 A. He's my brother's -- I mean my boyfriend's brother.

14 Q. He's your boyfriend's brother?

15 A. Yeah.

16 Q. Back on March -- I guess March 22nd of 2010, do you
17 remember that day or that weekend?

18 A. Yes.

19 Q. Where were you living at that time?

20 A. At [REDACTED].

21 Q. At the incident that was...

22 A. Yeah.

23 Q. So that was -- was that down the street from where this
24 incident happened?

25 A. Yeah.

1 Q. Was it the same place that Kenyatta was living at that
2 same time?

3 A. Yes.

4 Q. Do you remember the night of -- I guess that would be
5 March the 22nd?

6 A. Uh-huh.

7 Q. Were you at home during that time?

8 A. Yes, I was.

9 Q. Where exactly were you?

10 A. I was in -- in the room, in their mother's room,
11 watching T.V.

12 Q. Okay. Do you remember -- specifically, tell the jury
13 what you remember about that night.

14 A. Well, after I got off work, I came home. I watched T.V.
15 I had the door cracked. I didn't have the T.V. up loud,
16 so... I remember hearing Johnathan. He was like, "He dead.
17 The man, he dead. He dead." That's all I heard him say.

18 Q. You said that was Johnathan, Cash?

19 A. Yeah, Cash.

20 Q. And he was in the house?

21 A. Yeah, he -- yeah, he was -- I guess he was in the
22 hallway. He was in front of the door.

23 Q. Okay. Now, if he was in the hallway, how did you know
24 that the person that you heard saying that was Cash or saying
25 that---

1 A. Because I know -- I mean, I know his voice. He comes
2 over to the house every day. He was friends with my
3 boyfriend, so I know his voice. I know him long enough to
4 know how his voice sounds.

5 Q. Did you see Kenyatta that night?

6 A. Yeah, I seen him one time in the room laying down when I
7 was walking out the room. I just seen him one time in the
8 room.

9 Q. But he wasn't saying anything.

10 A. No, he wasn't saying anything.

11 Q. Okay. Now, the co-defendant, Cash, that you referred
12 to---

13 A. Uh-huh.

14 Q. ---Johnathan, how well do you know him?

15 A. I knew him for like some months because he -- once him
16 and my baby's daddy was like friends. He used to come over
17 every day. I didn't used to hang around him, but he used to
18 be over there every day, so...

19 Q. Okay. Now, earlier Cash had testified and he was asked
20 a question concerning the beating up of his girlfriend the
21 night before, that Saturday.

22 Ms. Campbell: Objection, Your Honor.

23 The Witness: Uh-huh.

24 Ms. Campbell: May we approach?

25 The Court: Sustained.

1 **Ms. Campbell:** Okay.

2 **Mr. Johnson:** Your Honor, could we approach?

3 **The Court:** (Shook head from side to side.)

4 By Mr. Johnson:

5 **Q.** Did you see Cash earlier that weekend?

6 **A.** Yeah. He came over to the house a couple of times. He
7 used to come over there every day, so I saw him.

8 **Q.** Do you have any knowledge of Cash being a member of a
9 gang?

10 **Ms. Campbell:** Objection, Your Honor.

11 **Mr. Johnson:** It goes to credibility.

12 **The Court:** I'll let her answer the question if there's
13 some basis.

14 **Mr. Johnson:** Yes, Your Honor. I asked---

15 **The Court:** How she would know that.

16 **Mr. Johnson:** Okay.

17 By Mr. Johnson:

18 **Q.** Okay. Do you have personal knowledge of Cash being a
19 member of a gang?

20 **A.** Yeah, I think he was a Blood? Yeah.

21 **Q.** How would you know that?

22 **A.** Because my baby's daddy. He say he was a Blood and the
23 tattoos and stuff on his arm... He used to talk about it.

24 **The Court:** Ladies and gentlemen, I'm going to tell you
25 to disregard that answer. It's based solely on hearsay.

1 It's not -- disregard that answer.

2 Mr. Johnson: Did you hear Cash say anything about it?

3 Ms. Campbell: Objection, Your Honor.

4 The Court: Don't lead.

5 Mr. Johnson: Well, I'm trying to---

6 The Court: You asked her how she knew. She testified
7 the information she had was from somebody else.

8 Mr. Johnson: I'm sorry, Your Honor. I have no other
9 questions.

10 The Court: You have another question?

11 Mr. Johnson: No, I said I have no other questions.

12 The Court: Oh, I'm sorry.

13 Ms. Campbell: May it please the Court?

14 The Court: All right.

15 Cross-Examination

16 By Ms. Campbell:

17 Q. Hey.

18 A. Hey.

19 Q. I don't think we've ever met. I'm Luck Campbell.

20 A. All right.

21 Q. I've just got a couple of questions. Miquan is your
22 boyfriend?

23 A. Yes.

24 Q. And you were actually living with the Bryants at the
25 time.

1 A. Yes.

2 Q. And Kenyatta is his brother?

3 A. Yes.

4 Q. And they're very close?

5 A. Uh-huh.

6 Q. And when the police actually came and talked to you,
7 they didn't get by there to talk to you for a couple of days,
8 did they, after this all happened? Do you remember?

9 A. When all this came out, the police talked to me that
10 same -- that same day when they came to the house.

11 Q. And that was on the 23rd, so it been would have been the
12 next day?

13 A. Yeah, the next day.

14 Q. That sounds about right?

15 A. Uh-huh.

16 Q. And when you told them all you've said -- which you
17 heard him talking to someone; right?

18 A. Yeah.

19 Q. And your testimony here today is a little more elaborate
20 than what you told the police about what you heard. Do you
21 remember whether you heard -- you said something about, "He's
22 dead. He's dead," is what you said?

23 A. Yeah, that's what I heard him saying.

24 Q. It wasn't that he was asking someone is he dead or do
25 you know?

1 A. No, he wasn't. It didn't sound like he was asking. It
2 was just like he was just saying, "Man, he dead. He dead,"
3 like that. That's how he sound.

4 Q. Okay. And in your statement you said he was talking to
5 someone outside?

6 A. I didn't hear anyone else, so I didn't know if he was
7 talking to---

8 Q. But that's what's in your statement though at the time
9 back when this happened, so you obviously thought he was
10 talking to someone outside.

11 A. Yeah. Yeah, I thought he was talking to someone
12 outside.

13 Q. Do you know whether or not he was talking to Kenyatta
14 Bryant?

15 A. No.

16 Q. And you also mentioned that you knew that he was a -- or
17 your testimony here today is that he's a Blood, Holloway was?

18 A. Yeah.

19 Q. But he was your boyfriend's best friend; right?

20 A. Yeah.

21 Q. And he knew he was a Blood.

22 A. Yeah.

23 Q. And your boyfriend didn't have any problems associating
24 with him even though he was a Blood.

25 A. No, because my boyfriend isn't a -- he isn't no gang

1 member, so it wasn't no problem.

2 Q. It wasn't a problem?

3 A. No.

4 Q. So it wasn't a problem for anyone in that household to
5 associate with this gang.

6 A. (No response.)

7 Ms. Campbell: Thank you. I have nothing further.

8 Mr. Johnson: Just a little follow-up.

9 Redirect Examination

10 By Mr. Johnson:

11 Q. Crystal?

12 A. Uh-huh.

13 Q. In the area where you live, can you live there and not
14 know a gang member?

15 A. No.

16 Mr. Johnson: No other questions.

17 The Court: All right. Thank you. You can step down.

18 All right. Call your next witness.

19 Mr. Johnson: I'd like to call Miquan Bryant to the
20 stand.

21 The Court: Miquan Bryant.

22 Mr. Johnson: Your Honor, since she's testified, can she
23 stay in the courtroom?

24 The Court: Sure.

25 Miquan D. Bryant, after being duly sworn, testified

1 as follows:

2 **The Clerk:** Have a seat in the witness box, and state
3 your full name for the record, please.

4 **Court Reporter:** And spell your first name.

5 **The Witness:** It's M-I-Q-U-A-N. Daniel, D-A-N-I-E-L.
6 Bryant. B-R-Y-A-N-T.

7 Direct Examination

8 By Mr. Johnson:

9 Q: Miquan, what is your relationship to Kenyatta?

10 A. That's my brother.

11 Q. How old are you?

12 A. Twenty.

13 Q. Are you employed?

14 A. Yes, sir.

15 Q. Where are you employed at?

16 A. Wal-Mart.

17 Q. Do you have any type of criminal record?

18 A. No, sir.

19 Q. On the night of March the 22nd, 2010, where were you
20 living at that time?

21 A. [REDACTED].

22 Q. Okay. Was that the same location that Kenyatta was
23 living?

24 A. Yes, sir.

25 Q. Now, where is that location compared to where this

1 incident occurred?

2 A. It's like on the back street.

3 Q. On the back street?

4 A. Yes, sir.

5 Q. Were you at home the night that this thing happened?

6 A. Yes, sir.

7 Q. Where were you?

8 A. I was -- first I was smoking, drinking Lokos, and all of
9 a sudden my sinuses started messing with me. So I took two
10 pills and I fell out.

11 Q. You went to sleep?

12 A. Yes, sir.

13 Q. Prior to that time, who was there at the house that you
14 was smoking and drinking with?

15 A. Me, my brother Kenyatta, Cash, my brother Vontae, Snoop,
16 and some other dudes.

17 Q. Okay. When you say Cash, are you -- who are you
18 referring to?

19 A. Johnathan Holloway.

20 Q. Now, was Johnathan like a -- was a personal friend of
21 yours?

22 A. Yes, sir, for -- for like a short period of time.

23 Q. What do you call a short period of time?

24 A. It was like first we was cool. We was doing everything
25 together, hanging around, smoke, ride bikes together. We

1 would go chill together, and then I went to South Congaree
2 for like two months. When I came back, I felt---

3 Q. Slow up some. I didn't understand what you said.

4 A. All right. All right.

5 Q. You went where?

6 A. South Congaree.

7 Q. Okay.

8 A. And I stayed down there two months, and when I came
9 back, I felt like he was a different person.

10 Q. Okay. How was he different?

11 A. He started popping pills, X. pills.

12 Q. X. pills?

13 A. Yes, sir.

14 Q. What kind of pills are those?

15 A. G. -- they -- they got -- as a matter of fact, they're
16 more powerful than weed.

17 Court Reporter: Wait a minute. Repeat---

18 Mr. Johnson: You need to slow down.

19 Court Reporter: Maybe back up a little bit.

20 The Witness: Okay. All right. Say that again.

21 By Mr. Johnson:

22 Q. Start over again and take your time and go slow so
23 everybody can understand.

24 A. Yes, sir.

25 Q. Okay. What type of pills are G. pills, as you call

1 them?

2 A. All right. They got cocaine. They got all kind of
3 stuff in one, in one small pill, like they're more powerful
4 than powder basically.

5 Q. On the weekend that this incident occurred, were you
6 around Cash that weekend?

7 A. Yes, sir.

8 Q. Of your personal knowledge, did you see him take any of
9 these pills?

10 A. Yes, sir.

11 Q. You personally saw him do that.

12 A. Personally, with my own two eyes.

13 Q. All right. What type of effect did it have on him?

14 A. See, if you take pills -- say, for instance, like
15 basically -- all right. You take X. pill and you want to
16 like -- if you want to fight somebody, you're going to fight
17 somebody. If you want to go have sex with a female, you're
18 going to have sex with a female. Basically whatever be in
19 your mind at the time, that's what you're going to do
20 basically.

21 Q. Now, was you taking them pills?

22 A. No. Huh-uh. Never. Never did. Never have.

23 Q. But you was smoking some marijuana.

24 A. Yes, sir.

25 Q. And you was drinking some---

1 A. Lokos.

2 Q. Lokos.

3 A. Yes, sir.

4 Q. Is that like an energy drink or something?

5 A. No. It got -- if I ain't mistaken, it got like 10
6 percent alcohol.

7 Q. So were and Cash together all weekend that weekend?

8 A. No. Cash stay beside my mama's house. Cash come over
9 there, so basically we was around each other.

10 Q. Now, do you have any personal knowledge of Cash being a
11 gang member?

12 A. Yes, sir.

13 Q. How would you have that knowledge?

14 A. If I ain't mistaken - I don't know if it's the right arm
15 or the left arm - he got a five-dollar bill going right here,
16 and they got Blood knowledge inside the five-dollar bill.

17 Q. Blood knowledge?

18 A. Yes, sir.

19 Q. Please explain to the jury what that is.

20 A. Blood knowledge is---

21 Ms. Campbell: Objection, Your Honor, to this whole -- I
22 think he's made a point.

23 The Court: Yeah. Is he a gang expert?

24 The Witness: No. Huh-uh. No.

25 Mr. Johnson: I can qualify him as one, Your Honor.

1 **The Court:** I don't think so. He's just denied he's an
2 expert.

3 **The Witness:** I ain't no expert.

4 **The Court:** All right. He's testified---

5 **Mr. Johnson:** Okay, Your Honor.

6 **The Court:** Let's move---

7 **Mr. Johnson:** I think -- I think you -- we explained
8 that enough.

9 **The Witness:** All right.

10 **Mr. Johnson:** I'll withdraw that, Your Honor.

11 By Mr. Johnson:

12 Q. He had gang symbols on his arms.

13 A. Yes, sir.

14 Q. Have you ever seen Cash violent that weekend?

15 A. Yes, sir.

16 **Ms. Campbell:** Objection, Your Honor. Can we approach?

17 (Whereupon, a bench conference was held.)

18 By Mr. Johnson:

19 Q. Have you ever known your brother Kenyatta to own a gun?

20 A. No, sir.

21 Q. Have you ever known your brother Kenyatta to be violent?

22 A. No, sir.

23 Q. Have you -- did you know Drew?

24 A. Yes, sir.

25 Q. Did you meet Drew?

1 A. Yes, sir.

2 Q. How many times?

3 A. I met Drew two times when we were staying Highland
4 Forest off North Main.

5 Q. How did you get a chance to meet Drew?

6 A. Asked for a cigarette.

7 Q. He was at your house?

8 A. Yes, sir.

9 Q. Was he sitting?

10 A. No, he pulled up and then he left.

11 Q. Okay. So you met Drew on a number of occasions.

12 A. Yes, sir.

13 Q. Have you ever seen Drew and your brother ever have an
14 argument?

15 A. No, sir.

16 Q. Have you seen your brother ever violent toward Drew?

17 A. No, sir.

18 Q. Have you heard your brother ever say anything evil or
19 anything bad against Drew?

20 A. No, sir.

21 Q. Have you ever known your brother to hit or beat anyone?

22 A. No, sir.

23 Mr. Johnson: I have no other questions, Your Honor.

24 The Court: Ms. Campbell?

25 Ms. Campbell: Thank you, Your Honor.

Cross-Examination

1
2 By Ms. Campbell:

3 Q. He's your brother.

4 A. Kenyatta Bryant.

5 Q. Yeah. He's your brother.

6 A. Yes, sir -- I mean, yes, ma'am.

7 Q. You were living with him at the time.

8 A. Yes, ma'am.

9 Q. He asked you about Drew and their relationship. Drew --
10 you had met Drew before?

11 A. Yes, ma'am.

12 Q. At your house?

13 A. Yeah, on Highland Forest.

14 Q. So on other occasions he was allowed to come to your
15 house.

16 A. No. No. I don't know who called him. I didn't call
17 him. I asked for a cigarette.

18 Q. You talked about how your brother wasn't violent?

19 A. Yes, ma'am.

20 Q. Did you know your brother sold drugs?

21 A. Yes, ma'am.

22 Q. Did you know he sold fake drugs?

23 A. No. No.

24 Q. What happens to people who sell fake drugs when the
25 people find out they're selling fake drugs?

1 A. I don't know.

2 Q. Nothing?

3 A. I don't sell drugs.

4 Q. You were friends with Cash?

5 A. Yeah, for---

6 Q. He was your friend.

7 A. Yes, ma'am.

8 Q. And you knew he was in a gang, according to your
9 testimony today.

10 A. Oh, no, that's -- that's a fact.

11 Q. Okay. And that didn't bother you any and he still came
12 over to your house all the time.

13 A. We was cool. Because he's in a gang don't mean that
14 flows on me.

15 Q. Okay. And that night in question he was definitely at
16 your house?

17 A. Yes, ma'am.

18 Q. Kenyatta was at your house?

19 A. I told -- I told -- I told Mr. Johnson -- Mr. Johnson
20 the same thing.

21 Q. Okay.

22 A. Okay.

23 Q. And that night, though, you don't know what happened
24 because you were drinking Loko, smoking weed and---

25 A. And all of a sudden I had a sinus -- and I took two

1 pills. I fell asleep on the floor.

2 Q. Does that Loko have a nickname?

3 A. Foyo (phonetic) Loko.

4 Q. You took some pills and you were on the floor and you
5 were out.

6 A. Yes.

7 Q. So you have no idea what happened.

8 A. No.

9 Q. Would your brother sometimes hang out with Cash?

10 A. Huh?

11 Q. Would your brother normally hang out with Cash?

12 A. No, I was hanging around Cash.

13 Ms. Campbell: Nothing.

14 The Court: Anything further, Mr. Johnson?

15 Mr. Johnson: No, Your Honor. Thank you.

16 The Court: All right. Thank you. You may step down.

17 All right. Ladies and gentlemen, we're going to take a
18 little bit of a break, let you step back to the jury room and
19 relax, have some refreshments, move about a little bit.
20 Please don't discuss the case while you're back there, and
21 we'll come back in about 15 minutes.

22 (Whereupon, the jury was excused from open court at 3:32
23 p.m.)

24 The Court: All right. We'll recess for about 15
25 minutes.

1 (Whereupon, a short break was taken.)

2 The Court: All right. Thank y'all. What happened to
3 Mr. Johnson? Did he quit?

4 Deputy: I think he's coming in now.

5 The Court: All right. Where is Mr. Johnson?

6 Deputy: Officer, check right out there. He's got a
7 witness.

8 The Court: He's got what?

9 Deputy: His next witness is in the holding cell.

10 The Court: All right. Well, let's bring us -- is that
11 his next witness?

12 Deputy: Yes, sir.

13 The Court: Well, let's bring them both in and...

14 Deputy: Let's bring both of them in, Officer Gantt.

15 (Mr. Johnson enters the courtroom.)

16 The Court: All right. Let's lock it up. All right.
17 Are we ready to call the next witness?

18 Mr. Johnson: Your Honor, could we approach?

19 Ms. Campbell: We don't need to approach. The next
20 witness has some pending charges in our office, Your Honor,
21 which we'd have to show bias or prejudice under State versus
22 Mandel Sims. Whenever a witness takes the stand and has
23 pending charges, they're allowed to cross-examine on the
24 specific charges pending and we would just be intending to do
25 that.

1 **The Court:** All right.

2 **Mr. Johnson:** My understanding: They can ask them what
3 the charges are, but they definitely can't ask them about the
4 details of it.

5 **Ms. Campbell:** No details.

6 **The Court:** That's right.

7 **Ms. Campbell:** Just that there's the charge and that
8 it's pending against him.

9 **The Court:** It's just like a prior record.

10 **Mr. Johnson:** Okay.

11 **The Court:** Okay. Are we ready to go?

12 **Mr. Johnson:** Yes, Your Honor.

13 **The Court:** All right. Let's bring the jury in.

14 (Whereupon, the jury was brought into open court at 3:52
15 p.m.)

16 **The Court:** Mr. Johnson, are you ready to call your next
17 witness?

18 **Mr. Johnson:** Yes, Your Honor. At this time we would
19 call Devontae Bryant to the stand.

20 Devontae Bryant, after being duly sworn, testified
21 as follows:

22 **The Clerk:** Have a seat in the witness box, and state
23 your name for the record, please.

24 **Court Reporter:** Spell your first name.

25 **The Witness:** D-E-V-O-N-T-A-E.

Direct Examination

1
2 By Mr. Johnson:

3 Q. Devontae, what relationship are you to Kenyatta?

4 A. That's my brother.

5 Q. That's your brother? Older brother?

6 A. That's the older.

7 Q. What's your age?

8 A. Eighteen.

9 Q. Eighteen?

10 A. (Witness nodded head up and down.)

11 Q. Back on March 22nd of 2010, were you living with
12 Kenyatta?

13 A. Yes, sir.

14 Q. Where exactly was you living?

15 A. On

16 Q. ? Do you remember what happened that
17 night?

18 A. Yes, sir.

19 Q. What do you remember that happened?

20 A. All right. We was sitting in the back room. It was me,
21 my cousin - Amp, my little friend - Snoop.

22 Q. Now, I don't want to cut you off, but let me ask you to
23 clarify something. About what time of night was this?

24 A. It was like 11 something, 12.

25 Q. Okay. Now, you said you were sitting in the back

1 room---

2 **The Court:** Mr. Johnson, excuse me. Mr. Bryant, you
3 need to speak up. All these jurors have to be able to hear
4 you, and you have sort of a soft voice. So if you'll speak
5 up, please.

6 By Mr. Johnson:

7 Q. You say you were sitting in a back room?

8 A. Yes, sir.

9 Q. Where exactly was the back room located?

10 A. Like it was in my room. Like when you walk in the
11 house, it's the second door on the right.

12 Q. Okay. Now, what kind of view did you have out of that
13 room?

14 A. Like out my back window I could see the Dick Smith like
15 a garage and like the whole back street to the stop sign.

16 Q. So you could see the street where this incident
17 happened?

18 A. Yes, sir.

19 Q. Okay. Now, what do you remember about that night?

20 A. We were sitting in the back room: Me, my cousin, my
21 little friend Snoop and my little brother, Jaquan, and like
22 we was just sitting back there talking or whatever. Then I
23 seen some headlights from a car like riding past fast. Then
24 I seen -- I heard the horn beeping and then like the car had
25 stopped. So like moments later we was just in the back room.

1 Then my brother came in the house. After my brother came in
2 the house, a little bit after that, that's when Cash had came
3 in, and Cash was acting like he had did something or
4 whatever.

5 Q. So your brother got home first.

6 A. Yes, sir.

7 Q. Then Cash came home.

8 A. Yes, sir.

9 Q. You said Cash was acting a little strange?

10 A. (Witness nodded head up and down.)

11 Q. How was your brother acting?

12 A. Like normal like how he always act.

13 Q. But Cash was acting a little different?

14 A. (Witness nodded head up and down.)

15 Q. Now, when you---

16 The Court: Wait a minute. Is that a yes?

17 The Witness: Yes, sir.

18 By Mr. Johnson:

19 Q. Were you together with Cash earlier that day?

20 A. No. Like he'll come like back and forth to our house
21 during the days.

22 Q. Okay. But you didn't hang with Cash or anything like
23 that.

24 A. No, sir.

25 Q. Now, did you later on find out that something happened

1 that night?

2 A. Yes, sir.

3 Q. Did you have any other contact or did you talk to
4 Kenyatta about it?

5 A. No, sir.

6 Q. You had no conversation with him about it?

7 A. No, sir.

8 Q. Did you have any conversation with Cash about it?

9 A. Yes, sir.

10 Q. When did this happen?

11 A. The same day that my brother had got questioned and they
12 had dropped him off at home and then they brought him back.

13 Q. Let's stop there. When you say they, who are you
14 talking about?

15 A. The investigators.

16 Q. So the day the police investigators first picked your
17 brother up?

18 A. Yes, sir.

19 Q. What happened that day?

20 A. They came and picked him up, I guess, to question him.
21 Then they had dropped him back off at the house. Then like
22 they came -- when they came the second time, that's when they
23 came and locked him up.

24 Q. So that's when they had the warrant for your brother?

25 A. Yes, sir.

1 Q. What happened then?

2 A. Then that's when like -- thirty minutes after that,
3 that's when Cash had called me. He called me---

4 Q. Let me be clear. Take it a step at a time. About 30
5 minutes later---

6 A. Yes, sir.

7 Q. ---Cash called you?

8 A. Yes, sir.

9 Q. What, on your cell phone? House phone? What?

10 A. It was on somebody else's number.

11 Q. I didn't hear you.

12 A. It was on another person's number.

13 Q. Whose number was it on?

14 A. I guess it was his cousin, the house he was at.

15 Q. He was calling -- I mean, which phone did he call you
16 on?

17 A. On my cell phone.

18 Q. On your cell phone.

19 A. Yes, sir.

20 Q. And what did he say?

21 A. He was like -- he was crying like, "I ain't mean to do
22 it. I don't know why I did it. I should have thought about
23 it first," and he asked me do I think they're coming to get
24 him and I told him, "Yeah."

25 Q. And that was your whole conversation with him?

1 A. Yes, sir.

2 Q. And you've had no other conversation with him about that
3 since then, have you?

4 A. No, sir.

5 Q. Have you had any conversation with your brother about
6 this incident?

7 A. No, sir.

8 Q. And that's all you know about this; is that correct?

9 A. Yes, sir.

10 Mr. Johnson: I have no other questions.

11 The Court: Ms. Campbell?

12 Ms. Campbell: Thank you, Your Honor.

13 Cross-Examination

14 By Ms. Campbell:

15 Q. You have three brothers?

16 A. Yes, ma'am.

17 Q. Is Kenyatta the oldest?

18 A. Yes, ma'am.

19 Q. Is he the one you look up to the most?

20 A. Yes, ma'am.

21 Q. Is he the one you're closest to?

22 A. No, ma'am.

23 Q. Who are you closest to?

24 A. My little brother, Jaquan.

25 Q. Jaquan?

1 A. (Witness nodded head up and down.)

2 The Court: Mr. Bryant, you have to answer. You can't
3 shake your head. You've got to say yes or no. Okay?

4 By Ms. Campbell:

5 Q. Okay. And currently you have charges pending, including
6 two counts of assault with intent to kill?

7 A. Yes, ma'am.

8 Q. Two counts of pointing and presenting a firearm?

9 A. Yes, ma'am.

10 Q. One count of discharging a firearm into a dwelling?

11 A. Yes, ma'am.

12 Q. One, two, three, four counts of burglary in the second
13 degree?

14 A. Yes, ma'am.

15 Q. And various larceny charges.

16 A. Yes, ma'am.

17 Q. And as far as your prior record goes, you've been
18 convicted back in 2008 of possession of a stolen pistol?

19 A. Yes, ma'am.

20 Q. Your timeline on what you said happened basically is --
21 and I believe is that night you were in the room with whom?

22 A. My little cousin, my little brother, and my friend,
23 Snoop.

24 Q. Your friend, Snoop. And what's Snoop's real name? Do
25 you know?

- 1 A. Antonio Brown, I think.
- 2 Q. You think?
- 3 A. (Witness nodded head up and down.)
- 4 Q. And your cousin?
- 5 A. Little Anthony Bryant.
- 6 Q. Anthony Bryant? And who else?
- 7 A. Jaquan Gladney, my little brother.
- 8 Q. Your little brother?
- 9 A. Uh-huh.
- 10 Q. And you happened to be looking out the window.
- 11 A. No. At first I wasn't looking out the window. Then I
- 12 seen the headlights of a car coming past.
- 13 Q. Had Cash -- do you know Cash, who he is?
- 14 A. Yes, ma'am.
- 15 Q. Had he been over to your house earlier that night?
- 16 A. Yeah, he was. He was.
- 17 Q. And was he hanging out with your brother Kenyatta?
- 18 A. He was hanging out with my other brother.
- 19 Q. Do you remember your other brother Miquan -- because
- 20 that was his friend; right?
- 21 A. Yes, ma'am.
- 22 Q. Do you remember him drinking and smoking some weed and
- 23 then taking some pills and passing out?
- 24 A. Yes, ma'am. That's like what he---
- 25 Q. That's kind of what he does?

1 A. Yes, ma'am.

2 Q. And that night that's what he did.

3 A. Yes, ma'am.

4 Q. And at that point was Cash hanging out with your brother
5 Kenyatta?

6 A. No, he was in the room with us. He had just came over
7 from his house.

8 Q. He had just come over?

9 A. (Witness nodded head up and down.)

10 Q. And what was he doing there that night?

11 A. Nothing. Just basically -- well, what we always do,
12 just sit and watch T.V.

13 Q. Was he normal as usual?

14 A. No. He was like drunk -- he was drunk and high or
15 whatever.

16 Q. He was drunk and high?

17 A. Yes, ma'am.

18 Q. When is the last time you talked to your brother
19 Kenyatta?

20 A. Talking about that night?

21 Q. No.

22 A. Recently?

23 Q. Recently.

24 A. Yesterday.

25 Q. Okay. I just wanted to make sure. And that night, your

1 testimony is here today, that he was acting high and stuff;
2 right?

3 A. Yes, ma'am.

4 Q. Cash was.

5 A. (Witness nodded head up and down.)

6 Q. And your brother Kenyatta was acting normal?

7 A. Yes, ma'am.

8 Q. Who all was drinking that night?

9 A. It was me, Snoop, but Cash wasn't drinking with us. He
10 had just come from his house with my next to the oldest
11 brother later on that day -- I mean, earlier that day.

12 Q. Miquan, you, Kenyatta were all drinking?

13 A. No, ma'am.

14 Q. I'm sorry; I misunderstood. Who was drinking that
15 night?

16 A. It was Miquan and Cash. They were drinking earlier that
17 day.

18 Q. Okay. And that night who was drinking together?

19 A. Me and my friend, Snoop.

20 Q. Just the two of you. Kenyatta wasn't drinking.

21 A. He wasn't with us.

22 Q. Was he in the house?

23 A. Yes, ma'am.

24 Q. Do you know if he was drinking?

25 A. Not sure.

1 Q. Do you know if he was smoking weed?

2 A. Yes, he was.

3 Q. Do you know if he was taking drugs?

4 A. Like?

5 Q. Crack.

6 A. No.

7 Q. Ecstasy?

8 A. No, ma'am.

9 Q. And you would know that if he was doing that.

10 A. Yes, ma'am.

11 Q. And that night when Cash came over, was Miquan already
12 passed out or was he still up?

13 A. No, he was still up.

14 Q. Okay.

15 A. Talking about that night?

16 Q. Yeah.

17 A. Yeah, he was still up.

18 Q. And then your testimony is is that at some point you
19 look out the window and you see some headlights.

20 A. Yes, ma'am.

21 Q. And when you say headlights, those are the lights on the
22 front of the car, not the lights on the back of the car. So
23 you know the difference between taillights and headlights.

24 A. It's the front of the car.

25 Q. It's definitely the front. And at that point do you

1 know where Kenyatta was?

2 A. That was the same car he had left in.

3 Q. You saw him leave in that car?

4 A. I didn't see him leave in it, but I seen that car in the
5 back when they had walked out of the house.

6 Q. And who is "they" that walked out of the house?

7 A. Cash and Kenyatta.

8 Q. So cash and Kenyatta left together that night.

9 A. Yes, ma'am.

10 Q. And then once they left the house, you saw them approach
11 and you could recognize the car from the headlights?

12 A. No, not from the headlights. I just seen just the car.
13 It was silver.

14 Q. And I'm not trying to put words in your mouth. When you
15 looked out the window and saw the car and the headlights on
16 the car, where was the car located?

17 A. In the back like by -- it was a -- there's a building
18 like -- there was a building like right behind our house.

19 Q. It was behind that?

20 A. (Witness nodded head up and down.)

21 Q. And then did you see where the car went after that?

22 A. No, ma'am, because I didn't look out the window after
23 that. When they got in the car is when I had sat back on the
24 bed.

25 Q. So you never saw what happened to the car.

1 A. No, ma'am.

2 Q. And the first person that got home that night was whom?

3 A. My brother.

4 Q. Your brother Kenyatta?

5 A. Yes, ma'am.

6 Q. And what did he do when he got home?

7 A. He just -- he came in the room and sat down.

8 Q. Okay. He didn't do anything else?

9 A. No, ma'am.

10 Q. He didn't go in the bathroom?

11 A. No, ma'am.

12 Q. He didn't take a shower or anything?

13 A. Not that I know of.

14 Q. Okay. And then the next person you said that came over
15 to the house -- this is going to be sometime after midnight?

16 A. No. It was like they came -- it was like a split --
17 like two -- no, it wasn't two -- like a couple of seconds
18 later, that's when Cash came in the house.

19 Q. And you said that he was acting different?

20 A. Yes, ma'am.

21 Q. Was he upset?

22 A. No, ma'am.

23 Q. He wasn't upset.

24 A. No, ma'am.

25 Q. And then this is the part that I don't understand, and

1 you said at some point after that you had a conversation with
2 Cash.

3 A. It was the same day that my brother got locked up.

4 Q. The same day your brother got locked up?

5 A. Yes, ma'am.

6 Q. And so the police came to the house and arrested your
7 brother?

8 A. Yes, ma'am.

9 Q. But they came to the house and arrested your brother.

10 A. Yes, ma'am.

11 Q. Do you remember how many police were there?

12 A. No, ma'am.

13 Q. And so then he was locked up, right, from then on?

14 A. Yes, ma'am.

15 Q. So he's -- once he leaves the house when they arrest him
16 at the house, he's then in jail; right?

17 A. Yes, ma'am.

18 Q. And then you said that after that you got a phone call
19 from Cash; right?

20 A. Yes, ma'am.

21 Q. Does your brother have a nickname?

22 A. Duke.

23 Q. Duke? Then after that -- so this is after. You
24 remember specifically about a phone call from Cash where he
25 was crying and telling you he was sorry or something like

1 that.

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

3 Q. And he wasn't locked up at that point.

4 A. No, ma'am.

5 Q. So your timeline is is then that he called you on your
6 cell phone.

7 A. Yes, ma'am.

8 Q. Do you remember back in March, March the 23rd of 2010,
9 when the police took a statement from you?

10 A. Excuse me?

11 Q. Do you remember back when the police took a statement
12 from you about what you knew about that night?

13 A. Yes, ma'am.

14 Q. And specifically they asked you the question on that
15 night: Did Cash or Kenyatta say anything about a shooting or
16 an attempted robbery happening?

17 A. Yes, ma'am, they asked me that.

18 Q. And you said no.

19 A. Yes, ma'am.

20 Q. But your testimony is different here today; isn't that
21 right?

22 A. I don't understand.

23 Q. Because now you're saying Cash told you something about
24 it.

25 A. Yeah, he asked me did they say something to me about

1 that that night, and they didn't. That was when my brother
2 got locked up.

3 Q. You don't think it was important to tell the police that
4 Cash had confessed to you?

5 A. That was after they left, after they had gave -- after I
6 had gave them my statement.

7 Q. After they gave you a statement?

8 A. Yes, ma'am.

9 Q. Your testimony is that they locked your brother up
10 first. Cash is still out on the street, and then Cash called
11 you and gave you this information.

12 A. Yes, ma'am.

13 Q. And they arrested your brother at your house is your
14 testimony.

15 A. Yes, ma'am.

16 Q. And you never told the police this because?

17 A. That was afterwards. That was after I had given my
18 statement. That's when he called me.

19 Q. You knew your brother was locked up; right?

20 A. Ma'am, see, at first I didn't know what really was going
21 on because they took him and then brought him back. Then
22 they took him again, so I didn't know if he was in jail or
23 not.

24 Q. Your testimony is all this happened after they took him
25 again; right?

1 A. Yes, ma'am.

2 Q. When he was in jail. And you didn't think it was
3 important to tell the police that the co-defendant had
4 confessed to you?

5 A. That was afterwards.

6 The Court: Anything?

7 By Ms. Campbell:

8 Q. You didn't make any attempt to contact the police and
9 tell them any of this.

10 A. No, ma'am.

11 The Court: Mr. Johnson?

12 Mr. Johnson: Just a few follow-up.

13 Redirect Examination

14 By Mr. Johnson:

15 Q. Let's clarify something. You saw the police come to
16 your house and take your brother away the first time?

17 A. Yes, sir.

18 Q. That was at your house.

19 A. Yes, sir.

20 Q. Or near your house?

21 A. That was at my house.

22 Q. Excuse me?

23 A. It was at my house.

24 Q. Okay. That was the first time.

25 A. Yes, sir..

1 Q. Then you saw the police bring your brother back?

2 A. Yes, sir.

3 Q. Did you see the police take your brother a second time?

4 A. Yes, sir.

5 Q. When did you see them take him the second time?

6 A. When we was -- all of us was still at the house where my
7 mama is.

8 Q. Your mom and them was at the house?

9 A. Yes, sir.

10 Q. And the police took your brother a second time?

11 A. Yes, sir.

12 Q. Okay. And that's what you were referring to?

13 A. Yes, sir.

14 Q. You don't remember your brother turning himself in?

15 A. No.

16 Q. Okay. As it relates to the sequence, the police took
17 your statement. Is that correct?

18 A. Yes, sir.

19 Q. At that time that they took your statement, had you
20 talked to Cash?

21 A. No, sir.

22 Q. Was there any way that you could tell them what Cash was
23 going to tell you before he called you?

24 A. No, sir.

25 Q. When did he call you?

1 A. Like after they left.

2 Q. After they left.

3 A. Yes, sir.

4 Q. Why didn't you then tell the police what Cash said?

5 A. Talking about after they left?

6 Q. Right.

7 A. I don't know.

8 Q. Why are you -- are you making this up today?

9 A. No, sir.

10 Q. Are you telling the truth?

11 A. Yes, sir.

12 Q. Now, that's your brother over there; correct?

13 A. Yes, sir.

14 Q. You're in jail on charges; correct?

15 A. Yes, sir.

16 Q. Would you lie for your brother?

17 A. Yes, sir, I would, but I'm telling you the truth.

18 Mr. Johnson: I have no other questions.

19 Ms. Campbell: Just a couple.

20 Recross Examination

21 By Ms. Campbell:

22 Q. You're telling the truth about what Cash said to you
23 just like you're telling the truth about how your brother got
24 arrested.

25 A. Yes, sir -- I mean, yes, ma'am.

1 **Ms. Campbell:** Thank you.

2 **The Court:** All right. Thank you. You may step down.
3 Call your next witness.

4 **Mr. Johnson:** Your Honor, the defense rests.

5 **The Court:** All right. Ladies and gentlemen, the
6 defense has rested which means they have now completed their
7 case. I need to let you step back to the jury room for a few
8 minutes. Please do not discuss the case while you're back
9 there, and we'll bring you back just as quickly as we can.

10 (Whereupon, the jury was excused from open court at 4:08
11 p.m.)

12 **The Court:** All right. Do you have anything in reply?

13 **Ms. Campbell:** If you would give me five minutes. I
14 don't think so.

15 **The Court:** All right. Do you want me to leave or...

16 **Ms. Campbell:** No, sir.

17 **The Court:** All right.

18 **Ms. Campbell:** I'm thinking. It takes awhile.

19 (Pause in proceedings.)

20 **Ms. Campbell:** No, Your Honor, we do not have any reply.

21 **The Court:** All right. Well, let's -- I guess tomorrow
22 morning we will argue and charge. Does that suit everybody?

23 **Mr. Johnson:** That's correct. Your Honor, should I make
24 my normal motions at this time?

25 **The Court:** If you want. I don't -- I don't know what

1 normal motion you might be speaking of.

2 **Mr. Johnson:** At the end of the case this is where I
3 make my motion for a directed verdict and that I still think
4 that the State has not met their burden of proving this case.
5 I ask for a directed verdict.

6 **The Court:** Well, we're not going to know that until the
7 jury rules, are we?

8 **Mr. Johnson:** That's fine. And I would just like to
9 renew all my---

10 **The Court:** What is the bur -- what is the burden of
11 proof in this case?

12 **Mr. Johnson:** Beyond a reasonable doubt.

13 **The Court:** And on directed verdict burden of proof is
14 not the required standard, is it? Beyond a reasonable doubt?
15 Isn't it just: Is there any scintilla of evidence or
16 substantial circumstantial evidence? And there is. I mean,
17 you know -- I mean, there is testimony that your client did
18 the shooting. That in and of itself will get it beyond the
19 D.V., but that's fine. I'm going to -- for the reasons
20 stated earlier -- I guess for the same reasons you're
21 remaking your motion, I'll deny it.

22 **Mr. Johnson:** Just doing it for the record, Your Honor.

23 **The Court:** All right. All right. I'm going to turn
24 the jury loose. Anything we need to talk about? We --
25 Mr. -- well, we'll talk about the charges. We'll go back in

1 my office for a few minutes to talk about the charges. All
2 right. Anything further for the day? From the solicitor?

3 Ms. Campbell: No, sir.

4 The Court: I'm going to bring the jury in. You can
5 tell them nothing in reply. I'll turn the jury loose and
6 bring them back here tomorrow morning at 9:30 and go from
7 there.

8 Ms. Campbell: We don't have to say anything if you
9 don't want us to, sir.

10 The Court: Pardon me?

11 Ms. Campbell: Whatever -- how ever you want to do it is
12 fine.

13 The Court: Thank you.

14 Ms. Campbell: He's giving me a hard time.

15 The Court: Ma'am?

16 Ms. Campbell: Nothing.

17 The Court: All right. Let's bring the jury in.

18 (Whereupon, the jury was brought into open court at 4:12
19 p.m.)

20 The Court: Ladies and gentlemen, the defendant has
21 rested which you heard Mr. Johnson advise the Court. Is
22 there anything in reply from the State?

23 Ms. Campbell: No, sir.

24 The Court: All right. The next phase of the trial is
25 for the attorneys to make their closing arguments, and then I

1 will instruct you as to the law. We will do that in the
2 morning. So y'all have invested three days. Don't do
3 anything to jeopardize it. Don't talk about the case. Don't
4 do anything in that regard. Don't make any private
5 inquiries. Don't read any newspapers or anything in the
6 newspaper or listen to the radio, watch T.V.

7 We're going to start at 9:30 in the morning, but I'm
8 going to ask y'all to do something for me. I ask you to be
9 here about 9:20 because I'd like y'all to select me a
10 foreperson, and then if you'll -- I think one of the bailiffs
11 can give you a sheet of paper. You can write that down on
12 who that -- whoever that is. Whoever you select as
13 foreperson will sit right here where this young lady is
14 seated next to where Mr. Broom is seated. The rest of you
15 continue to sit wherever you want.

16 Y'all have a nice evening. Thank you for your attention
17 in this matter, and we will see you tomorrow morning.

18 (Whereupon, the jury was excused from open court for the
19 day at 4:14 p.m.)

20 **The Court:** All right. Ms. Campbell, if you and Mr.
21 Johnson and associated counsel can join me in the office,
22 we'll talk about the charges and then come in the morning.

23 **Mr. Johnson:** Thank you, Your Honor.

24 **The Court:** All right.

25 (Whereupon, the trial concluded for the day at 4:15 p.m.)

1 and resumed the following day, June 23, 2011, as follows.)

2 **The Court:** All right. I told y'all that I would look
3 at your charges to see what I'm going to do, and Ms. Walker
4 came into my office and presented me another charge and...
5 Can we lock the door, please? I'm not going to charge what
6 you asked me to charge, Ms. Walker. I think that my mere
7 presence charge is sufficient for that in terms of -- Ms.
8 Campbell had asked me to look at -- what is it? Darby? Is
9 that what it is?

10 **Ms. Campbell:** Yes, sir.

11 **The Court:** I'll tell you what my charge is.

12 **Ms. Campbell:** Yes, sir.

13 **The Court:** I'll read you my charge. Y'all probably
14 don't -- you may not like it too much. What is reasonable
15 doubt? Reasonable doubt is the kind of doubt that would
16 cause a reasonable person to hesitate to act. If you have
17 such a doubt about the guilt of the defendant, then he would
18 be entitled to a verdict of not guilty. Proof beyond a
19 reasonable doubt is proof that leaves you firmly convinced of
20 the defendant's guilt. Reasonable -- that's my charge on
21 reasonable doubt.

22 **Ms. Campbell:** As far as in front of the jury, can I use
23 the Darby charge to them?

24 **The Court:** I don't know what...

25 **Ms. Campbell:** All it does is talk about there are very

1 few things in this world we know with absolute certainty,
2 which is what I believe---

3 **The Court:** Well, I'm not charging that. I mean, you
4 can---

5 **Ms. Campbell:** Can I use it?

6 **The Court:** That certainly is a---

7 **Ms. Campbell:** Correct statement of the law?

8 **The Court:** Well, I think that's a correct statement of
9 life. There are very few things that are absolutely certain
10 in life.

11 **Ms. Campbell:** And the laws does not require proof that
12 overcomes every possible doubt?

13 **The Court:** I'm not -- I'm not charging that.

14 **Ms. Campbell:** Can I just -- I'm asking if I can use
15 this in front of the jury.

16 **The Court:** I don't know how that -- you know, I don't
17 know why that would be a problem to get up and argue what you
18 want to argue.

19 **Ms. Campbell:** Thank you.

20 **The Court:** I'm going to -- I'm going to charge them the
21 law, and I assume somebody -- and then I'm going to say,
22 "Reasonable doubt may arise from the evidence which is in the
23 case or from the absence or lack of evidence in the case. If
24 you think the defendant is probably guilty or the
25 circumstances are suspicious is not enough." That's my

1 charge. Anything else?

2 Mr. Johnson: I have nothing from the defense, Your
3 Honor.

4 The Court: And I will charge intoxication.

5 Ms. Campbell: You will? Thank you.

6 The Court: How long do you anticipate that y'all will
7 be on your closing? The forelady is Rosalyn Harris who is
8 juror number 120. How long do you think you'll be on your
9 closing, Madam---

10 Ms. Campbell: Your Honor, we plan on opening on the law
11 which will take usually about 15 minutes, and then the
12 closing should be---

13 The Court: Thirty?

14 Ms. Campbell: ---30 to 40, something like that.

15 The Court: Let's---

16 Ms. Campbell: I'll---

17 The Court: Let's try and limit it to a total of 45
18 minutes.

19 Ms. Campbell: I'll try, Your Honor.

20 The Court: You can do it.

21 Ms. Campbell: I think so.

22 The Court: If there's anybody in America that can do
23 it, it's you.

24 Ms. Campbell: You know I could go on.

25 The Court: Mr. Johnson, I'm not -- I'm not concerned

1 about Mr. Johnson. He's generally direct and to the point.

2 Mr. Johnson: It won't be too long, Your Honor.

3 The Court: But you have the same amount of time.

4 Mr. Johnson: Thank you, Your Honor.

5 The Court: I know you'll only make one argument but...

6 All right. Anything else we need to take up?

7 Ms. Campbell: No, sir.

8 The Court: Mr. Johnson, anything we need to...

9 Mr. Johnson: I have nothing, Your Honor.

10 The Court: All right. Let's bring the jury in. If
11 y'all want to look at the verdict form, it just says, "We
12 find the defendant guilty" or "We find the defendant not
13 guilty."

14 Mr. Johnson: Thank you, Your Honor.

15 The Court: Pretty easy.

16 (Whereupon, the jury was brought into open court at 9:36
17 a.m.)

18 The Court: All right. Thank y'all, ladies and
19 gentlemen. Good morning to you. Ms. Harris, thank you for
20 agreeing to serve as foreperson, and, ladies and gentlemen of
21 the jury, thank you for addressing that issue for me this
22 morning.

23 Before we get started, I want to ask you once again:
24 Anybody have any conversation about this case since we left
25 or were you approached by anyone to discuss the case since we

1 left? Anybody do any independent inquiry about this case
2 since we left? All right. Good. Thank you.

3 Ladies and gentlemen, we're at the final phase of the
4 trial, and that is where the lawyers have an opportunity to
5 make their closing arguments, and I explained to you what
6 that is. In fact, the State has the right to make two
7 closing arguments. One of them, they get to make an argument
8 on the law, and then they get to make an argument after Mr.
9 Johnson makes his closing argument on behalf of Mr. Bryant.

10 When we conclude that, then I will charge you or
11 instruct you as to the law, and you will then retire to the
12 jury room and begin your deliberations. So with that said,
13 Ms. Campbell, are you ready to proceed?

14 Ms. Campbell: Yes, Your Honor. May it please the
15 Court?

16 The Court: Yes, ma'am.

17 Ms. Campbell: Good morning. The first thing I want to
18 do on behalf of the State of South Carolina and the citizens
19 of Richland County is to thank you for your service in this
20 case. I know when you showed up for jury duty on Monday
21 morning you may not have anticipated that you were going to
22 be on a murder case, that you were going to be forced to look
23 at photographs that no one should have to see and that you
24 were going to be having to listen to details about a heinous
25 crime that took the life of one young man and ultimately

1 caused two others to be charged with his death. So on behalf
2 of the State and the citizens, I do thank you for your
3 service.

4 Now, as the judge just told you, I'm going to have the
5 opportunity to get up here and talk to you a little bit about
6 the law in the case, and then Mr. Johnson is going to get up
7 here and he's going to make his argument on behalf of his
8 defendant, and then I'll have the opportunity to reply to
9 that. If -- when I'm talking about the law, if I misquote
10 anything or say anything that's different from what the judge
11 said, it's not intentional. Take the law as the judge gives
12 it to you because he is the sole finder of the law. And in
13 that same vein, if either side, either one of the attorneys,
14 mischaracterizes the facts, you remember because you are the
15 sole judge of the facts.

16 The roles in this courtroom are well-defined. The
17 prosecution is to submit all the relevant admissible evidence
18 for you to consider, and you must base your verdict on that
19 evidence. The defense is obvious, too: To defend his client
20 to the best of his ability. The judge determines what's
21 admissible. He rules on objections, and ultimately he
22 instructs you on what the law is. But your role, ladies and
23 gentlemen, individually and when you get back to that jury
24 room collectively is the most important role in this
25 courtroom because you alone must decide what the credible,

1 believable facts are and then apply the law as the judge
2 gives it to you. And in this case, ladies and gentlemen,
3 with this murder where two people are involved, it is
4 critical that the law is explained to you.

5 Now, you've heard all the evidence you can consider, and
6 you must base your verdict on the evidence that's before you
7 about what happened that night, that evidence. You don't
8 base your verdict your evidence on questions by the lawyers,
9 fishing expeditions, innuendos, speculation, or just plain
10 wishful thinking. It must be based on the testimony and the
11 physical evidence that will go back with you in the jury
12 room.

13 I want to take this opportunity to apologize if I have
14 offended anyone, if Ms. Walker has offended anyone. At times
15 there has been legal wrangling back and forth. Y'all have
16 been sent back to the jury room, been late bringing you out
17 because of legal arguments and things of that nature. I've
18 been in artful, clumsy in questioning at times. Please don't
19 hold that against the State. I sincerely apologize if we
20 have offended anyone.

21 Now, in criminal cases it's somewhat unique because the
22 defendant has, and he should, the right to confront each and
23 every witness against him. As you -- we've gone through the
24 testimony. There's been references to statements that were
25 given by different people. There have been references to

1 reports generated by experts in the case and things of that
2 nature, but you haven't seen any depositions, any audio
3 depositions, any video depositions, none of that, and the
4 reason for that is very simple: Because the law requires in
5 criminal cases that each and every witness that has something
6 to say come before you and testify. The statements aren't
7 admissible except for impeachment. The only person's
8 statement that is admissible, as you have seen, is the
9 defendant's statement.

10 In that same fashion, you also have heard references to
11 other, say, police officers that were involved in this case
12 or other people, say Mr. Fields and his son who were out at
13 the scene that morning when they found the body. We can't
14 bring everybody in that touched this case to say the same
15 thing over and over. That's called cumulative evidence. We
16 can just bring forth those who have something to add, and in
17 this case the focus is quite narrow because, very simply,
18 your job is to determine whether or not the defendant, along
19 with Johnathan Holloway, committed a murder back on March the
20 22nd.

21 Now, the burden of proof, as it should be, is on the
22 State of South Carolina to prove this defendant guilty beyond
23 a reasonable doubt. That's where it should be. And, ladies
24 and gentlemen, I submit that in this case, perhaps more than
25 any other, that is a burden the State welcomes.

1 What is proof beyond a reasonable doubt? The judge will
2 instruct you that proof beyond a reasonable doubt --
3 reasonable doubt has been defined as the kind of doubt that
4 makes a reasonable person hesitate to act. The law has gone
5 further in defining what is reasonable doubt.

6 Proof beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. The judge will
8 instruct you on that, in addition to what I just said. The
9 law has gone farther in some cases in defining it because
10 they have said there are very few things in this world that
11 we know with absolute certainty. In criminal cases the law
12 does not require proof that overcomes every possible doubt.

13 Very simply and the best way to summarize it is: If,
14 based on your consideration of the evidence, you are firmly
15 convinced the defendant is guilty, then you must find him
16 guilty of the crime. If, on the other hand, you think that
17 there is a real possibility that Kenyatta Bannister (sic) did
18 not participate in that robbery that ultimately led to the
19 murder, then you must find him not guilty. Proof that leaves
20 you firmly convinced. We don't have to go any further than
21 that.

22 Now, when you go back to your jury room, the judge will
23 instruct you -- we'll have one indictment, and there are only
24 two possible verdicts in this case. There are no lesser
25 included in this crime with these facts. It's either murder

1 or not guilty. Those are the two possible verdicts in this
2 case.

3 How is murder defined? To be the most heinous crime
4 that can be committed in this country, it happens perhaps has
5 the shortest definition in our code of laws. Murder is
6 simply defined as the killing of any person with malice
7 aforethought, either express or implied. In South Carolina
8 we don't have different degrees of murder; we don't have
9 anything like that. This is the definition of murder.

10 And listen carefully because someone may get up here and
11 talk about how there's no motive, how there is no
12 premeditation. Listen carefully to the judge's charge
13 because that is not necessary or even an element of the crime
14 of murder in this state. All we have to prove is there's an
15 unlawful killing and that at the time of the killing that the
16 defendant had malice in his heart, and, ladies and gentlemen,
17 if this case doesn't reek of malice, no case does. I submit
18 no one will get up here and argue that this crime was not a
19 murder, I submit.

20 The killing of any person with malice aforethought,
21 either express or implied or inferred. What do those terms
22 mean: Express or inferred? Very simply, ladies and
23 gentlemen, the judge will charge you something similar to
24 this: Malice is the intentional wrongdoing of a wrongful act
25 without just cause or excuse.

1 What is meant by the term malice? It's a term of art, a
2 technical term, importing wickedness and excluding just cause
3 or excuse. It is something that springs from wickedness,
4 depravity from a heart devoid of social duty and fatally bent
5 upon mischief, and the judge will instruct you on these words
6 exactly, ladies and gentlemen.

7 Malice does not necessarily impart ill will toward the
8 individual injured and in this case killed but signifies,
9 rather, a general malignant recklessness of the lives and
10 safety of others or a condition of mind which shows a heart
11 regardless of social duty and fatally bent on mischief. And
12 I submit, ladies and gentlemen, the actions of Kenyatta
13 Bryant and Johnathan Holloway reek of malice.

14 You must decide what their intent was that night, what
15 they went there to do. Both of them admit that they went
16 there to commit a crime, both of them. Taking both of their
17 stories at face value - and I'll talk about that in a minute
18 - they went out there to sell fake crack to Andrew Decker,
19 who is supposed to be his friend. And I submit, ladies and
20 gentlemen, when he decided to rob him by selling fake drugs,
21 that friendship ended then and there.

22 There was no friendship because, as the defendant
23 himself from the stand when he slipped -- when he addressed
24 me, Luck Campbell, wouldn't you do it? And you remember what
25 he said: Anything for money. And that anything cost Andrew

1 Decker his life.

2 What does the term aforethought mean? The judge will
3 instruct you: Malice aforethought does not require that
4 malice exists for any particular time before the act is
5 committed, but the malice must exist in the mind of the
6 defendant just before and at the time the act is committed.
7 Therefore, there must be a combination of the previous evil
8 intent and the act. And I submit at the moment that the gun
9 got pulled out for the purpose of the robbery that night,
10 that evil intent manifested itself, and as the struggle
11 continued, it escalated until the only way that Andrew Decker
12 could be controlled was to shoot him pointblank in the face
13 and end his life.

14 And you know why this case reeks of malice? Because
15 this man, in his own version of what he wanted the facts to
16 show, even in his own version he goes back -- maybe he never
17 left. We must infer from the facts, the physical evidence
18 combined, because the only two people out there were
19 Johnathan Holloway and Kenyatta Bryant. So in every murder
20 case the jury must infer from the facts, the physical
21 evidence, combined with the stories produced, what happened.

22 His own version, which he wants to exonerate himself
23 with, puts him going back to the car, reaching over his
24 friend lying in his own pool of blood, dead almost instantly,
25 so that he can remove -- at first he says the victim's phone

1 because he knows his phone number will be on there, and then
2 later before you yesterday, the first time we've ever heard
3 this, he wants to get his own phone. The victim's phone is
4 gone and it's never recovered.

5 Another concept of law which the judge will instruct you
6 on is a very important one in this case because ultimately
7 Mr. Johnson is going to get up here and say you can't believe
8 Johnathan Holloway. He lied to the police, which is kind of
9 ironic since in the same vein Kenyatta Bannister (sic) lied
10 to the police over and over and over as well, but he wants
11 you to believe him. Even if you were to take what Kenyatta
12 Bannister (sic) told the police on simply most of the
13 occasions as well as what he got up here and told you a whole
14 new version yesterday, he is guilty under the law in this
15 state.

16 A crime -- if a crime is committed by two or more
17 persons who are acting together in the commission of an
18 offense... Both of them admit that they went there to sell
19 either drugs or fake drugs, robbery, whatever you want to
20 tell it. Nobody is going to get up here and say they weren't
21 committing a crime, an offense. They were acting together.
22 And, ironically, why did it take two of them if they weren't
23 planning a robbery? Why did two people need to go serve
24 Andrew Decker if it wasn't going to be a robbery? So they
25 could make sure they had control.

1 Two or more people, persons, acting together in the
2 commission of an offense. The act of one is the act of both
3 or all. If two or more combine together to commit an
4 unlawful act and in the execution of that criminal act a
5 homicide is committed by one of the actors - note: It
6 doesn't say it matters which one - as a probable or natural
7 consequence of the acts done in pursuance of the common
8 design, all present participating in the unlawful undertaking
9 are as guilty as the one who committed the fatal act.

10 If both are together, acting together, assisting each
11 other in the commission of an offense, the law says under
12 those circumstances the act of one is the act of all, and as
13 it is sometimes said, the hand of one is the hand of all. If
14 two people go into a store to commit a robbery and one stays
15 outside and tells the person that goes in to do the robbery:
16 Do not shoot the clerk behind the counter at the drugstore,
17 and that person goes inside while the other person stays out
18 as the lookout and he goes inside and, despite being told not
19 to shoot the person, shoots him, in this state, in this
20 country, he is as responsible as the person who actually
21 commits the fatal event. The hand of one is the hand of all.

22 And ironically and most telling, Kenyatta Bryant, when
23 he knows he's up against it and he needs to tell the police a
24 story, the first question, when he's figured out those cell
25 phone records that he knew were going to be a problem but

1 that didn't shake him, the first question is: If I was just
2 there, would I be in trouble? And he's told if he didn't
3 participate, he would be a witness. And then he goes on to
4 minimize his participation as much as he can, but even under
5 his version, it's not enough to get around two or more
6 persons acting together in the commission of an offense. And
7 I submit, ladies and gentlemen, his participation goes way
8 beyond mere presence because the judge will also instruct you
9 that if he was merely present at the commission of an
10 offense, that is not enough, even if it's suspicious.

11 But Kenyatta Bryant wasn't just merely present. By his
12 own admission, he was the participant. He set up the deal.
13 He got the dope, the fake dope, and under any version he gave
14 whether or not he knew it was fake or thought it was real,
15 whatever - at some point he was talking about shaving pills -
16 it was his gig. And you kind of have to do the "but for."
17 But for him setting up Andrew Decker, but for him taking
18 back-up, and but for him taking that gun -- which, ladies and
19 gentlemen, remember the details.

20 Who knew the make and model of the gun to the point
21 where he knew what was inscribed on the side of the gun? And
22 that's just one of the many little things we'll talk about
23 when I get back up here. Who knew exactly what caliber that
24 gun was? Who knew what the words were on it? Taurus
25 Millennium or something to that effect. You remember the

1 testimony. He even knew that there was another word on there
2 that he couldn't remember. And that wasn't his gun?

3 The hand of one is the hand of all. In this case and
4 what is hard for them to get around is under our law it does
5 not matter which person pulled the trigger. The hand of one
6 is the hand of all.

7 Now, you've also heard some testimony, depending on
8 which witness said what, about who was smoking what and who
9 was drinking what and who was everything. Johnathan
10 Holloway, according to him, he could tell he was hyped up on
11 pills. The defendant admitted to smoking some pot and
12 drinking something Loko, and he admits that's an alcoholic
13 beverage.

14 In this country if a person voluntarily takes
15 intoxicating drugs and/or liquor, it does not excuse you.
16 Voluntary intoxication is never an excuse or a defense to a
17 crime. A person who voluntarily renders himself intoxicated
18 is no less responsible for his act while in such condition.
19 If a person voluntarily drinks intoxicating liquors or takes
20 drugs and becomes intoxicated and if while in that condition
21 commits an act which would be a crime if it had been
22 committed by a sober person, the fact of drunkenness or
23 intoxication would not relieve the intoxicated person from
24 responsibility.

25 And the reasons for that, ladies and gentlemen, it's

1 common sense. It can't be that someone goes out and gets
2 drunk and gets into a car and he mows somebody down and is
3 not held responsible. In that same vein, just because you
4 have been smoking weed and drinking Loko and you're out of
5 money and want to do a robbery, you're still responsible.
6 That's the law in our country.

7 Now, there are two ways -- two types of evidence the
8 judge will talk to you about. There's direct evidence and
9 circumstantial evidence. Direct evidence is typically
10 eyewitness testimony: Who was there? Who saw what? It's
11 evidence that's perceived through the senses: Sight, smell,
12 touch, things of that nature, what was said, whether it was
13 heard. That's direct evidence.

14 Circumstantial evidence is very simply, ladies and
15 gentlemen, proof of a chain of facts which points to evidence
16 of another fact. In this case circumstantial evidence -- you
17 have both. You have direct evidence and circumstantial
18 evidence. You have direct evidence from the people who heard
19 the gunshot, direct evidence from Johnathan Holloway who told
20 you what happened that night.

21 You have direct evidence, and then circumstantial
22 evidence is that type of evidence which points to something
23 else: The fingerprints on the interior driver's glass and
24 the exterior driver's glass; the D.N.A. on the hat that he
25 says he didn't hide in the back of the F-150; the fact that

1 it's the victim's blood, that there were little round drops
2 consistent with -- we referred to it in different ways: Back
3 splatter, blowback, whatever you want to call it. Any one of
4 those pieces of evidence alone circumstantially corroborates
5 Johnathan Holloway. That's circumstantial evidence.

6 The judge will tell you you don't give greater weight to
7 direct, greater weight to circumstantial evidence. What you
8 do is you evaluate all the evidence that's been submitted in
9 this case. In this case the circumstantial evidence is
10 corroborated by the direct evidence in what the State put up.
11 You consider both, not give greater weight to one or the
12 other. Neither one is more important.

13 Now, you also, as the judge has instructed you
14 repeatedly -- you heard from a number of experts in this
15 case: The pathologist, the crime scene investigators, the
16 ballistics person, the fingerprint expert, all those experts.
17 And in this case the judge will instruct you that certain
18 people are allowed to give opinions when they have certain
19 training and/or education, and the reason for that is because
20 as lay person like me, I can't get up on the stand and give
21 an opinion about anything because I am not an expert in a
22 field, but what I can do -- but certain people, because they
23 are trained and are experts in areas, are allowed to give
24 opinions. You judge their credibility the same way you judge
25 any other witness in the case, and I'll get to credibility.

1 The judge will also instruct you that the defendant in
2 this case gave a statement and that prior to you being able
3 to consider his statement in determining his guilt that we
4 must prove that it was a voluntary statement. And you may
5 have wondered why we asked all those questions about, you
6 know: Did you promise him anything? Did you threaten him in
7 any way? That's to prove that the police did their job.

8 And, ladies and gentlemen, in this case this was a good
9 police investigation. They made sure this defendant's rights
10 were protected. As soon as it looked like that he might be
11 going down a road that he was going to be involved or
12 ultimately commit this murder, they read him his rights.
13 They stopped everything. They read him his Miranda rights.
14 They went through those to make sure he understood that this
15 could be used against him and all that, and that's important
16 to make sure the police do their job and they do it
17 correctly. And even the defendant on the stand admitted that
18 they didn't do anything wrong, that his rights were read to
19 him and that he gave those statements. So in this case there
20 is not an issue as to whether or not the police did their job
21 and whether or not this defendant gave a statement.

22 Finally, ladies and gentlemen, I just want to talk to
23 you about credibility. Very simply, the easiest definition
24 of that is believability and in this case it boils down...
25 Ironically, it really in this case is not as much an issue

1 because even under the defendant's version of facts, he is
2 guilty of murder under his own -- which -- well, of the last
3 few versions. He is guilty of murder. Under the version
4 that he got up here and testified to, he is guilty of murder.

5 But in this case you're going to be asked to judge
6 credibility, and the judge will tell you: You look at the
7 demeanor of a witness. Do they have a bias or prejudice,
8 something to gain or something to lose, a reason to testify
9 in a certain way? That's something you have to determine
10 when judging credibility.

11 The judge will tell you you can believe one witness
12 against many or many against one. You can believe part of
13 what a witness says, all of what a witness says or none at
14 all. That is totally up to you. But I submit, ladies and
15 gentlemen, the credible evidence in this case from the
16 witnesses that don't have a dog in this fight, the experts --
17 they aren't trying to frame someone here. They don't care,
18 to be honest, if it's Johnathan Holloway or Kenyatta Bryant.
19 They're just trying to get to the truth, and in that same
20 vein that's all we ask of you.

21 All we ask you to do, just as Johnathan Holloway who got
22 up here and testified and he's charged with murder -- he's
23 still charged with murder, and he is still facing penalties
24 on that. Just as he understood that he was guilty, all we
25 ask is that you hold Kenyatta Bannister (sic), Bryant, excuse

1 me, guilty for his actions, his decisions, his choices, and
2 ultimately this murder. Thank you.

3 The Court: Mr. Johnson?

4 Mr. Johnson: Thank you, Your Honor. May it please the
5 Court? Good morning, ladies and gentlemen. I want to start
6 off by thanking you for sitting through the trial. It's very
7 seldom that people get the opportunity to sit through a
8 murder trial and be the triers of the facts. It is not an
9 easy job that you have, and I do not envy you at all. I
10 would love to be able to stand here and tell you that this is
11 a simple decision, that you should just find my client
12 innocent and we all go home, but it's not.

13 There are some questions that need to be answered, and
14 we have attempted during the trial to try to answer some of
15 those questions that you may have so that you could come to
16 the conclusion that we believe you should come to and that is
17 that Kenyatta Bryant is not guilty of murder. He did not
18 participate in this crime. He did not have any knowledge of
19 this crime, and, therefore, under the law he should not be
20 found guilty of that.

21 If it was up to the people at the table to make a
22 determination, we wouldn't need you. They have their
23 beliefs, and believe me, they have -- those are honorable
24 people sitting there. The State, the police, I have known
25 those people for many years. I do not believe that they have

1 any special bias or anything like that. I just believe that
2 they are wrong. It's just as simple as that. People can
3 make mistakes.

4 You have two things to choose from, and you make a
5 decision. In this case I think that they went down to the
6 crossroads and they made a deal with the devil, the co-
7 defendant. Because they made a deal with the co-defendant,
8 then they have to ride that horse, but that horse is not a
9 winner in this case. They made a deal with the devil.

10 You saw the person that killed Andrew Decker in this --
11 in this courtroom. It was not my client. It was that co-
12 defendant that got up there. That co-defendant told you that
13 basically he committed the crime. Think about what he said.
14 He said that he was sitting in the car, that he grabbed the
15 victim by his neck and fought with him, that my client did
16 not touch the victim, did not do anything to assist him. He
17 also stated that my client did not know what he was going to
18 do nor did they discuss robbing anybody or doing anything.

19 Now, this is the State's own witness. He said that he
20 got out of the car and he went into the front part of the car
21 or got out of the back seat and went into the front doorway
22 of the front seat with the victim and fought with him. All
23 of that matches the evidence.

24 Ladies and gentlemen, this is State's exhibit 29. It
25 shows you the car as it sat. It shows you with the door open

1 and how the car appeared when the victim was found. It has
2 little diagrams here to show you where certain items and
3 things were found. Everything is found on the left-hand side
4 of the car. Everything is surrounding the front driver door
5 and the back passenger door.

6 When you go in the back, you'll have all this evidence
7 to look at. Everything indicated that everything occurs
8 right within this area. The big -- the co-defendant, Mr.
9 Holloway, told you that he gets out of the back, goes to the
10 front. He wrestles with the victim, and then all of a sudden
11 he decided he wanted to leave. He admits to everything
12 except shooting. He says that my client did nothing except
13 shoot.

14 Now, the prosecution would like to tell you about common
15 sense. Well, you have common sense. Think about that. If
16 my client is participating in a robbery and he has a gun --
17 he is sitting in the front seat by the victim. He doesn't
18 touch the victim. He doesn't shoot the victim. He doesn't
19 hit the victim. He comes around, all the way around the car,
20 to the left-hand side of the car, stands behind the co-
21 defendant and then shoots the victim 16 inches away, standing
22 behind the co-defendant. How could that happen? Those are
23 the things that you need to think about because if those
24 things didn't happen, it would indicate that my client is not
25 guilty.

1 I was not there. The solicitor, the prosecution --
2 nobody in this courtroom was there except for my client and
3 the co-defendant and, unfortunately, the victim. So you have
4 to use your sense. You have an opportunity to do something
5 that very few people in America or very few people in the
6 world have the opportunity to do: You have a chance to use
7 your mind. You have an opportunity to look at the facts and
8 actually use your brain.

9 Nowadays everything is given to you. You look at T.V.;
10 they tell you what to think. You look at this; they tell you
11 what that means. You look at this; they tell you what that
12 means. Well, fortunately the solicitor nor me can tell you
13 anything today. Use your brains. Look at the facts. You
14 are the determination of the facts in this case, not me, not
15 the solicitor. All I can do is present the facts to you,
16 tell you what I believe, and you make a decision, but don't
17 prejudge.

18 The solicitor would have you think -- she left stuff
19 out. They didn't mention that the co-defendant in this case
20 bought jewelry. The police gave that information up, but you
21 notice they didn't mention that in their case? The reason
22 they didn't mention it is because it doesn't help their case.
23 They want to win their case. They try to make it sound like
24 they are here to give you examples and tell you things that
25 -- that we just present the facts, but they have to present

1 all the facts.

2 That gentleman left the next day, bought 200 something
3 dollars worth of jewelry, of which he didn't have any money
4 the day before. The police even questioned him about it.
5 Where did this money come from? My client didn't buy
6 anything. My client turned himself in to the police,
7 cooperated with them. His first question was -- not nothing
8 trickery. His first question was: If I didn't do it or if I
9 didn't shoot the individual, what would happen to me? And
10 the officer told him correctly: If you did not participate,
11 did not shoot, you are only a witness. He cooperated. Now
12 he's sitting over there as a defendant.

13 Remember: After he told them that, they let him go.
14 The only reason they changed their mind was they have some
15 evidence of fingerprints on the outside of the window.
16 Remember the window is up. Look at the pictures. The window
17 is up. My client's right-hand fingerprints are to the
18 forward part of the window on the outside of the door. He's
19 not inside the door sill where he has the fingerprints.
20 They're on the outside of the window. It places him to the
21 left side of the car.

22 The only evidence that the State has places my client at
23 the scene. They have no evidence saying that he shot anyone.
24 He gave an explanation and he told the truth, and basically
25 this is going to come down to one thing: Whether you believe

1 my client or whether you believe the co-defendant.

2 We can argue about all the different little facts and
3 the blood on my client's hat, but he explained that. The
4 prosecution would call it dots or splatter, but remember what
5 the expert said. They said they could not say that it was
6 blood splatter; they said it was possible. But, of course,
7 he could not -- remember the word he used. He could not
8 definitively say that it was, meaning that all they're doing
9 is speculating. Don't you speculate.

10 Take your time. This is very important. This is not
11 one of those closed/shut cases. If my client did not
12 participate in killing anyone, if my client did not
13 participate in robbing or knowing anything about the robbery,
14 he's not guilty. He might be guilty of being a drug dealer;
15 he's not charged with that. He might be guilty of being born
16 poor; he ain't charged with that. He might be guilty of
17 being dumb and stupid; he's not charged with that.

18 He is a human being, and regardless of his mental
19 capacity, regardless of his socioeconomic level in our
20 community, he still deserves the same rights as anyone else.
21 And at the very least, he deserves you taking your time to
22 look at this evidence and really consider it. Look at that
23 witness. Look at that co-defendant. The only person -- the
24 only person that even indicates that my client shot anybody
25 is the only other person that could have done it.

1 He lied. He took that stand and said that -- what is
2 it? I shook up my girlfriend. He stood up on that stand and
3 said he wasn't a gang member. He stood up on that stand and
4 said that he just had some money. Well, that's your choice
5 if you believe him or not; I don't. I think that he
6 basically confessed to everything except the shooting because
7 if he confessed to the shooting, he knows what will happen to
8 him.

9 He told you that he tried to get a deal from the
10 solicitor. Now, of course, they say they're not going to
11 offer him a deal or anything, but do you honestly believe
12 that if my client is convicted that he's going to be given
13 the same -- same sentence or the same charge for this type
14 sentence? He doesn't have a deal? Do you honestly believe
15 that he thinks that?

16 What you have to think about in this case is very
17 simple: I could stand up here and could go over all this
18 evidence, but there's only three pieces of evidence. We
19 presented 15 witnesses that came before you on Tuesday. Not
20 one witness could say that my client committed a murder.
21 None. The only witness that says that my client committed
22 the murder was the co-defendant.

23 The State didn't prove anything. They just proved that
24 they made a deal with the devil. They flipped a coin. Now
25 they're going to get up here and they're going to argue that

1 my client lied and all those... And they're going to tell
2 you what you must do and all this, but let me tell you
3 something. You don't have to do anything you don't want to
4 do. You are the jury. It's you that makes this decision,
5 and it's not something that you should take lightly.

6 My client's life is in your hands. That family, they
7 want to have someone who killed their son held accountable,
8 but I do not feel it would give them a warm fuzzy feeling if
9 the wrong person was convicted for it. I believe that my
10 client did not commit this murder. He sold drugs. He tried
11 to get some money.

12 He knew Drew. He knew Drew for over two years. Drew --
13 Drew came around his family, and Drew trusted him enough to
14 go in that community and call him on the way coming into
15 town. My client had no reason to want to hurt Drew. My
16 client was making money off of Drew constantly coming to his
17 house, and Drew was an addict. Drew was a drug addict. My
18 client was a drug dealer. They live off of each other; they
19 don't kill each other.

20 The only thing different about this deal -- my client
21 had dealt drugs to Drew many times before, and nothing ever
22 happened to Drew, never was harmed. Nothing ever happened.
23 The only thing different about this deal is the co-defendant.
24 That's the only thing different about any of those deals that
25 Drew ever did with my client is the co-defendant, and the

1 only thing different about this deal is that Drew is dead and
2 now the co-defendant is saying that my client committed the
3 murder.

4 My client went down. He talked to the police. When
5 they said they had a warrant for him, he turned himself in.
6 He consented to do D.N.A. samples, and even with the hat that
7 they say he tried to stuff behind the seat, he told them:
8 I'm looking for my hat; I want my hat; it's in the truck.
9 Why would a person hide a hat and then tell you where the hat
10 is to look for it? That doesn't make sense.

11 I submit to you that hat was left on that seat. That
12 officer went home, did not pay any attention to it. It could
13 have been under the baby seat, anywhere. People over an
14 eight-day period could have been sitting there, anything. It
15 could have fallen behind the place, behind the seat. When
16 the officer removed the seat, he finds the hat, and he made
17 the assumption that my client is trying to hide it. I submit
18 that he makes the wrong decision.

19 Think about the co-defendant. When they find the co-
20 defendant, he is up under a bed, hiding. He makes a call to
21 my client's brother and admits that he did the shooting and
22 asks were they looking for him. That's why he was under the
23 bed; he knew the police was looking for him. The solicitor
24 can't find any fault wrong with that.

25 My client's brother came up here. He was in shackles;

1 he was arrested. He was about the most honest person that
2 you would want. I asked him -- the last question I asked him
3 was: Would you lie for your brother? Most people would say,
4 "No, I wouldn't lie for my brother." They would be lying.
5 What did he say? "Yeah, I would lie for him, but I'm not
6 lying about this."

7 The solicitor, the State, they want you to tell the
8 truth, but then when you tell the truth about how you live,
9 how you -- if you smoke dope, you tell the truth about that.
10 If you drink, you tell the truth about that. Then they tell
11 you that that's a character flaw for you telling the truth
12 and it shows that you can't be believed. They can't have it
13 both ways.

14 They had no evidence that those people were drinking and
15 smoking. Those witnesses could have easily came up and said,
16 no, we wasn't doing anything. They told the truth. But then
17 the solicitor wants you to see that as a character flaw that
18 would indicate that they would now be lying.

19 Those are all things that you have to consider in this
20 case. I cannot give you the final answer. You have to give
21 that to us. All I ask is that you take your time. Please
22 look at this, and I think if you look at these things,
23 consider all the things, you will come to the same conclusion
24 that I have come to: That is that my client might be a drug
25 dealer. He might have been thinking about trying to scam

1 Andrew out of some money, a few bucks, but he did not go
2 there with the intent on robbing Andrew and he definitely did
3 not kill Andrew Decker. As a result, I think that there is
4 no evidence that you can find beyond a reasonable doubt that
5 Kenyatta Bryant is a murderer. Thank you.

6 The Court: Ms. Campbell?

7 Ms. Campbell: May it please the Court? When you're
8 getting ready for trial, you try to anticipate what the
9 defense will be, and in murder cases it's classically: Wrong
10 guy, misidentification. The eyewitness picked the wrong guy.
11 Or classic self-defense: I had to shoot; he was coming at
12 me. Or it's just a lesser included offense.

13 This case is somewhat unique because the defendant has
14 gotten up there and told a series of stories, stories he
15 wants and he modifies in order to try to distance himself
16 from the truth about what happened. Yeah, I'm a drug dealer,
17 but I didn't rob him. His very actions of going to sell the
18 defendant (sic) fake drugs -- he's giving him nothing. It's
19 a robbery, by his own version.

20 But it's called the art of confessing error. Admit to
21 some wrongdoing because he can't get around the fact he's
22 there because remember when he asked that question about if
23 I'm only a witness? At that point they've already confronted
24 him with his phone number, the cell phone records. He knows
25 that at that point he's trapped. So what are his options?

1 And he comes up with the best option he can. Admit to some
2 underlying wrongdoing and then throw the book at the other
3 person because at that point he knows -- remember by his own
4 statement? He's gotten rid of his clothes. He thinks he's
5 home free on that. He's hidden the hat which he doesn't know
6 may or may not have blood on it because he thinks he's going
7 home in that same truck and can reach down and get it back
8 and then get rid of it. He doesn't know about any
9 fingerprints on the driver's door, be it the exterior or the
10 interior, and we'll talk about that.

11 So what does he do? Well, if I'm just a witness, am I
12 in trouble? And he's told flat out: If you did not
13 participate in this murder, participate -- and the reason he
14 asked for the hat is because he needs to get it back because
15 he knows more than anybody that that's problematic because he
16 knows that when he is up there -- and, ladies and gentlemen,
17 that hat proves he was right there when the shooting happened
18 and by any version of events when he shot him because the
19 little brown droplets -- you heard from two experts. That's
20 consistent with back spatter.

21 That's what happens when you're close in proximity when
22 someone gets shot and killed and shot in the face, and he
23 asked for that hat back because at that point they're taking
24 him home and he thinks his story is good enough to get him
25 off. And the defense gets up there and says oh, well, that

1 proves that he's not guilty of anything? No, that proves the
2 police were doing their job. Before they accused anyone of
3 this murder, they wanted to make sure they had more facts,
4 more information. They didn't jump to conclusions because
5 they wanted to make sure they got it right. In this case the
6 police not only did their job; they were diligent about
7 ensuring that his rights were protected. And then he argues
8 that makes him innocent? Does that make sense?

9 Ladies and gentlemen, I want to take a little time and
10 talk about the facts in this case, but even Mr. Johnson got
11 up here and he said: Don't hold him accountable. We aren't
12 holding him accountable for this murder, and I don't know why
13 he called him dumb. He's pretty smart. He thinks things
14 out. He knows enough that -- he knows cell phone records or
15 the cell phone can incriminate him. He knows enough to make
16 sure that if he's just a witness he won't be in trouble.
17 Dumb? No.

18 He knows enough that he's supported himself, according
19 to his own testimony, for years as a drug dealer. As he
20 said, he doesn't have a record. He's never been caught.
21 Dumb? No, ladies and gentlemen. I submit he is smart, way
22 beyond dumb, and no one is here prosecuting him because he's
23 poor. I don't know -- we don't know how much money he made
24 as a drug dealer. That was his chosen profession. He
25 didn't, like other people in our community, go out and get a

1 job, be it at Wal-Mart, McDonald's. He didn't go out and
2 choose to pursue a career that doesn't have ramifications.

3 The defense got up here and argued, too, that, oh, he
4 had served -- he had sold drugs to Andrew on so many
5 occasions, that this had never happened until the co-
6 defendant got involved, that he would never shoot his client.
7 He has never heard about drug deals gone bad? Rampant in
8 this nation as far as murders are concerned? Does that make
9 sense? The very use of guns and drugs, bad things happen
10 like here today.

11 Under his own version and what he didn't refer to, not
12 once -- the law the judge will give you: If two or more
13 people - and listen carefully - are acting together in the
14 commission of an offense, the act of one is the act of all.
15 And, ladies and gentlemen, I submit the evidence in this
16 case, the credible, believable evidence, goes way beyond
17 that. I submit it points to Kenyatta Bryant as the shooter
18 in this case, but, ladies and gentlemen, in this case that's
19 not even something that really matters because under the law,
20 the act of one is the act of all or the hand of one is the
21 hand of all.

22 Mr. Johnson got up here and argued that the only two
23 people that know what happened that night -- well, there were
24 three. One is dead. He was murdered. Nobody has gotten up
25 here and said this wasn't a murder. The only two people that

1 did know what happened -- and that's why drug deals happen in
2 back alleys. There are no witnesses. We don't have video
3 when it's a drug deal -- are Johnathan Holloway and Kenyatta
4 Bryant. And under his version of "we don't know exactly what
5 happened," then no one could ever get convicted when it's a
6 murder that didn't happen on video, and I submit, ladies and
7 gentlemen, there aren't very many of those.

8 When people choose to take a gun to a scene to execute a
9 robbery and then they murder someone, they usually don't try
10 to get in front of a camera. Under his theory, under Mr.
11 Johnson's theory, no one could ever be convicted, and that's
12 why the judge will tell you that you take all the evidence,
13 what we put forth or what we didn't put forth, and you look
14 at it like what wasn't there, like Johnathan Holloway's
15 D.N.A., Johnathan Holloway's clothing that was analyzed and
16 didn't have the blood on it. The lack of evidence points to
17 a fact. That's how it works.

18 Listen carefully to the judge. He will tell you that
19 that's what you have to consider: All the evidence, the
20 direct, the circumstantial, and you put it together. And
21 he's right. We put up 15 witnesses that first day before
22 you. It goes up to 160 something or 70 or whatever exhibits.
23 And he got up here and said to you that that doesn't point to
24 Kenyatta Bryant's guilt? That this hat and the blood on
25 it -- because even he yesterday got up here -- at one point

1 he said he couldn't say something because it wasn't in his
2 statement, but when he was asked about the blood on the hat,
3 and you remember, even he said he couldn't explain it because
4 the only explanation that makes any sense -- he wants it to
5 be that, well, maybe it was when he got into the car? And
6 what makes sense about that? Because his version of that is
7 interesting.

8 His first thing - and it's in the statement and you'll
9 have that - is that he went back there. Remember, it's in
10 the oral statement - I'm sorry - that Rob Martin read in --
11 is that he went back there in order to get the victim's cell
12 phone out of his pocket, and remember, the victim's cell
13 phone is never recovered in this case and his pocket is
14 turned out. Now, whether he did that right after he shot him
15 or whether he went back and did that doesn't matter, but it's
16 an interesting point.

17 But yesterday on the stand he got up there and testified
18 that he had to go back to get his own phone that he had left
19 on the seat. At no time did he mention pulling out his
20 phone, having his phone out to make a phone call while he was
21 out making his drug deals, getting the change, filling up a
22 car with \$40 worth of gas, all that which wasn't on the video
23 that he knew of but it -- and then he said he reached over
24 Andrew to get it out of the passenger seat.

25 Does that make sense? The reason he had to say that was

1 he's trying to come up with some explanation for why there
2 would be a perfect transfer of droplets - and you've got the
3 diagrams; you've got the hat - on his hat which he admits is
4 his hat, why there would be another droplet on the front in a
5 separate area which is consistent with it blowing back.

6 Why, if you have just been involved and, as he said, he
7 was scared to death, this Blood gang member -- and by the
8 way, the only reason Johnathan Holloway is involved here is
9 because he's his friend. We didn't choose the witnesses.
10 Johnathan Holloway, as he put in his statement, is his
11 homeboy. He chose to hang with him, and now suddenly here we
12 are 15 months later and he's scared to death of him. Oh, my
13 gosh, he's a known gang member.

14 That's his associate, not ours. He chose Johnathan
15 Holloway, not us. That's who he hangs with, but he was
16 scared of him that night? So when he goes back after his
17 friend, for whom he had no motive to kill other than remember
18 when he was asked about money, he addressed me -- he was
19 like, "You'd do anything for money, wouldn't you?" - And I
20 submit that's what happened that night. There was a
21 desperate need for money, and it wasn't just by Johnathan
22 Holloway.

23 He goes back to the car and reaches over this dead man
24 who has bled out all over this car, but remember: At this
25 point the blood is not gushing up in spurts. It's going

1 down. And somehow he chooses not to go to the right side of
2 the car where he had left it, but he chooses to reach over -
3 and you've got photos; we tried to make sure they weren't the
4 worst ones there - to get his cell phone so that he can
5 explain away? Does that even make sense? Is there any
6 common sense that would make that true?

7 Then he had to go home and take a shower. Why? Because
8 he was covered in blood. Then he had to throw out his
9 clothes and his cell phone. Why? Because he's not guilty?
10 Ladies and gentlemen, even his own admitted actions, even his
11 own testimony, screams of guilt.

12 Now, I want to take a little bit of time and talk to you
13 about the actual facts in this case and the testimony. Mr.
14 Johnson says that on the first day we presented evidence,
15 none of it pointed to the defendant's guilt. I want to talk
16 to you a little bit about the forensic evidence and how it
17 corroborates what happened in this case. And, ladies and
18 gentlemen, he is right. The only two people that lived, that
19 survived this murder, are Johnathan Holloway and Kenyatta
20 Bryant, and you've now heard from both of them.

21 In every murder case a jury is asked to look at the
22 evidence and evaluate it and determine what happened that
23 night. It doesn't mean that either one is going to come in
24 here and tell you particularly the whole truth, and as far as
25 the deal, ethically we have to turn over any deal that has

1 possibly been made in this case. You heard it. The judge
2 knows it, and that is what we have to do and that is what we
3 did in this case. So any inference that there is some
4 underhanded deal going on here is simply not right.

5 What witnesses did you hear from? The first day you
6 heard from a series of witnesses, and we didn't have to bring
7 forth every single witness because some of the facts are not
8 in dispute because of the defendant's statement himself. He
9 admits to being there. He admits to participating in the
10 crime, so that eliminates some. He admits basically in his
11 own statement that he participated in this murder.

12 We heard from Michael Fields, Sr. There's also a junior
13 involved, but he didn't have anything else to say that was
14 different from the senior. What does he know? He's getting
15 up because guess what? He's got a job. He goes to work at 6
16 in the morning every morning. He supports himself legally.

17 What did Mr. Fields tell you? That he was driving by.
18 He saw the car. There were some lights on in it, that at
19 that point he turned around. He pulled up in front of it,
20 honked the horn and nothing happened. He went around to the
21 side. He looks in, didn't touch anything, looks in and saw
22 obviously Andrew Decker dead, gunshot wound to the head. It
23 doesn't get any bloodier than that. Once you're shot, you're
24 down. There are pools of blood, and you've got photos of it.

25 He does what responsible people do when they see a dead

1 body. He doesn't go through the pockets. He doesn't steal
2 things. He doesn't go back and get his cell phone. He does
3 what's the right thing, and he calls 9-1-1 and the police
4 respond. And at that point that's all the information the
5 police have when they get there.

6 You also heard from Tammy Gantt, and what was critical
7 about her was because they did a canvass of the neighborhood
8 and they wanted to get down to what time this would have
9 happened. Did anybody hear any gunshots? She told you she
10 told the police back then that she heard a gunshot. She
11 actually said two on the stand.

12 What's interesting is he then gets up here and cross-
13 examines her on whether she said two or one? What -- just
14 challenge each and every witness? And that's his job.
15 Around 12:30 to -- 12:30 to 1:30, but she was home in bed
16 asleep because at that time she did have a job and was doing
17 the responsible thing.

18 You heard from Emily Rogers, and the purpose of putting
19 her up was to show the timeline about where the defendant was
20 the night before, his reasons for coming to Columbia. He is
21 an addict. He had problems. He purchased drugs and, yes, he
22 inserted himself into the situation which ultimately led to
23 his murder, but that does not excuse Kenyatta Bryant for his
24 culpability because no one deserves to die for being an
25 addict.

1 Andrew Decker was wrong, ladies and gentlemen. We were
2 the people that told you that. He was an addict. He was
3 there to get high, to get his drugs so he could get high, and
4 the toxicology shows that at the point he was getting the
5 drugs. He hadn't ingested them yet, but that does not lessen
6 this offense. That does not make this not a murder.

7 You also heard from Shaqwaja Albright, the defendant's
8 girlfriend, and why was she important? Because again, ladies
9 and gentlemen, the police were doing their job. All that day
10 on the 22nd into those evening hours they had no clue who did
11 this, but they did their job. They subpoenaed and they got
12 the phone records from the victim's phone, and the last phone
13 calls - and you'll have the chart back there with you - are
14 the phone calls that are to Kenyatta Bryant's phone.

15 They try to get the subscriber information on the phone.
16 They can't get it because it's a prepaid phone, so they do
17 the next step. They do their job. They start cross-
18 referencing the phone calls that are on the prepaid phone.
19 And what do they find? They find the phone number that leads
20 them to Ms. Albright.

21 Remember, they tried to interview other people, too.
22 They went to a number of different people. It wasn't that
23 they were just targeting her. They were looking at numbers
24 that were frequently called from the 917 number, and Ms.
25 Albright was one of them and they went to her. She was in

1 school, and they went and they talked to her, and they asked
2 her whose phone number that was and she gave them -- she
3 didn't -- she said she didn't know his real name, but she
4 said his nickname was Duke and then she showed them --
5 because her mom showed up. Remember? And her mom took her
6 and then she showed them where he lived, and that happened to
7 be [REDACTED].

8 So at this point they have a person of interest, and
9 this is very careful because they aren't condemning him.
10 He's not charged, even though it's suspicious that he's the
11 last person to talk to him. He's not charged at that point
12 because of that because at that point what do they know?
13 That he lives right there on [REDACTED] which is a two-
14 block distance - and you've got the maps - from where this
15 occurred and that he was the last person to receive or send
16 phone calls to the victim.

17 That's suspicious, but they didn't jump to conclusions
18 because that's not what they should do. They bring him in as
19 a person of interest, as they should. They aren't condemning
20 him for his social class. They're wanting him to come in and
21 talk to them, and that's when Kenyatta Bryant made a fatal
22 mistake because at that point he's walking down the road and
23 who is he with? Johnathan Holloway, this person who has just
24 committed this vicious murder of his friend the night before
25 of whom he is scared to death. And remember when I asked him

1 on the stand, "Why were you with him?" We were just walking.
2 He just happened to be walking to the same phone store he was
3 walking to that day?

4 And by the way, why did Kenyatta need a new phone? He
5 had a perfectly good one, we know. It was working well, we
6 know, because it was working at 12:30 on the night of Andrew
7 Decker's... He needed a new phone because he had to get rid
8 of his old phone because it linked him to the murder he
9 committed, yet another link in this whole scenario.

10 The police walk up. He's thrown away his clothing, by
11 his own admission, but Kenyatta Bryant loved his hat. He had
12 washed away the blood on his face. He had thrown away the
13 clothing. It was long gone by the time the police showed up,
14 but he loved his hat. And when the police rolled up,
15 remember, he had the hat rolled up in his hand because he
16 wanted to keep it. Will you come down and talk? And you ask
17 yourself: Why would he do that? Because the defense pointed
18 out he was very cooperative. Yes, he's cooperative. He
19 wants to know what they know. He needs to know which story
20 he needs to tell. Utter denial?

21 And remember their first contact with him when Ms.
22 Albright calls him and he calls back and they put Rob Martin
23 on the phone? His first contact, what does he do? I'm John
24 Riley. I live off Farrow Road. I have a false name, a false
25 date of birth that I'll give you. So he knows they're on to

1 him. So, yes, he cooperates. He needs to know which story
2 is going up next, and I'll get back to those stories.

3 So at that point he goes down and talks to the officers,
4 and he gives what is the first of a number of different
5 stories about what happened, and I'll get back to the
6 stories. Who else did you hear from? You heard from
7 Johnathan Holloway, Cash. And there is no dispute he is
8 charged with murder. He is facing the same penalties he is,
9 and he came before you because he hopes a judge down the road
10 or somebody will give him a break. He was honest about that.

11 But he got up here and he admitted he was culpable. He
12 admitted he participated. He admitted he was guilty of
13 murder, but he also said who did it with him and who was the
14 actual triggerman. And, ladies and gentlemen, it wasn't that
15 we just tossed a coin up in the air and chose somebody to
16 try. We looked at the evidence, the evidence, the hard
17 evidence, the physical evidence. And remember back when
18 these two were arrested? None of that evidence, the results,
19 were in. The fingerprints weren't in yet. The D.N.A. wasn't
20 completed yet. The crime scene -- the analysis was still
21 going on.

22 They were arrested back when this happened based on
23 their statements and their culpability. Johnathan Holloway
24 got up here. Did he minimize his role? Not to the point
25 where he didn't admit he's guilty of murder. He says he

1 wasn't there when the shot went off, the same thing he says,
2 but he knows he's guilty under the law.

3 Was Johnathan Holloway credible? He lied to the police;
4 there is no doubt. We brought that out. First, he denied
5 any knowledge. Then he said he went there and I think to
6 sell him fake crack. Then he said that he ran and wasn't
7 there participating, and then he did admit to what he did,
8 which is supported by the physical evidence.

9 He grabbed him, he said. Kenyatta had the gun, and how
10 did Holloway describe the gun? It would have been brought
11 out if he gave more of a description. It was a pistol, a
12 black handgun I think it was. He didn't have the details on
13 the caliber. He didn't have the details on what the writing
14 was on the side of it, which just happens, we find out down
15 the road when you do the ballistics, to be the exact right
16 information that the co-defendant -- that Kenyatta Bryant
17 had.

18 And he held him and he struggled with him and he punched
19 him, and he was trying to control him because he wanted I
20 guess at that point the money. And there's also no dispute -
21 we put him up - that he went the next day and bought a grill,
22 that he went to the mall. This is the same day that he's
23 hanging out with Kenyatta Bryant and that's -- he told you
24 about it, and how did Kenyatta Bryant know? Did he give him
25 the money?

1 Johnathan Holloway: You can believe part, all, or none.
2 All we ask you to believe is the hard physical evidence in
3 conjunction with the statements that were presented to you.
4 You heard from other officers that went to the scene.
5 Corporal Dukes went to the scene to make sure it was secure,
6 secured the scene.

7 Then you heard from other officers who also did their
8 job in this case. You heard from Investigator Bouknight,
9 Sergeant Richards, Investigator Holt. They followed up on
10 every lead. They processed this crime scene. They
11 photographed it. You have the photographs.

12 They collected the evidence, and what is important about
13 what they collected? They collected these keys right here
14 which would prove significant down the road, and what else
15 did they collect? They collected these fingerprints. And
16 the defense got up here and talked to you about the
17 fingerprints, which I'll talk to you in more detail, about
18 how they were only on the exterior window and that doesn't
19 prove anything and he leaned up against the car.

20 And he's actually right about one of them: This one,
21 L-7. We'll get to the results in a minute. Those
22 fingerprints are Kenyatta Bryant because he admits they were
23 his fingerprints, were on the exterior of the front window,
24 but how does he explain this one that's on the interior of
25 the front window? He argued that because they were on the

1 exterior only that they don't prove anything, but he even
2 said if they had been on the interior that would be
3 different. Guess what? They're on the interior of the
4 window. They're on both sides of the window. I believe this
5 is a thumbprint, and look at how it's situated. How did it
6 get there? Maybe he had to push off when he opened the door
7 when he was shooting. What does that prove?

8 They collected the evidence. Investigator Holt went
9 back when the family said, oh, we found Johnathan Holloway's
10 hoodie or black pullover, whatever, which was tested negative
11 for blood. They went back and searched the area to try to
12 find the gun - negative - where the Bryant family pointed it
13 out.

14 You heard from Investigator Kristen Polis who collected
15 the projectile which happens to be a .40 caliber, just like
16 he described, and it happens to be the type of gun that could
17 have done this crime. And who else do you hear from? You
18 heard from analysts who analyzed the evidence in this case.
19 You heard from the pathologist who described to you what kind
20 of wound this is, and we put in some pretty gruesome pictures
21 to show you the stippling that corroborates what he said.

22 This was an up-close-and-personal killing. Was it
23 because Andrew Decker didn't want to be robbed? Was he
24 fighting back? No doubt. He had a bruise on his shoulder.
25 He was fighting back. So the only way to control him was to

1 kill him, to murder him, and I submit, ladies and gentlemen,
2 a murder -- a killing that takes place during a robbery is a
3 murder every day of the week, and he admits he was there to
4 rip him off, to rob him.

5 Investigator Trisha Odom - you'll have this chart back
6 there with you - where she analyzed fingerprints. And
7 fingerprints, unlike on T.V., are not the easiest things to
8 get. Sergeant Richards did his job processing that car. He
9 tried to get fingerprints from every single area and he --
10 only one of those -- 15 of them had no value, and the only
11 prints, other than the victim's of which there were three,
12 that showed up on the driver's side of that car and in that
13 area were whose? L-6.1. Remember, these are labeled L-6 and
14 L-7.

15 What is L-6.1? It was from the interior left front
16 window. That was the testimony. That's labeled. It shows
17 exactly where it was, and you have the pictures where they
18 put the number by them to show where they were collected. On
19 the interior left front door window is Bryant's left thumb
20 print, and look at how it's situated. How did it get there?
21 It's not just that he leaned over.

22 On the exterior, L-7.1 and 7.2, right middle finger, on
23 the exterior. He wasn't just randomly going in that car
24 because remember the doors are open at that point. Andrew
25 Decker is shot either standing or getting out of that front

1 seat because there's no gunshot residue on the interior,
2 and the expert told you why there wouldn't be gunshot residue
3 necessarily on the exterior: Because of the wind and
4 different factors. So it didn't happen in the car, but he
5 sunk back into the car. So he doesn't have to open the door.
6 He doesn't have to put his hand on the window, but he's
7 there. And why is he there? Because he's struggling. The
8 fingerprints alone without any D.N.A., that we'll get to in a
9 minute, put him as the shooter, but there's more.

10 L-1 which is another fingerprint that's in this bag also
11 was negative to Decker and Holloway, but it didn't have
12 enough points for her to call it on Bryant, but it could have
13 been his. Every piece of evidence found in that car - and
14 you see where this was, at the driver's door - puts him as
15 the shooter, but that's not all you heard in this case.

16 You heard from Agent Ila Simmons. They collected the
17 gunshot residue. She did her job. What did she tell you?
18 That basically the gunshot residue on Andrew Decker's one
19 palm would indicate where his hands were around the time,
20 doesn't indicate that he shot. Remember, there's more on the
21 back if he had shot anything. Puts him as the victim, which
22 he is. Nobody is disputing that in this case. No gunshot
23 residue. She analyzed it from the interior of the car; it's
24 negative. Puts him right there at the door when he was shot,
25 just like all the other evidence shows.

1 Did he slump back into the car? Yes. Was his head then
2 over the console? Yes. You can actually see the blood flow
3 down the back of the console into the back seat when you look
4 at the pictures.

5 Investigator Terri Gleason, what does she tell you? All
6 she can tell you is what it is. It's not uncommon for a
7 person who's smart to get rid of the clothes, to get rid of
8 the gun, to get rid of his phone if it's going to link him to
9 a crime. She's able to tell you though that it's a .40
10 caliber, that it was coming from a gun, and guess what's
11 included in the list of guns that it could have come from?
12 The one that ironically Kenyatta Bryant happened to know the
13 exact make, the exact model, the type of Millennium and that
14 it had another name on it. Only the shooter, the person who
15 was familiar with the gun, would have all that knowledge.

16 Investigator John Barron. You're going to have his
17 entire chart. There was, and in every case as it should be,
18 the officers collected evidence wherever they could and then
19 they tested the evidence that would be relevant to the guilt
20 or innocence of any of these people involved, and what did
21 they find? Item number 54 -- and there's been much talk
22 about this ignition key, and Investigator Martin was actually
23 able to come and put it together for you, how the key ended
24 up there.

25 This is the key that now 15 months later, suddenly for

1 the first time Kenyatta Bryant, because he knows what the
2 evidence is, has come up here yesterday and told you that
3 suddenly, oh, I forgot to put in my thing that when we were
4 at the Hot Spot getting gas, that's not shown, I turned off
5 the ignition key and to explain -- because he's got to
6 explain again his D.N.A. on that ignition key because what's
7 interesting and when you look at his statement - and I'll get
8 back to those in a second - it's very important.

9 He explains that at some point during the scuffle,
10 remember -- and it's not unusual, ladies and gentlemen, for a
11 defendant to put himself in the less culpable role, to point
12 blame to the other one. That happens every day. Use your
13 common sense. He has to explain the D.N.A. that he knows is
14 on this key.

15 So suddenly now he touched it at the Hot Spot, but under
16 his story still that he has to stick with that somehow
17 Johnathan Holloway from the back seat is able to, while in
18 the middle of a fight for his life, holding a gun in one hand
19 and holding the neck with the other, is somehow able to reach
20 over and get the ignition keys back and then he loses the
21 gun. Does that make sense? Is that credible?

22 Holloway's D.N.A. is not on that key. The victim's
23 D.N.A. is not on that key. So whose D.N.A. would be on that
24 key? The last person to touch it. The swab from the parking
25 brake that he mentions that Holloway grabbed and pulled up at

1 some point in the new version from yesterday, it only has
2 Andrew Decker's D.N.A., not Johnathan Holloway. A number of
3 other items are tested.

4 You will see on here - and I don't need to show you -
5 that Johnathan Holloway's clothing, all of it, tested
6 negative for blood. It does have blood on it, some unknown
7 female, but it doesn't have Andrew Decker's blood.

8 Item 105, this hat. When you go back there, since it
9 does have blood on it, use gloves if you want to look at it.
10 The hat. And what do we found from that? And there's a
11 diagram that will aid you. You can actually still see the
12 stains, this diagram, where exactly the stains come from,
13 what the shape of the stains are generally.

14 Transfer versus spatter. Transfer: Say, like if
15 there's a pool of blood somewhere and you go up and rub
16 against it. It brushes on to the clothing. Generally that's
17 transfer. Transfer doesn't become pin points separated, four
18 of them, maybe one. Four of them? Not just four, excuse
19 me, five drops of blood on the hat which he says he didn't
20 hide in the back of the car. And then he says, well, why
21 would he ask for it? Of course he asked for it back. He
22 knew what was on it. He needed that hat back. He thought
23 he'd talked his way out of it. Dumb? He was home free at
24 that point.

25 The blood was Andrew Decker's - the expert's opinion.

1 They don't dispute it. The minor contributor would have been
2 skin cells on the outside of that hat -- happened to be
3 Kenyatta Bryant. The swab from the underside of the brim:
4 Major contributor, Andrew Decker. It was his blood; that's
5 the testimony. Minor contributor, Kenyatta Bryant. Not
6 Johnathan Holloway. And finally the swab from the inside to
7 see who was wearing it.

8 Ladies and gentlemen, I submit that's not just proof
9 beyond a reasonable doubt. This, and I'll go over the rest
10 of it, based on -- combined with everything else, every piece
11 of forensic evidence in this case, forensic evidence he
12 didn't know about, points to one person being the shooter.
13 But in this case, ladies and gentlemen, under the law, it
14 doesn't matter if Johnathan Holloway shot and Kenyatta Bryant
15 was standing there. If Kenyatta Bryant shot and Johnathan
16 Holloway was standing there, it does not matter. Once they
17 decided to go and commit that robbery, giving him fake drugs
18 for money -- they were both there, and by their own
19 admission, each one of them, they were both actively
20 participating.

21 Now, I'm going to talk to you a little bit about other
22 evidence in the case. You also heard from Major Smith and
23 Investigator Rob Martin, and they are crucial because they
24 did their job and they did it by the book. They advised him
25 of his rights. They made sure his rights were protected.

1 They gave him every opportunity, just as they did Johnathan
2 Holloway, to come forth truthfully. They cannot, however,
3 ladies and gentlemen, force someone to tell the truth. It's
4 his story, his final version, and I submit his version
5 changed over and over.

6 Before I get to that, I want to talk to you just a
7 second about the defense. Kenyatta Bryant got up there and
8 he told yet a separate version of events, and then the
9 defense called -- and, ladies and gentlemen, credibility?
10 Remember, the defense has absolutely no burden in this case.
11 They don't have to put forward evidence, but once they choose
12 to call people up here, then you judge their credibility the
13 same way you do each and every one of the State's witnesses.

14 That is your job, whether or not they're believable or
15 not, and you can't blame these people for wanting to help
16 what little they could. And basically the gist of what we
17 got from Crystal Bethel was that she said she heard Duke, not
18 Duke, excuse me, Cash out there talking to someone. She
19 didn't want to admit that on the stand, but that's what she
20 put in her statement and that she heard him saying something
21 about he's dead. It was a little hard when she was on the
22 stand.

23 And I asked her could it have been Cash asking is he
24 dead? And then I asked her who was he talking to. And she
25 was very vague about that because she didn't want to admit:

1 Is he out there asking Kenyatta Bryant is he dead? That's
2 her boyfriend's brother. She's living with him. She has
3 loyalty to him. She got up here and did the best she could
4 do, and she's not at fault. But does that make sense?

5 And then you heard from Miquan who is his brother, and
6 he got up here and talked about how his best friend was a
7 Blood and how horrible that was. That was the gist of what
8 he knew because that night he had been drinking Lokos, and he
9 took some pills like he does apparently a lot, and he passed
10 out. So he doesn't have any knowledge. This is his best
11 friend up until that night, up until he needs to try to help
12 his brother, and who can blame him? Who can blame these
13 people? That's their brother, their boyfriend's brother.

14 And then you heard from Devontae Bryant, the youngest,
15 who got up here and he wanted to help his brother, and you
16 can't blame him. He gave a statement to the police, so he
17 knew to talk to the police which didn't include the toll
18 phone call. Never came forward, never anything. The last
19 time he talked to his brother was the day before yesterday.

20 You can't blame him, and he did the best he could, but
21 he told you he was telling the truth about what Holloway said
22 to him in the same way he was telling the truth about how his
23 brother was arrested. And it is uncontroverted that his
24 brother, according to his brother's own testimony, turned
25 himself in to the police. The police never came there and

1 arrested him. He wants to help and he -- who can blame him?
2 And he did -- it did ring true when he said, "Would you lie
3 for your brother?" "Yeah, but I'm not lying now."

4 Kenyatta Bryant's statements -- and then I'll be
5 through. The first time he makes any contact with the
6 police, what does he do? And this is ironic because at the
7 same time they're getting up here saying Johnathan Holloway
8 is a liar and you can't believe him; he gave false
9 statements. But you aren't supposed to apply that standard
10 to him. And, by the way, again, Johnathan Holloway is
11 involved in this only because of him, no one else.

12 And why did he need to take Johnathan Holloway that
13 night if all he was going to do was sell fake drugs? Gave a
14 false name, John Riley I think it was. False date of birth.
15 False residence. That's his first contact with the police
16 because at that point he thinks he's gotten away with it, but
17 he's always worried about the phone records.

18 He is picked up in the F-150 by Rob Martin, and he's put
19 into the back seat where ultimately eight days later we
20 recover the hat. He had not spoken with Drew in several
21 months. He then stated he'd had his 917-2658 cell number for
22 two months. He then admitted he lied and had recently spoke
23 with Drew to give Drew his new cell phone number. So at this
24 point he knows -- because he's been confronted with the fact
25 that we've got your phone records and we know you're on --

1 that your 917 -- and that's your number because his
2 girlfriend has already given him up. He knows that.

3 Next statement: He admitted to speaking with Drew about
4 buying crack cocaine. Then his next thing is, yeah, he
5 needed some crack cocaine and I spoke to him, but I told him
6 to go find a man named Mike who lived on Carnegie Street in a
7 trailer with a dog. So at this point he knows he's got the
8 phone records; they've got the phone records. They told him
9 about that. He knows he's caught on that much. So all he
10 does and all he thinks he's got at that point are the phone
11 records.

12 So he basically points to another person in the
13 neighborhood named Mike with a dog. Go get your crack there.
14 The police talk to him again about lying, and at that point,
15 remember, he knows they've got the phone records. He knows
16 it may be going somewhere. He doesn't know what other
17 evidence they've got.

18 So at that point is when he asks the crucial question:
19 If I'm not the shooter, basically if I'm a witness, am I in
20 trouble? And he's told: If you didn't participate in this
21 murder, you won't get in trouble. And he then proceeds to
22 make himself, in his mind, not in the eyes of the law, a
23 nonparticipant.

24 He and Cash were going to sell Drew crack cocaine. He
25 and Cash then got in Drew's Altima. Drew needed change for a

1 hundred-dollar bill, and they went to the Hot Spot. When
2 Drew got out of the car, he got his money and they saw a
3 couple of hundred-dollar bills. When Drew got back in the
4 car, he paid Kenyatta Bryant for the fake crack cocaine and
5 then he went back and the story continued.

6 Kenyatta Bryant and the victim and Cash then went to get
7 this cigar at El Cheapos that he was getting for Cash for
8 some reason. I don't know which drugs that uses. The three
9 then went back to Brady Street. Kenyatta was in the front
10 passenger seat. Cash was in the rear driver seat, and Drew
11 was driving.

12 Cash pulled out a .40 caliber gun - and remember the
13 descriptions in his other statement; I'll get to it in a
14 minute - and held it to Drew's head. Cash also grabbed Drew
15 from behind and placed him in a choke hold. Drew fought
16 back. The gun fell on the floorboard of the driver's seat.
17 Cash grabbed the keys from the ignition from the back seat
18 because, of course, he didn't do anything. Remember, that's
19 very important to their defense.

20 Cash was able, while struggling with Drew from the back
21 seat, according to him, to get the keys out of the ignition.
22 Kenyatta Bryant got out of the car and ran, and he heard a
23 single gunshot as he was running. Didn't see anything,
24 according to that statement.

25 Kenyatta was then taken to the car. Remember? And he

1 admits to doing all this. He said Cash was in the back seat
2 and got out of the car. He pointed his hand with the gun
3 where Drew was. Kenyatta said Cash shot him once in the head
4 and demonstrated it to the officers. He's contradicting
5 himself that day because he's so intent on blaming Cash for
6 what he did that he can't help it. More stories.

7 Statements taken. The police do their job. They let
8 him go because they aren't jumping to conclusions. They're
9 still investigating. And on the way back, it's Captain
10 Smith, not Rob Martin. He doesn't get to get back in the
11 same car, and that's a problem and he knows it, but he thinks
12 he's talked his way out of this because obviously the police
13 believe him because they're releasing him. He wanted his hat
14 back.

15 He gives a written statement, and what's significant in
16 the written statement? This is when all he knows is they
17 have the phone records. There's no D.N.A. There are no
18 fingerprints at this point. He doesn't know of any other
19 evidence they've got. Basically, who were you with at your
20 house when Drew got there? You'll have the entire statement
21 back there with you; okay?

22 Remember, he made corrections, got to change it
23 whichever way he wanted. My homeboy, Cash, not the Blood
24 drug dealer from whom I am scared for my life and my family's
25 life, but my homeboy, Cash, whom he's desperate to distance

1 himself from now.

2 It goes on. I didn't see -- Cash told me he saw a
3 couple of hundreds fall out. So he's in the same car in the
4 front seat, and the hundreds fell out, remember above the
5 rear-view mirror or something, but he didn't see it but Cash
6 sees it because he's got to constantly push it towards Cash.
7 This is Cash. This is Cash.

8 Cash said he's fixing to get his ass. I said, "Man,
9 don't do that shit. I got to get it. I really didn't think
10 Cuz would do that shit." Excuse my language. Drew got back
11 in the car. I gave him the fake dope.

12 On the stand yesterday when asked why was he selling him
13 fake crack: I need the money. I'll do anything for money.
14 He was basically not -- you remember. Don't let me misquote.
15 And that's what this is all about. He needed the money. He
16 doesn't care about Drew. He needed the money.

17 All of a sudden: Give me everything you got. They
18 started struggling. He gets the whole thing. Cash was
19 choking him. Cash also took the key out of the ignition, and
20 remember, this is his opportunity to say anything. He
21 doesn't say anything about how they stopped and he turned off
22 the car and all this stuff. He fails to mention that because
23 at that point he doesn't know his D.N.A. is going to be on
24 those keys. He probably doesn't know that can be done.

25 The key chain fell and then he's trying to -- this is --

1 he's trying to get a key out of his pocket. I later heard
2 him trying to crank up the car when I was running, so I guess
3 he got the spare key out about the time the key chain --
4 Cash's gun fell to the floorboard. So his story is the gun
5 fell to the floorboard, and at that point he and Andrew were
6 in the front seat and Cash is in the back seat, and somehow
7 in this whole -- in his version of events, Cash is able to
8 restrain Decker who is bigger than both of them, hold him and
9 get around to the front of the car and able to get into the
10 car or else I guess he -- he doesn't say he dives over the
11 seat -- to get the gun off the floorboard? Who dropped the
12 gun on the floorboard? What makes sense? He did. And who
13 would have access to it? Not the dude in the back seat.
14 It's going to be him.

15 I saw Cash get out of the car and open up the driver
16 door, and he was fighting with Drew. I kept running. When I
17 got to my back porch, I heard one gunshot. It was loud. And
18 then this is crucial. What does he say he did at that point?
19 I went in and took a shower because he knows they may
20 question everybody in the house, and that's what he did and
21 they might tell the truth.

22 He was acting nervous. I had to do it. I'll see you
23 later. He could see the light on inside his car all night.
24 What kind of gun? Millennium .40, something like that. It
25 was smaller than your gun, but it was similar in shape. It

1 has the name Taurus on there, too. It had two more names
2 after that. It was like Taurus blank blank. And he says he
3 only saw the gun once that day? Whose gun is this?

4 I know we went to the mall on Sunday, this man who in
5 his testimony yesterday he's deathly afraid of, he's
6 threatening his family, but yet he has all this information
7 that he couldn't get from anybody but Johnathan. Then he
8 describes his clothing that he was wearing that night,
9 doesn't have a problem with that because it's gone along with
10 the gun and along with the victim's cell phone.

11 Has Cash talked any more about the murder? Cash said he
12 was nervous. I'm scared to death of him. I don't want
13 anything to do with him. I don't want to be near him. He's
14 a Blood gang member. I was at the phone place on Beltline
15 with Cash. That's not what he said yesterday. They just
16 happened to be walking down to the same area. I even told
17 you that Cash touched the laptop. He puts him in the back
18 seat.

19 When Cash told you he was going to rob Drew, why didn't
20 you get out of the car? He's a Blood gang member. He's got
21 a gun, according to him. I didn't want to walk home.

22 Finally -- and at this point remember, ladies and
23 gentlemen, there are no results from fingerprints. There's
24 no results from D.N.A. There's no results from any of their
25 other stuff. Is there anything else you can add that maybe

1 we haven't asked you directly that you feel is important or
2 you should tell us? No, not right now, but it might come to
3 my mind later, and it did, because then when he's back at the
4 police department after he has turned himself in -- because
5 he thinks he's talked his way out of this. It's not going to
6 stick. He tells them -- he overhears a conversation about a
7 fingerprint being found in the driver window, and he
8 realizes, uh-oh, I need to explain that, too, and that's what
9 he does. Confronted with evidence, I'll explain that.
10 Confronted with evidence, I'll explain that. No, he's not
11 dumb.

12 Kenyatta went back, is his story, to get Drew's cell
13 phone that night, and, ladies and gentlemen, yesterday you
14 heard a whole -- a similar story, but he had kind of tweaked
15 it to explain the evidence, but when asked can you explain
16 why the blood was on his hat, he said: No, I can't. Maybe
17 it got on there when I went back, and his story is he reached
18 over the victim's body to get his phone out of the passenger
19 seat.

20 Kenyatta Bryant counted on the fact that if he just got
21 up there and talked, because he's smart, and if he just came
22 up with a story that minimized his involvement, if he just
23 put himself in the other role or if he just pointed the
24 finger to Johnathan Holloway, that a jury would believe him
25 and not hold him accountable, and he counted on the fact that

1 the police wouldn't do their job, and he counted on the fact
2 that even if Johnathan Holloway came forward and told you
3 what happened that you wouldn't believe him.

4 He's just trashing. He's a Blood member. He's this;
5 he's that. This is his friend, his homeboy, and he counted
6 on the fact that you wouldn't care. Why should the citizens
7 of Richland County care what happens to a drug addict? And
8 he counted on the fact that all that would be argued. His
9 lawyer got up here and argued, muddied the waters. Point
10 blame to Johnathan Holloway. That no jury would convict him
11 for what he did.

12 All we ask, ladies and gentlemen -- and he said it to
13 you earlier: You don't have to do anything. The judge is
14 going to instruct you that what you must do in this case is
15 to take the credible evidence and to apply the law as he
16 gives it to you, and once you do that, ladies and gentlemen,
17 I submit that under any theory in this case - under Kenyatta
18 Bryant's, Johnathan Holloway's, and especially under the
19 physical evidence - he is guilty.

20 Under the law, it doesn't matter. I submit he was the
21 shooter, but under the law it doesn't matter. Once he made
22 the choice to go and commit that crime, to sell that fake
23 crack, under our law the hand of one is the hand of all. All
24 we ask is that you hold him responsible for what he did for
25 his choices. Thank you.

1 **The Court:** All right. Ladies and gentlemen, we went a
2 lot longer than I anticipated, so we're going to take a break
3 before we get into the charge. I'm going to let you step
4 back to the jury room for about 10 minutes. Do not discuss
5 anything about this case. I'll bring you back in just a few
6 minutes.

7 (Whereupon, the jury was excused from open court at
8 11:16 a.m.)

9 **The Court:** All right. Because this went so long, I'm
10 going to -- I'm going to -- we're going to order lunch. So
11 as soon as you get the lunch ordered, let me know and we'll
12 bring the jury in and I'll give them the charge.

13 (Whereupon, a short break was taken.)

14 **The Court:** All right. Let's bring the jury in.

15 (Whereupon, the jury was brought into open court at
16 11:26 a.m.)

17 **The Court:** Madam Forelady and ladies and gentlemen of
18 the jury, the indictment in this case charges the defendant
19 with murder. The indictment alleges that Kenyatta Andre
20 Bryant did in Richland County, South Carolina, on or about
21 March 22, 2010, feloniously, willfully, and with malice
22 aforethought kill one Andrew Decker by means of a gunshot
23 wound to the head and that the said victim died as a
24 proximate result thereof.

25 I remind you that the fact that the defendant was

1 arrested, charged, and indicted in this case is not evidence
2 in the case and cannot be considered by you as evidence of
3 guilt in this case nor does it create any presumption or
4 inference of guilt. The indictment is simply the formal
5 written instrument which contains the charge made against the
6 defendant. It is the formal document by which this case is
7 brought into this court.

8 Now, to this indictment the defendant has entered a plea
9 of not guilty which places upon the State the burden of
10 proving the defendant guilty. A person charged with
11 committing a crime in South Carolina is never required to
12 prove himself innocent. I charge you that it is a vital,
13 important rule of the law of evidence that the defendant in a
14 criminal trial, no matter how great or serious may be the
15 offense for which he is charged, must always be presumed
16 innocent until his guilt has been proven beyond a reasonable
17 doubt.

18 This presumption of innocence remains with the defendant
19 at all times, from the moment of his appearance in the court,
20 throughout the trial, and until the jury has, upon the
21 testimony and the evidence presented, reached a verdict of
22 guilty beyond a reasonable doubt, for it is the solemn duty
23 of the jury if not clearly convinced of the guilt beyond a
24 reasonable doubt to acquit the defendant.

25 So the burden of proof is upon the State to establish by

1 evidence to your satisfaction the guilt beyond a reasonable
2 doubt of this defendant here on trial for the crime of
3 murder. Now, what is a reasonable doubt? A reasonable doubt
4 is the kind of doubt that would cause a reasonable person to
5 hesitate to act. If you have such a doubt as to the guilt of
6 the defendant, then he would be entitled to a verdict of not
7 guilty. Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the defendant's guilt. Reasonable
9 doubt may arise from the evidence which is in the case or
10 from the absence or lack of evidence in the case.

11 To think that a defendant is probably guilty of the
12 circumstance or that the circumstances are suspicious is not
13 enough. You alone must make the determination of whether or
14 not reasonable doubt exists as to the guilt of the defendant.

15 Now, ladies and gentlemen, there are two types of
16 evidence which are generally presented during a trial:
17 Direct evidence and circumstantial evidence. Direct evidence
18 is the testimony of a person who claims to have actual
19 knowledge of a fact such as an eyewitness. It is evidence
20 which immediately establishes the main fact to be proved.

21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact. It is
23 evidence which immediately establishes collateral facts from
24 which the main fact may be inferred. Circumstantial evidence
25 is based on inference and not on personal knowledge or

1 observation.

2 The law makes absolutely no distinction between the
3 weight or value to be given either direct or circumstantial
4 evidence nor is a greater degree of certainty required of
5 circumstantial evidence than of direct evidence. You should
6 weigh all of the evidence in this case. After weighing all
7 the evidence, if you are not convinced of the guilt of the
8 defendant beyond a reasonable doubt, you must find the
9 defendant not guilty.

10 Now, Madam Forelady, members of the jury, under our
11 constitution and laws of South Carolina, you are the finders
12 of facts in this case. I do not have the right to pass upon
13 the facts or even to express any opinion I may have as to
14 those facts nor may I intimate in any way what I think about
15 the guilt or the innocence of the defendant.

16 You are also the sole judges of the credibility and by
17 that I mean the believability of the witnesses who have
18 testified in this case. In passing upon their credibility,
19 you may take into consideration many things such as the
20 demeanor or manner of testifying of the witness, whether the
21 witness had reason to be biased or prejudiced. You can
22 consider whether a witness's testimony was contradicted on
23 the one hand or supported and corroborated on the other hand.

24 You certainly do not determine the credibility or
25 believability by counting the number of witnesses for either

1 side. You may believe a small portion of a witness's
2 testimony and disregard the larger or vice versa. You may
3 believe one witness against many or many against one.

4 Now, you've heard the testimony of witnesses who have
5 special knowledge, skill, experience, training or education
6 in particular professions or occupation who have given their
7 opinions as experts to matters in which they are skilled. In
8 determining the weight to give -- to be given such opinions,
9 you should consider the qualifications and the credibility of
10 the expert and the reason given for that expert's opinion.
11 You are not bound by such opinion. Give it the weight, if
12 any, to which you deem it is entitled.

13 Now, ladies and gentlemen, a person who has a past
14 criminal record is competent to testify in a trial. A person
15 who has pending bad acts may be -- is also competent to
16 testify. A past record or bad acts does not affect the
17 ability of that witness to testify. They may only be
18 considered by you, if at all, in determining the witness's
19 believability. Remember, you're the sole judges of the facts
20 in this case and of the believability of any and all the
21 witnesses.

22 Now, a statement alleged to -- or statement or
23 statements alleged to have been made by the defendant have
24 been admitted into evidence in this case. While the Court
25 has determined that the statements are admissible, I instruct

1 you that you make the ultimate decision of whether or not the
2 defendant made the statements. If the defendant did, in
3 fact, make any statement or statements, you must determine
4 whether the statement or statements were made by the
5 defendant voluntarily and of his own free will. This means
6 that the statement was not caused by pressure, force, fear,
7 threats, coercion or intimidation or by hope or promise of
8 leniency or a reward of any kind.

9 In determining whether a statement was voluntary, you
10 should consider both the characteristics of the defendant and
11 the details of the questioning. Some of the factors that you
12 must consider are the age of the defendant, the defendant's
13 education or lack of education, the defendant's mental
14 ability or capacity, the defendant's intelligence, the
15 defendant's background and environment, the place and length
16 of the detention, the nature of the questioning, and the
17 advice or lack thereof to the defendant of his constitutional
18 rights including, but not limited to, the right to remain
19 silent, that any statement could be used against him in a
20 court of law, the right to have a lawyer present, that if he
21 could not afford a lawyer, a lawyer would be appointed to
22 represent him without any cost and that he could stop making
23 a statement at any time. You must carefully consider all of
24 the surrounding circumstances before you give any weight to
25 any alleged statement.

1 The State has the burden of proving beyond a reasonable
2 doubt that the alleged statement was voluntary. If you've
3 determined it was, you may give the statement any further
4 consideration you deem proper. You must decide what weight,
5 if any, should be given to the alleged statement or
6 statements. If you determine the alleged statement or
7 statements was not the free and voluntary statement of the
8 defendant, then you should not consider that statement or
9 statements at all. All of these things you will consider,
10 ladies and gentlemen, bearing in mind that you should give
11 the defendant the benefit of a reasonable doubt.

12 Now, the same constitution and laws, which make you the
13 finders of facts in this case and of the evidence which I
14 discussed with you previously, make me the sole and only
15 instructor of the law. You must accept as correct the law
16 which I charge and apply to it the evidence as you find it
17 and then reach your verdict. I charge you in this regard:
18 That you should not be concerned about what you think the law
19 ought to be or what you wish the law were but, rather, only
20 what I charge you the law to be.

21 Ladies and gentlemen, the defendant has been charged
22 with murder. The State must prove beyond a reasonable doubt
23 that the defendant killed another person with malice
24 aforethought. Now, what is malice? Malice is defined in the
25 law of homicide as a term of art. It is a technical term

1 importing wickedness and excluding just cause or legal
2 excuse. It is something which springs from wickedness, from
3 depravity, from a depraved spirit, from a heart void of
4 social duty and fatally bent on mischief.

5 Malice is hatred, ill will, or hostility towards another
6 person. It is the intentional doing of a wrongful act
7 without just cause or excuse and with an intent to inflict an
8 injury or under circumstances the law will infer as evil
9 intent. Malice aforethought does not require that malice
10 exist for any particular time before the act is committed,
11 but malice must exist in the mind of the defendant just
12 before and at the time the act is committed. Therefore,
13 there must be a combination of the previous evil intent and
14 the act.

15 Malice aforethought may be expressed or inferred. These
16 terms expressed and inferred do not mean different kinds of
17 malice but merely the manner in which malice may be shown to
18 exist, that is, either by direct evidence or by inference
19 from the facts and circumstances which are proved. Express
20 malice is shown when a person speaks words such as -- which
21 express hatred or ill will for another or when the person
22 prepared beforehand to do the act which was later
23 accomplished. For example, lying in wait for a person or any
24 other acts of preparation going to show that the deed was
25 within the defendant's mind would be express malice.

1 Malice may be inferred from conduct showing a total
2 disregard for human life. Malice may be inferred from
3 willful, deliberate, and intentional doing of an unlawful act
4 without just cause or legal excuse. Malice may arise when
5 the deed is done with a deadly weapon.

6 The law also allows a jury to infer malice if you
7 conclude that the homicide was the proximate direct result of
8 the commission of a felony, and in that regard robbery would
9 be a felony under our law. You can imply that malice existed
10 if a person is in the commission of a felony at the time of
11 the fatal blow. Even if the facts are proven that are
12 sufficient to raise an inference of malice, this inference
13 would simply be an evidentiary act to be considered by you
14 along with all of the evidence in the case, and you must give
15 it such weight as you determine it should receive as to
16 whether or not malice has been proven beyond a reasonable
17 doubt.

18 Madam Forelady and members of the jury, if a crime is
19 committed by two or more people who are acting together in
20 committing a crime, the act of one is the act of all. A
21 person who joins with another to accomplish an illegal
22 purpose is criminally responsible for everything done by the
23 other person which occurs as a natural consequence of the
24 acts done in carrying out the common plan and purpose. If
25 two or more people are together, acting together, assisting

1 each other in committing the offense, the act of one is the
2 act of all or, as is sometimes said, the hand of one is the
3 hand of all.

4 Prior knowledge that a crime is going to be committed
5 without more is not sufficient to make a person guilty of
6 that crime. Mere knowledge that another person is going to
7 commit a crime, even if the defendant is present when the
8 crime is committed, is not sufficient to convict the
9 defendant as a principal. Guilt as a principal is shown by
10 actual or constructive presence at the scene as a result of
11 prior arrangement. Therefore, a finding of a prior arranged
12 plan or common scheme is necessary for a finding of guilt as
13 a principal. The State must prove beyond a reasonable doubt
14 by competent evidence the theory of the hand of one is the
15 hand of all.

16 A principal in a crime is one who either actually
17 commits the crime or is present aiding, abetting, or
18 assisting in committing the crime. When a person does act in
19 the presence of and with the assistance of another, the act
20 is done by both. Where two or more acting with a common plan
21 or intent are present at the commission of a crime, it does
22 not matter who actually commits the crime. All are guilty.
23 The hand of one is the hand of all.

24 Present at the commission of a crime means to be
25 sufficiently near to aid and abet and assist in the

1 commission of the crime. However, mere presence at the scene
2 of the crime is not sufficient to convict one as a principal
3 on the theory of aiding and abetting.

4 Intent is also a necessary element, for there must have
5 been a common design or intent to commit the crime, and the
6 crime must have been committed pursuant thereto with the
7 person aiding and abetting by some overt act. Intent means
8 intending the result which actually occurs, not accidentally
9 or voluntary. Intent may be shown by acts and conduct of the
10 defendant and other circumstances from which you may
11 naturally and reasonably infer intent. The State must prove
12 these elements beyond a reasonable doubt.

13 As I said earlier, mere presence at the scene is not
14 sufficient to prove someone guilty. A defendant's presence
15 where a crime is being committed or mere association with a
16 person who commits a crime does not make a defendant an
17 accomplice or an aider or abettor of the person committing
18 the crime. The burden is on the State to prove every element
19 of the crime charged. If you find after reviewing all of the
20 evidence that the State has proved that the defendant was
21 only present at the scene of the crime but that they have not
22 proved beyond a reasonable doubt any other participation in
23 the crime, then you must find the defendant not guilty. The
24 law is that proof of at the scene of the crime is not
25 sufficient to find someone guilty.

1 I charge you that voluntary intoxication is never an
2 excuse or a defense to a crime. A person who voluntarily
3 renders himself intoxicated by either alcohol or drugs is no
4 less responsible for his acts while in such condition. If
5 the person voluntarily drinks intoxicating liquor or takes
6 drugs or ingests drugs and becomes intoxicated and if while
7 in that condition commits an act which would be a crime if it
8 had been committed by a sober person, the fact of drunkenness
9 would not relieve the intoxicated person from responsibility.
10 Voluntary intoxication of either alcohol or drugs is not an
11 excuse for or a defense to a crime.

12 In order to establish criminal liability, criminal
13 intent is required. For example, the mental state required
14 to be proven by the State for a particular crime might be
15 some purpose, some specific intent, knowledge of certain
16 facts or recklessness. Criminal intent must be proven beyond
17 a reasonable doubt. Criminal intent is always a matter that
18 must be determined by the jury from the circumstances
19 surrounding the situation.

20 There's no way to prove to a mathematical certainty
21 intent. There's no way medical science can digest a person's
22 brain and determine what the person had in mind, so the law
23 says that criminal intent may be inferred from the
24 circumstances shown to have existed. This is how you make a
25 determination of whether or not the element requiring intent

1 was present. Criminal intent is a mental state, a conscious
2 wrongdoing.

3 Madam Forelady and ladies and gentlemen of the jury, you
4 have been selected as fair and impartial jurors, sworn to
5 impartially try and determine the facts of this case, and
6 when you comply with your oath to do so, then no one will
7 have a right to criticize your verdict and you will have
8 fully discharged your duty as jurors. You are to decide this
9 case according to the testimony that you've heard from the
10 lips of the sworn witnesses, along with other evidence
11 introduced in the case.

12 I charge you that as jurors you must decide the issues
13 in this proceeding without bias and without prejudice to any
14 party. You cannot allow yourself to be governed by sympathy,
15 by prejudice, by passion, by public opinion, or by any other
16 arbitrary factor. Both the State and the defendant have the
17 right to expect that each of you will carefully and
18 impartially consider all the -- all of the evidence in this
19 case and that you will follow the law as I have explained it
20 to you.

21 Madam Forelady, ladies and gentlemen of the jury, I have
22 prepared a verdict form here. There are two possible
23 verdicts that you can reach in this case. You should not
24 infer anything by what goes first or what goes second on this
25 verdict form. Something has to go first and something has to

1 go second. The two possible verdicts are, one, we, the jury,
2 unanimously find the defendant, Kenyatta Bryant, guilty of
3 murder or, two, we, the jury, unanimously find the defendant,
4 Kenyatta Bryant, not guilty of murder.

5 As this verdict form says, ladies and gentlemen, your
6 verdict must be the unanimous verdict of all twelve jurors.
7 It cannot been an eleven-one, nine-three, seven-five. It has
8 to be the unanimous verdict of all twelve jurors.

9 Now, Madam Forelady, I'm going to ask when the jury has
10 reached its verdict that you circle that verdict completely,
11 whatever it is, the whole verdict. If it's guilty, circle
12 that whole verdict. If it's not guilty, circle that whole
13 verdict. I'm then going to ask you to sign the verdict form
14 as foreperson of the jury and date the verdict form.

15 When that has been done, if you or someone on the jury
16 will knock on the door, there will be a bailiff seated
17 outside the door. If you will advise the bailiff at that
18 time, we will bring the jury back so that your verdict can be
19 published.

20 Now, in just a moment I'm going to ask all of you but
21 the alternates to step back into the jury room, but I'm going
22 to ask that you not begin deliberations in this case. Before
23 you can do that, I have to review with these attorneys to
24 determine whether they believe I either failed to instruct
25 you in some manner or I incorrectly instructed you. If

1 additional instructions are necessary, I will immediately
2 bring you back and give you those instructions. If not, I
3 will have the bailiff bring to the jury room all of the
4 exhibits that have been introduced into this case, along with
5 this verdict form. At that time you can begin your
6 deliberations.

7 As you know, Madam Forelady and ladies and gentlemen of
8 the jury, we have ordered lunch for you, and the lunch
9 generally takes about an hour to get here. It's probably
10 been -- I guess it was 20 after, so we've probably got about
11 another 35 minutes or so before your lunch gets here.

12 When your lunch gets here, we will knock on the door and
13 your lunch will be distributed to the various members of the
14 jury pursuant to whatever you ordered. You can continue to
15 deliberate and eat your lunch. If y'all want to stop, you
16 can stop and -- and eat your lunch and then resume your
17 deliberations after that.

18 If by some reason you've reached a verdict before then,
19 we can -- we can take your verdict and your lunch can come
20 when -- it will be given to you when you come back. When you
21 have finished this case, we will -- that will be your service
22 for the week, so it's not like we've got to get you back
23 downstairs to put you on another jury for the -- any
24 remaining portion of the week.

25 All right. If y'all will step back to the jury room.

1 Do not begin your deliberations. We will be with you
2 momentarily. Thank you.

3 (Whereupon, the jury was excused from open court at
4 11:49 a.m.)

5 **The Court:** All right. My two alternates, we are going
6 to be able to excuse you.

7 (The alternates were excused from the trial.)

8 **The Court:** All right. Anything from the State with
9 respect to the instructions?

10 **Ms. Campbell:** No, sir.

11 **The Court:** Anything from the defendant?

12 **Mr. Johnson:** Nothing, Your Honor.

13 **The Court:** All right. If you would -- I know we've
14 got, you said, 170 or so, 165 exhibits?

15 **Ms. Campbell:** I think the count was that high. There
16 were a few we didn't offer.

17 **The Court:** There's nothing that we shouldn't send back
18 at this time, is there?

19 **Ms. Campbell:** There's only one that's marked for I.D.
20 which was the fingerprint of the past prior arrest---

21 **The Court:** I'm talking about we don't have a weapon, so
22 we don't have to be concerned about it.

23 **Ms. Campbell:** No.

24 **The Court:** Is there anything that might present any
25 sort of danger to---

1 **Ms. Campbell:** The only thing that we might send back
2 are gloves if they want to look at the hat because it does
3 have blood on it. Just latex gloves.

4 **The Court:** All right.

5 **Ms. Campbell:** Here is some.

6 **The Court:** Do we have -- where is our -- our bailiffs
7 are gone? Go get me a bailiff if you would, Marshall. All
8 right. If you and Mr. Johnson would get -- or Ms. Walker,
9 whoever is familiar with all the evidence, make sure that we
10 have it all accumulated and we can send it back. Get with
11 Ms. Helms. Mr. Dye?

12 **Bailiff:** Yes, sir.

13 **The Court:** When we send this -- all of the evidence
14 back, one of the pieces of evidence -- I think it's in an
15 envelope or something, isn't it?

16 **Ms. Campbell:** (Nodded head up and down.)

17 **The Court:** Is the hat.

18 **Bailiff:** Okay.

19 **The Court:** Instruct the jury that because the hat has
20 blood on it, we will provide them and we can send some gloves
21 back -- gloves if they want to handle the hat.

22 **Bailiff:** All right, sir.

23 **The Court:** I don't know if we need to send 12 pairs,
24 but we've got them, I guess.

25 **Ms. Campbell:** I'll get some gloves down here right

1 away.

2 **The Court:** And Ms. Campbell or Ms. Walker is going to
3 see to it that the evidence, along with Mr. Johnson, is all
4 put together so that -- with Ms. Helms and we'll wait and see
5 what happens.

6 **Ms. Campbell:** Your Honor, one housekeeping matter is I
7 think it's item number 164 -- there were two 164's, and we've
8 marked one of them as 164-A for the record.

9 **The Court:** Mr. Dye, here is the verdict form, if Mr.
10 Johnson and Ms. Campbell want to see it.

11 (Whereupon, the jury began deliberating at 12:03 p.m.)

12 **The Court:** We've got to get the defendant. Where
13 would---

14 **Mr. Johnson:** They've gone to get him now, Your Honor.

15 **The Court:** Okay.

16 (Pause in proceedings.)

17 **The Court:** All right. I received a note from Ms.
18 Harris who is the forelady of the grand -- of the jury and
19 she -- and I've shown it to I think Ms. Campbell and Mr.
20 Johnson, but it's -- they asked, "Can we get the full
21 definition of the hand of one is the hand of all?" My guess
22 is they're asking if they can have something in writing, and
23 I will have to tell them that we can't do that, but I will
24 recharge them if that's what they want and, if it is, I'll
25 recharge them. Mr. Dye, could you bring the jury in?

1 **Bailiff:** Yes, sir, Your Honor.

2 **The Court:** Anything from the State---

3 **Ms. Campbell:** No, sir.

4 **The Court:** ---before we bring them in? Mr. Johnson,
5 anything before we bring them in?

6 **Mr. Johnson:** I have nothing.

7 (Whereupon, the jury was brought into open court at
8 12:33 p.m.)

9 **The Court:** All right. Madam Forelady, I received your
10 note where you asked, "Can we get the full definitions of the
11 hand of one is the hand of all?" I'm not -- if you're asking
12 can I give you a written definition of that, I cannot give
13 you anything in -- anything in writing as to the charge. If
14 you would like me to recharge you the hand of one versus the
15 hand of all -- the hand of one is the hand of all, I'll be
16 happy to do that if that's what you'd like.

17 **Forelady:** Yes, sir.

18 **The Court:** All right. If a crime is committed by two
19 or more people who are acting together in committing a crime,
20 the act of one is the act of all. A person who joins with
21 another to accomplish an illegal purpose is criminally
22 responsible for everything done by the other person which
23 occurs as a natural consequence of the acts done in carrying
24 out the common plan and purpose. If two or more people are
25 together, acting together, assisting each other in committing

1 the crime, the act of one is the act of all or as is
2 sometimes said, the hand of one is the hand of all.

3 Prior knowledge that a crime is going to be committed
4 without more is not sufficient to make a person guilty of
5 that crime. Mere knowledge that another person is going to
6 commit a crime, even if the defendant is present when the
7 crime is committed, is not sufficient to convict the
8 defendant as a principal. Guilt as a principal is shown by
9 actual or constructive presence at the scene as a result of
10 prior arrangement. Therefore, a finding of a prior arranged
11 plan or common scheme is necessary for a finding of guilt as
12 a principal. The State must prove beyond a reasonable doubt
13 by competent evidence the theory of the hand of one is the
14 hand of all.

15 A principal in a crime is one who actually commits the
16 crime or who is present aiding, abetting, or assisting in
17 committing the crime. When a person does an act in the
18 presence of and with the assistance of another, the act is
19 done -- the act is done by both. Where two or more acting
20 with a common plan or intent are present at the commission of
21 a crime, it does not really matter who actually commits the
22 crime. All are guilty. The hand of one is the hand of all.

23 Present at the commission of a crime means to be
24 sufficiently near to aid and abet and assist in the
25 commission of the crime. However, mere presence at the scene

1 of a crime is not sufficient to convict one as a principal on
2 the theory of aiding and abetting. Intent is also a
3 necessary element for there must have been a common design or
4 intent to commit the crime, and the crime must have been
5 committed pursuant thereto with the person aiding and
6 abetting by some overt act.

7 Intent means intending the result which actually occurs,
8 not accidentally or involuntarily. Intent may be shown by
9 acts and conduct of the defendant and other circumstances
10 from which you may naturally and reasonably infer intent.
11 The State must prove these elements beyond a reasonable
12 doubt. Is that sufficient for you, Madam Forelady?

13 **Forelady:** Yes, sir.

14 **The Court:** All right. Your lunch is here and we will
15 deliver it to you immediately. If you'll step back to the
16 jury room and resume your deliberations, we would appreciate
17 it.

18 (Whereupon, the jury resumed deliberations at 12:38
19 p.m.)

20 **The Court:** All right. Anything from the State with
21 respect to the note from the jury?

22 **Ms. Campbell:** Beg the Court's indulgence. No, sir.

23 **The Court:** Anything from the defendant?

24 **Mr. Johnson:** Nothing from the defendant, Your Honor.

25 **The Court:** I will make this note a court exhibit. Is

1 this number 1? Court exhibit number 1.

2 (Court's exhibit 1 was marked for identification only.)

3 **The Court:** All right. It's been reported that the jury
4 has reached a verdict. I want to caution everybody in the
5 courtroom that I don't want any kind of outburst or any kind
6 of behavior that I would find unacceptable in any way when
7 this verdict is published. If so, I will deal with you
8 accordingly. Mr. Whittle, can somebody bring the jury in,
9 please?

10 (Whereupon, the jury returned to open court with a
11 verdict at 2:35 p.m.)

12 **The Court:** All right. Madam Forelady, it's been
13 reported that the jury has reached a verdict?

14 **Forelady:** Yes, Your Honor.

15 **The Court:** Is it the unanimous verdict of all 12
16 jurors?

17 **Forelady:** Yes, sir.

18 **The Court:** All right. Would you hand the verdict form
19 to the bailiff, please, ma'am?

20 **The Clerk:** The State of South Carolina, county of
21 Richland. The State versus Kenyatta Andre Bryant, indictment
22 2010-GS-40-1103. We, the jury, unanimously find the
23 defendant, Kenyatta Bryant, guilty of murder, signed by the
24 foreperson, number 120, on June 23rd, 2011. Madam Forelady,
25 is this -- is this your verdict and the verdict of the entire

1 jury?

2 Forelady: Yes, it is.

3 The Court: All right. Anything from the State with
4 respect to the jury?

5 Ms. Campbell: No, sir.

6 The Court: Anything from the defendant?

7 Mr. Johnson: Your Honor, I ask that you poll the jury.

8 The Court: Madam Clerk, if you would poll the jury.

9 The Clerk: Ladies and gentlemen of the jury panel, when
10 I call your number, I'm going to ask you two questions. If
11 you would just answer to those two questions. Number 120,
12 was this your verdict?

13 Juror 120: Yes, it was.

14 The Clerk: Is it still your verdict?

15 Juror 120: Yes, it is.

16 The Clerk: Number 58, was this your verdict?

17 Juror 58: Yes.

18 The Clerk: Is it still your verdict?

19 Juror 58: Yes.

20 The Clerk: Number 244, was this your verdict?

21 Juror 244: Yes.

22 The Clerk: Is it still your verdict?

23 Juror 244: Yes.

24 The Clerk: Number 227, was this your verdict?

25 Juror 227: Yes.

1 **The Clerk:** Is it still your verdict?

2 **Juror 227:** Yes.

3 **The Clerk:** Number 56, was this your verdict?

4 **Juror 56:** Yes.

5 **The Clerk:** Is it still your verdict?

6 **Juror 56:** Yes.

7 **The Clerk:** Number 290, was this your verdict?

8 **Juror 290:** Yes.

9 **The Clerk:** Is it still your verdict?

10 **Juror 290:** Yes.

11 **The Clerk:** 201, was this your verdict?

12 **Juror 201:** Yes.

13 **The Clerk:** Is it still your verdict?

14 **Juror 201:** Yes.

15 **The Clerk:** Number 202, was this your verdict?

16 **Juror 202:** Yes.

17 **The Clerk:** Is it still your verdict?

18 **Juror 202:** Yes.

19 **The Clerk:** Number 275, was this your verdict?

20 **Juror 275:** Yes.

21 **The Clerk:** Is it still your verdict?

22 **Juror 275:** Yes.

23 **The Clerk:** Number 235, was this your verdict?

24 **Juror 235:** Yes.

25 **The Clerk:** Is it still your verdict?

1 **Juror 235:** Yes.

2 **The Clerk:** 164, was this your verdict?

3 **Juror 164:** Yes.

4 **The Clerk:** Is it still your verdict?

5 **Juror 164:** Yes.

6 **The Clerk:** Number 223, was this your verdict?

7 **Juror 223:** Yes.

8 **The Clerk:** Is it still your verdict?

9 **Juror 223:** Yes.

10 **The Clerk:** The jury has been polled, Your Honor.

11 **The Court:** All right. Ladies and gentlemen of the
12 jury, I thank you very much for your service in this case.
13 These are not easy cases. They require a lot of thought and
14 work, and we could not operate without members of our
15 community participating in this process. As you can see, you
16 are the fact finders. You decide these cases. We could not
17 operate without your doing so.

18 (Whereupon, the jury was excused from the trial at 2:39
19 p.m.)

20 **The Court:** All right. Are we ready? I tell you what
21 we might do. I don't know whether any of them want to come
22 back. We might give them five minutes.

23 **Ms. Campbell:** We need to do some paperwork, if that
24 suits you, Your Honor.

25 (Pause in proceedings.)

1 **The Court:** All right. We got the paperwork on the
2 sentencing? I'm ready. Are you ready? Have y'all done the
3 paperwork?

4 **Mr. Johnson:** Yes, sir.

5 **The Court:** All right. Mr. Bryant, as you know, we were
6 here -- spent the week here and you went through a trial, and
7 the jury has found you guilty of the offense of murder. So
8 we're going to go forward with the sentencing. Madam
9 Solicitor, anything you want to say at this---

10 **Ms. Campbell:** Your Honor, as far as his prior record,
11 he had no adult convictions. I know he did have a juvenile
12 record, but I think it was for things like disturbing schools
13 and things of that nature. Your Honor, family members are
14 here today, and I know at least one family member wants to
15 address the Court at the appropriate time. And I didn't know
16 if you wanted -- are you doing any motions?

17 **Mr. Johnson:** Your Honor, I just -- the motion would be
18 for a judgment not -- a judgment notwithstanding the verdict,
19 Your Honor. I do not think the State has met its burden, and
20 I ask that you reconsider the sentence.

21 **The Court:** All right. Well, you know, basically a
22 J.N.O.V. is the same thing. It's a post-trial directed
23 verdict, and you made two of those at the end of the State's
24 case and at the end of your case, and I assume your J.N.O.V.
25 is on the same basis that they -- that you made it earlier,

1 the same reasoning that they failed to meet the burden that
2 would be required under a -- under a directed verdict. And,
3 again, I think that there was sufficient evidence to submit
4 this case to the jury.

5 As you pointed out in your case, Mr. Johnson, it really
6 came down to who was the jury going to believe in terms of
7 this case. Were they going to believe your client when he
8 denied that he had anything to do with the shooting and then
9 exited the situation before it ever got to that point? Which
10 I think is what he claimed when he testified on the stand.
11 Or were they going to believe Mr. Holloway and the forensic
12 evidence that they had in support of Mr. Holloway's
13 testimony? And clearly they believed the State's case in the
14 case, and so I'm going to deny your motion.

15 Mr. Johnson: Thank you, Your Honor.

16 The Court: All right.

17 Ms. Campbell: Your Honor---

18 The Court: Anything else you want to tell me?

19 Ms. Campbell: ---I think Mrs. Decker wants to address
20 the Court. This is the victim's mother, Your Honor.

21 The Court: Am I going to be able to hear her from
22 there? Ma'am, I'm going to need to be able to hear you.
23 Okay?

24 Ms. Decker: Okay.

25 The Court: So if you feel like your voice is weak, I

1 can move you down here by---

2 **Ms. Decker:** I'm okay. I'm just trying to speak. I
3 just wanted to say that Drew is not just a victim murdered in
4 a car. Drew---

5 **The Court:** Ma'am, I'm having a difficult time
6 hearing -- I hate that you have to do that but...

7 **Ms. Campbell:** That won't reach.

8 **The Court:** All right. First thing, could you tell me
9 your name?

10 **Ms. Decker:** Laura Decker.

11 **The Court:** Laura Decker?

12 **Ms. Decker:** (Nodded head up and down.)

13 **The Court:** All right. Ms. Decker? You need to speak
14 into that mic because I'm having a hard time hearing you
15 from... I'm old and I've got...

16 **Ms. Decker:** Drew is not just a victim murdered in a
17 car. He wasn't just a guy buying some drugs. He was our
18 son, a brother, a grandson, and a best friend. He was dearly
19 loved. Due to events and the age of his grandparents - both
20 of his grandparents are alive - we requested that they not be
21 here or we would have more family present.

22 Drew was funny. He was handsome. He was charming and
23 made friends easily. He loved his dog. He loved to go to
24 the river here. He loved the beach. He was intelligent. He
25 traveled to five countries in Europe. He spoke fluent

1 French.

2 His passion was computers. He worked on computers. He
3 was a Cisco Certified Network Administrator, and he wasn't
4 your typical kid who laid around playing video games. He
5 watched The Discovery Channel, The History Channel, National
6 and Video Graphic. You didn't ever want to get in an
7 argument because he knew just about everything except opera,
8 and he didn't care about that.

9 We're robbed of our son, ever seeing him fulfill future
10 goals, become a husband, become a daddy, and carry on with
11 the family name. He was our only son. He was loving. He
12 was sweet, and we dearly miss him.

13 Before I ever open my eyes, the first thought every day
14 is Drew is gone, and it never leaves you. It's heart-
15 wrenching to know that he fought hard for his life and that
16 he sat alone, aware that he had the taste of blood in his
17 mouth. He knew that he was dying, and no one -- no one
18 helped him. No one called the police. We live with that, to
19 know that nobody in the neighborhood ever picked up a phone
20 and called.

21 His funeral was the day before his 24th birthday. His
22 family will get to see the defendant or talk to him. They'll
23 have visitation and on his birthday. We'll never have any
24 family birthdays, holidays. We'll never have that chance
25 again.

1 We accept the position of the Court to punish him. I
2 hope it will fit the severity of what he's done to take a
3 life, casually walk away and go walk around with his dude the
4 next day. We just hope that the Court will punish him to the
5 severity, and what he doesn't get on this earth he will stand
6 before another Judge one day.

7 **The Court:** Thank you, ma'am. Anything else, Madam
8 Solicitor?

9 **Ms. Campbell:** Beg the Court's indulgence. His sister
10 is also present, Your Honor, I believe, but she does not wish
11 to address the Court.

12 **The Court:** Tell me your name, please. Deputy, let me
13 get you to... Tell me your name.

14 **Kelly Decker:** Kelly Decker.

15 **The Court:** Anything you want to say?

16 **Kelly Decker:** No.

17 **The Court:** All right. Thank you.

18 **Kelly Decker:** Thank you.

19 **The Court:** Ma'am?

20 **Ms. Campbell:** She doesn't have anything to add.

21 **The Court:** All right. Anything else from the State?

22 **Ms. Campbell:** No, sir.

23 **The Court:** All right. Mr. Johnson, anything?

24 **Mr. Johnson:** Yes, sir. Your Honor, Kenyatta's mother
25 is here. She would like to address the Court.

1 **The Court:** Sure.

2 **Mrs. Bryant:** Your Honor, no, I don't know how the
3 victim's family feels. My condolences goes out to them, but
4 also Kenyatta was never a troubled child. I raised him from
5 day one by myself as a single parent, and when I heard about
6 this, I was surprised. He never got in any trouble. The
7 little incidences that he did in school, it was something an
8 average child would do.

9 But when I heard what happened, knowing that their son
10 has been around Kenyatta for so many years, I could not
11 believe it either, but on the Court I wish y'all would show
12 mercy on my son. I'm not saying he's right for what he have
13 done. I'm not saying that at all and, no, I don't know how
14 they feel; I don't. No, they're not going to be able to see
15 their son on birthdays or see him with a child or a wife; I
16 know that. But also I know my son as any mother. I also
17 feel bad also; I really do. And I'm so sorry, but this is my
18 first child. This is my oldest child. He have three other
19 brothers, and I know -- please, Judge, just show mercy on
20 him, please. I'm so sorry.

21 **The Court:** Thank you, ma'am.

22 **Mr. Johnson:** Your Honor, as stated before, Kenyatta is
23 22 years old. He has no prior record. The full time that
24 I've dealt with Kenyatta over the last year or so, he's been
25 fully cooperative. I think -- I understand that the charges

1 carry a mandatory minimum of 30 years which is severe. I
2 know that you have the leniency to do 30 or more. I ask you
3 to consider the leniency side and sentence him to the minimum
4 of the 30 years.

5 **The Court:** Anything you want to say, Mr. Bryant?

6 **Mr. Bryant:** No, sir.

7 **The Court:** Well, you know, this case is sad, really
8 sad. You had three young people that just -- one of them is
9 deceased and two of them's lives have been destroyed. You
10 see who is hurt, not just you, not just Mr. Decker, but their
11 family.

12 **Mr. Bryant:** Yes, sir.

13 **The Court:** Your family.

14 **Mr. Bryant:** Yes, sir.

15 **The Court:** Your friends. All because of some random
16 act where y'all decide you're going to go sell fake drugs and
17 it goes from there and somebody ends up dead. You and Mr.
18 Holloway. I don't know what the magic number is to give you:
19 Life imprisonment, 30 years, something in between. But I
20 believe you are guilty. I believe the State's evidence, and
21 the jury did right, and you've got to be punished. And
22 unfortunately when you take a life, the punishment is severe.

23 Now, I'm going to give you an opportunity to get out
24 sometime in life, but you're going to be there a long time.
25 You're going to be an old, old man when you get out, but you

1 have some reason to behave yourself when you're in the
2 department of corrections so that you do get out because if
3 you don't, you'll spend the rest of your life in the
4 department of corrections.

5 Sentence of this Court: You be committed to the State
6 department of corrections for a term of 45 years, plus costs
7 and assessments as applicable.

8 Mr. Johnson: Thank you.

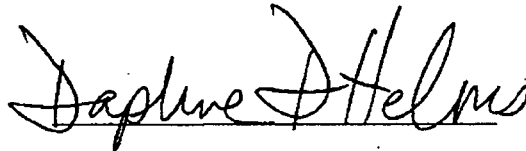
9 (Whereupon, the proceedings were concluded.)

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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had (of the portion that was requested) and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 20th through 23rd of June, 2011.

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

January 26, 2012

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

Daphne D. Helms, court reporter

5739

FORM 5

2012 CP 400 7146

STATE OF SOUTH CAROLINA

County of Richland

Kenyatta Andre Bryant*

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION REVIEW

2012 OCT 22 PM 3:43
JEANETTE W. MCBRIDE
Clerk, C.O.P. & G.S.

RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Broad River Correctional Institution
~~Perry Correctional Institution, 4200 Carolina~~
~~Road, P.O. Box 2, 29669~~ Correction: 4460 Broad River Road, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence General Sessions
Court for Richland County
3. Name(s) of co-defendant(s) (if any) Johnathan Holloway
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-40-1103 (murder)
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 23, 2011 (Forty-five years)
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Applicant Dismiss Direct Appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial Counsel
- (b) 11
- (c) 11
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to object to a Constructive amendment of applicants indictment
- (b) Counsel failed to object to a constructive amendment - mandatory-presumption Jury charge
- (c) Counsel failed to object to Court's failure to instruct on elements of robbery charge, etc. . .
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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) They are exclusively Post-Conviction Relief (PCR) Claims
 (b) u
 (c) u

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Charlie Johnson, Esquire,
 ii. Susan B. Hackett
 iii.

(b) the proceedings at which each such attorney represented you:

i. Trial
 ii. Direct Appeal
 iii.

19. State clearly the relief you seek in filing this application:

That my conviction and sentence be reversed, vacated,
and dismissed with prejudice

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Kenyatta Andre Bryant, SCDC # 346659, 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.

Kenyatta Bryant

SWORN to and subscribed before me this 18th
 day of October, 2012.
Aaron H. Zige (L.S.)
 Notary Public

My Commission Expires:

My Commission Expires
March 5, 2018

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

I, Kenyatta Andre Bryant, SDC #, 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.

Kenyatta Bryant
Applicant

SWORN or affirmed to and subscribed before me this
18th day of October, 2012

Jessan H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

RICHLAND COUNTY
 FILED
 2012 OCT 22 PM 3:43
 JEANETTE W. MORRIS
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Kenyatta Andre Bryant,)

Applicant,)

v.)

State of South Carolina,)

Respondent,)

IN THE COURT OF COMMON PLEAS

Case No: _____

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST-CONVICTION
RELIEF

COME NOW, the applicant, above-named, presents the Memorandum of Law in Support of Application for Post-Conviction Relief (PCR) and would ask the Honorable Court the following.

RICHLAND COUNTY
FILED
2012 OCT 22 PM 3:43
JEANNETTE WOODBRIDGE
C.C.P. & S.

STATEMENT OF THE CASE

The applicant was indicted along with a codefendant, Johnathan Holloway, by the Richland County Grand Jury for murder (2010-GS-40-1103) during the April 14, 2010, term of General Sessions Court. He was represented by Charlie Johnson, Esquire, and the State was represented by Kathryn "Luck" Campbell, Esquire, and Meahan Walker, Esquire, of the Richland County Solicitor's Office. The applicant went to trial on June 20-23, 2011, before the Honorable James Barber, III, Judge, and jury. The jury found him guilty of murder, and Judge Barber sentenced him to forty-five (45) years. A timely appeal was filed on applicant's behalf.

On appeal the applicant was represented by Susan B. Hackett of the Division of Appellate Defense. The South Carolina Court of Appeals _____ the appeal in Op. No. _____

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to a constructive amended of his indictment and charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on trial court's lack of jurisdiction to convict and sentence him for a common law felony murder.

To establish a claim of ineffective assistance of trial counsel, a post-conviction relief (PCR) applicant has the burden of proving that counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability that the results at trial would have been different; a "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. Edmond v. State, 534 S.E.2d 692 (S.C. 2000).

In this case the applicant was charged with common law "felony murder" in a single-count indictment which alleged the offense as follows:

Kenyatte Andre Bryant did in Richland County, South Carolina, on or about March 22, 2010, "feloniously", wilfully and with malice aforethought kill one Andrew Decker by means of a gunshot wound to the head and the said victim died as a proximate result thereof.
Tr. p. 113, L. 11-17.

In particular, the applicant points out that he was not charged with any other felony in a separate indictment regarding the murder offense. Also, since it will be so important against the standard for judging allegations sufficient for his common law "felony murder" charge, our South Carolina Statutory law states, in relevant part, the following:

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegation as to time and place,...charges the crime substantially in the language "of the common law...so plainly that the nature of the offense charged may be easily understood..." S.C. Code, §17-19-20. Emphasis added.

Notwithstanding, the applicant contends that both the solicitor and judge constructively amended a "robbery offense" to his felony murder charge and indictment during the trial and jury charge in his case. A constructive amendment occurs when either the government (usually during its presentation of evidence and/or closing argument) and the court (usually during its jury instructions) or when both the government and court broaden the possible basis for conviction beyond those presented by grand jury. See, e.g., U.S. v. Floresca, 39 F.3d 706 (4th Cir 1994).

As previously stated, the applicant was charged in a single-count indictment with

"common law felony murder", and the State did not charge or indict him for any other felony in connection with the felony murder offense. Consequently, during its opening statement to jury, the solicitor informed the jury that the state would prove that the applicant committed the felony murder during a robbery offense. Tr. p. 127, L. 9-25.

During the trial and the solicitor's direct examination of applicant's alleged Codefendant, Johnathan Holloway, the solicitor presented evidence that the applicant and Holloway planned to sell the victim fake drugs as a pretense to actually "rob the victim for his money". Tr. p. 270-291. In addition, during the State's closing, the solicitor made numerous references to its presentation of its robbery evidence to persuade the jury that it could convict the applicant of felony murder if it found that the State had proved that committed the murder during the robbery. Tr. p. 651, L. 14-21; Tr.p. 652, L. 9-13; Tr.p. 653, L. 16-21; Tr.p. 654, L. 1-9; Tr.p. 655, L. 11-19; Tr.p. 657, L. 1-16; Tr.p. 671, L. 16-19.

Following the solicitor's closing argument, the Judge again reminded the jury of the felony murder offense charged in applicant's indictment. Tr.p. 705, L. 17-24. The judge went on to instruct the jury, in relevant part, that it must accept as correct the law as he charge it and apply it to the evidence as it find and then reach its verdict. Tr.p. 711, L. 12-17. Afterward, the judge charged the jury on felony (robbery) murder consistent with the solicitor's presentation of evidence and closing argument as follows:

The law allows a jury to infer malice if you conclude that the homicide was the proximate direct of the "commission of a felony" and in that regard "robbery" would be a felony under our law. You can imply that malice existed if a person is in the commission of a felony at time of the fatal blow. Even if the facts are proven that are sufficient to raise an inference of malice, this inference would simply be an evidentiary fact to be consider by you along with all of the evidence in the case, and "you must" give it such weight as you determine it should receive as to whether or not malice has been proven beyond a reasonable doubt. Tr.p. 713, L. 6-17.

Here, as evidenced by the State's presentation of its evidence and closing argument,

1. It is important to judicially note that at no time during the judge's jury charge did he instruct the jury on the elements of the amended robbery offense.

along with the judge's jury charge, the robbery offense was never "plainly stated" in any presentment of an indictment by a grand jury, but rather was amended to applicant's applicant's felony murder indictment after the jury had been impaneled and sworn. S.C. Code, §17-19-20, Supra; S.C. Code, §17-19-100 (Amendment of Indictment).

With regards to such an amendment as that in applicant's case, the U.S. Supreme Court has held that after an indictment has been presented its charges may not be broadened through an amendment except by grand jury itself. Strone v. United States. In Strone's case, the offense proved at trial was not "fully contained" in his indictment, for trial evidence had "amended his indictment" by broadening the possible basis for his conviction from that which appeared in his indictment. The Court held that "although the trial court did not permit a formal amendment to Strone's indictment the effect of what it did was the same, and the additional charge was neither trivial, useless, nor innocuous." 361 U.S. at 219, 80 S.Ct. at 274.

The Court went on to hold that while there was a variance in the sense of a variation between the pleading (indictment) and the proof (at trial), that variation destroyed Strone's substantial right to be tried only upon charge presented in an indictment returned by a grand jury. The Court further held that "a deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless", quoting Berger v. United States, 295 U.S. 79, 92, 55 S.Ct. 622 (citing Ex parte Bain, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed 849 (1887)).

In addressing such an amendment as that in Strone, our S.C. Supreme Court in State v. Lynch, 517 S.E.2d 331 (S.C. App. 2001), held that the trial court lost subject-matter jurisdiction over Lynch's first degree burglary charge when it permitted State, at out set of trial, to amend the indictment to replace words "in the hours during darkness" with "caused physical injury", and amended aggravating circumstances was never presented to grand jury. The Court has also held that an amendment to an indictment may deprive the court of jurisdiction even if it does not change the nature of, or penalty for, offense. See Weinhauer v. State, 513 S.E.2d 840 (1999). It is important to note here that while our Supreme Court in Gentry v. State, 510 S.E.2d 610 (2005), overruled the holding in Lynch, it only done so to the extent that an insufficiently stated charge in an indictment would affect the court's jurisdiction to try such a case absent an objection before the jury is impaneled and sworn.

In fashioning a remedy to correct a constructive amendment such as that complained of by the applicant in this case, our Supreme Court has held that an applicant may move for a verdict in arrest of judgment and entry of judgment of acquittal based on the insufficiency of the indictment or some other fatal defect appearing on the face of the record. See State v. Fallin, 573 S.E.2d 912 (S.C.App. 2002); State v. Taylor 559 S.E.2d 917 (S.C.App. 2001), citing State v. Brown, 23 S.E.2d 381 (1942). The

applicant asserts that the amended robbery offense is a fatal defect that appears on the face of his record in his case.

The applicant finally submits that given the decisions by both the U.S. Supreme Court and S.C. Supreme Courts regarding constructive amended indictments, given the fact that an unindicted robbery offense was constructively amended to his felony murder indictment during the State's presentation of its evidence and during the court's jury charge, his trial counsel's failure to object to such amendment and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the court's lack of jurisdiction to convict and sentence him for a "felony (robbery) murder was ineffective assistance of counsel that was per se prejudicial." Edmond, Supra, accord Strickland v. Washington, 104 S.Ct. 2052 (1984).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's omission of any jury charge on the elements of a robbery offense in his case.

To prove ineffective assistance of counsel, a defendant must establish that his counsel's performance was deficient and that deficient performance prejudiced his defense. Battle v. State, 409 S.E.2d 400 (S.C. 1991).

In applicant's case, the court constructively amended a robbery offense to his felony murder indictment. Consequently, the court failed to instruct the jury on any elements of the robbery offense², but nonetheless instructed the jury that it had to consider the robbery to prove the "intent" element to convict the applicant of the felony murder charged in his indictment.

Since there was no instruction on the element for proof of the robbery offense presented and charged in applicant's case, trial counsel was ineffective for failing to request such instruction and that failure was per se prejudicial. See Hudgins v. Moore, 524 S.E.2d 105 (S.C. 1995).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's constructive amended-mandatory presumption jury charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the trial court's lack of jurisdiction to convict and sentence him for common law felony murder.

². Robbery is defined as the felonious or unlawful taking of money, goods or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Bland, 457 S.E.2d 411 (1995).

As it will be so important against the standard for which to judge applicant's claim in this instance, he will again point out that he was not indicted for any robbery offense. To begin with, in State v. Norris, 329 S.E.2d 339 (S.C. 1985), a case in which the defendant Norris was charged ~~and indicted~~ for felony murder and criminal sexual conduct (CSC), the Court took the opportunity in that case to remind the Bench and Bar of the proper felony murder jury charge as follows:

The law says if one intentionally kills another during the commission of a felony, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive as to whether or not malice has been proven beyond a reasonable doubt. Id. at 329 S.E.2d 343.

By comparison, the judge in applicant's case charged the jury as follows, in relevant part, on his felony murder offense:

Court: The law also allows a jury to infer malice if you conclude that the homicide was the proximate direct result of the commission of a felony, and in this regard "robbery" would be a felony under our law. You can imply that malice existed if a person is in the commission of a felony at the time of the killing. If the facts are proven that are sufficient to raise an inference of malice, this inference would simply be an evidentiary fact to be considered by you along with all of the evidence in the case, and you must give it such weight as you determine it should receive as to whether or not malice has been proven beyond a reasonable doubt. Tr.p. 713, L. 6-17.

The applicant reiterates that he was not charge or indicted by a grand jury for any robbery offense; therefore, the judge's charge on the robbery offense constructively amended this offense to his indictment in violation of his right to be tried only on offense presented by a grand jury. S.C. Const. Art. I, §11; S.C.

3. The judge did not instruct the jury at any time that the State had to first prove the "predicate fact" of the (amended) robbery offense beyond a reasonable doubt before it could consider it as proof of elemental fact of malice necessary to convict applicant of felony murder.

Code, §17-10-10; Florence, Supra, Strone, Supra. He next contends that the recommended, permissive malice, jury charge in Norris can be interpreted to charge the jury, in relevant part, as follows: a jury may imply malice if one intentionally kills another during commission of a felony (CSC)....If (predicate facts of CSC) are proved "beyond a reasonable doubt" sufficient to raise an inference of malice to jury's satisfaction..."and jury may give it (inference of predicate facts of CSC) such weight...as jury determine it should receive as to whether or not malice (elemental fact of intent for conviction of felony murder) has been proven beyond a reasonable doubt.

By analogy, the applicant contends that the constructive amended-mandatory presumption jury charge in his case can be interpreted to charge the jury, in relevant part, as follows: The law allows the jury to infer malice if the jury concludes that the homicide was the proximate direct result of the commission of a (amended) robbery offense...."You can" imply malice existed if (defendant) was in commission of a (amended) robbery offense at time of fatal blow. Even if (predicate) facts of the (amended) robbery are (presumed) proven along with other evidence sufficient to raise an inference of malice...."You must" give it (presumed facts of amended robbery offense) and other evidence such weight as to whether or malice (elemental fact of intent for conviction of felony-robbery murder) has been proven beyond a reasonable doubt.

With regards to applicant's claim in this instance, the Courts have held that a "constructive amendment" occurs when the trial evidence and judge's charge broadens the possible basis for a defendant's conviction by the addition of an unindicted offense. Strone, Supra, Lynch, Supra. In addition, the U.S. Supreme Court has further held that a "mandatory presumption" occurs when a jury charge creates a "mandatory presumption" on the element of "intent" for crime charged. In reaching this decision, the Court held that a mandatory presumption deprives a defendant of due process because it is susceptible to an interpretation that removes the prosecution's burden of proving the "element of intent beyond a reasonable doubt". See, e.g. Francis v. Frankland, 471 U.S. 307 (1985); Sandstrom v. Montana, 442 U.S. 358 (1979); See also, In re Winship, 397 U.S. 358 (1970)(holding that...Due Process Clause of Fourteenth Amendment protects accused against conviction except upon proof of every fact necessary to constitute crime for which he is charged).

As a threshold matter, the State might argue that any errors in the judge's mandatory presumption jury charge on the proof of the predicate fact of the (amended) robbery offense was cured by the Court's correct jury charge on the "hands of one is the hands of all" theory. If so, the applicant submits that any reliance on the "hand of one is the hand of all" theory would be misplaced. First, it would be misplaced the "common design" and (amended) robbery charged in the mandatory presumption jury charge are one and the same. Second, the U.S. Supreme Court has held that an unconstitutional mandatory presumption in one part of the jury charge "cannot be cured merely by other language in the instruction indicating that the defendant may rebut the presumption, or by including language that contradicts the presumption". Frankland, 471 U.S. 370.

Accordingly, the applicant contends that as the court broadened the basis for his conviction by amending an unindicted robbery offense to his felony murder indictment, as the court's mandatory jury instruction relieved the State's burden of proving the "predicate facts" of its own amended robbery offense "beyond a reasonable doubt" for a determination of whether or not the "ultimate or elemental" fact of malice had been proven beyond a reasonable doubt to convict him of felony murder, his trial counsel's failure to object to the judge's constructive amended robbery offense and mandatory presumption jury charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the court's lack of jurisdiction to convict and sentence him, was ineffective assistance of counsel.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to the erroneous admission of his hat in violation of his Fourth Amendment right.

When a defendant claims that counsel's failure to object to the admission of evidence was ineffective assistance of counsel, he must show that such claim is meritorious and that verdict would have been different absent evidence that should have been excluded. Sikes v. States, 449 S.E.2d 540 (S.C. 1974).

In this case, the applicant submits that prior to his trial his counsel moved the court to suppress his hat which had the victim's blood on it. The facts showed that the applicant, prior to being charged with any crime, had left his hat in a police vehicle when a police officer transported him back to his home after he was questioned about the victim's murder. The facts also showed that applicant called the police, told them where he left his hat, and asked if they could return it to

him. Tr.p. 99, L. 24—p. 99, L. 6; Tr.p. 100, L. 6-14; Tr.p. 101, L. 2—p. 102, L. 5.

The judge denied the defense's motion to suppress defendant's hat on the grounds that "defendant had deliberately hid or secreted his hat underneath the seat in the police's vehicle". Tr.p. 107, L. 25—107, L. 1. Although counsel did raise and argue the suppression of his hat in a motion in limine prior to trial, he failed to object to the admission of the hat during trial to preserve this issue for appellate review. See State v. Simpson, 470 S.E.2d 57 (S.C. 1995).

Contrary to the judge's ruling, the applicant contends that the standard for judging whether or not a defendant has abandoned his property turns on whether or not he "actually or constructively abandon the property, and disclaim and/or makes no effort to retrieve the property". See, e.g., Abel v. United States, 362 U.S. 217 (1960); U.S. v. Mulder 808 F.2d 1346 (9th Cir. 1987) (holding that warrantless search of defendant's bag seized from hotel room, invalid because no abandonment when defendant returned to hotel room, paid for extra night, and contacted police to inquire about bag), accord Abel, infra.

In applicant's case, as the record shows, he called the police, told them where he left his hat in the police vehicle, and requested it be returned to him. Therefore, he had not abandoned his hat, and his counsel's failure to object to the admission of his hat at trial to preserve the issue for appellate review, where there was a reasonable probability that his conviction could have been reversed absent the admission of the hat, was ineffective assistance of counsel that was per se prejudicial. See Johnson v. State, 480 S.E.2d 733 (S.C. 1997), accord Strickland.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to State's introduction of graphic crime scene photos of victim's body.

The applicant contends that during his trial the State introduced graphic crime scene photographs of the victim's body. Tr.p. 150—152 (Exhibits 6-22). The applicant further contends that there was no question who died, how the victim died, where the victim died, or when the victim died. The only question was who killed the victim. Therefore, the photographs were irrelevant and unnecessary to substantiate any fact of malice, and only served to inflame and arouse the passion and prejudice of the jury. See, e.g., State v. Todd, 360 S.E.2d 370 (S.C. 1988).

Furthermore, during closing argument, the solicitor took further advantage of the graphis, prejudicial photos of the victim, by arguing to the jury that "I know that when you showed up for jury duty...you may not have anticipated that you were going to be on a murder case, that you were going to be forced to look at photographs that no one should have to see". Tr. p. 645, L. 20-24. These photos were also sent to jury during its deliberation.

The applicant contends that counsel's failure to object to the admission of the graphic photos of the victim's body was ineffective assistance of counsel that was prejudicial. Strickland, Supra.

CONCLUSION

WHEREFORE, for the foregoing reasons, the applicant pray the Honorable Court grant the relief requested in the pleadings in this case.

Respectfully Submitted,

By: Kenyatta Andre Bryant
 Kenyatta Andre Bryant, "
 Perry Correctional Institution
 22000 Highway 200, Suite 100
 Palzer, N.C. 28120

This 16 day of Oct 1997.



ALAN WILSON
ATTORNEY GENERAL

October 8, 2012

Appellate Defender Susan B. Hackett, Esquire
S.C. Commission of Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211

Re: PCR (2012-CP-40-6453) - Kenyatta Bryant, #346659 v. State

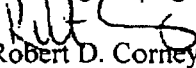
Dear Ms. Hackett:

I am in receipt of your letter addressed to Assistant Deputy Attorney General Don Zelenka dated October 4, 2012, regarding the dismissal of Mr. Kenyatta Bryant's direct appeal (Appellate Case No. 2011-195209). Mr. Bryant filed an application for post-conviction relief with the Richland County Clerk of Court on September 27, 2012, which was summarily dismissed **without prejudice** by the Honorable James R. Barber, III, by order filed October 5, 2012. At the time of the dismissal, our office was unaware of the October 1, 2012, remittitur from direct appeal having been issued.

Therefore, his PCR action has been dismissed without prejudice and his file closed. However, Judge Barber's order granted leave for Mr. Bryant to re-file for post-conviction relief within one (1) year of the issuance of the remittitur from direct appeal pursuant to S.C. Code § 17-27-45(a). By copy of this letter, I have provided Mr. Bryant with the same information so is aware that he may file an application to pursue post-conviction relief by October 2, 2013, if he wishes to do so.

I apologize for the confusion and any inconvenience. Please feel free to contact me with any questions or concerns.

With highest regards,


Robert D. Corney
Assistant Attorney General

cc: Kenyatta A. Bryant, #346659 (*Pro Se* PCR Applicant)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

BRYANT Kenyatta A -
00346659,

) 2012CP4007146
)
)

) Applicant,
)

) v.
)

) RETURN
)

) State of South Carolina,
)

) Respondent.
)
_____)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 22, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the April 2010 term of the Richland Grand Jury for Murder (2010-GS-40-1103).² He was represented by Charlie J Johnson, Jr., Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable James R. Barber, III. On June 23, 2011, following a four (4) day trial, Applicant was found guilty as indicted and sentenced to forty-five (45) years imprisonment.

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4007146&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00346659>

Direct Appeal

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. He was represented by Susan Hackett, Esquire, of the South Carolina Office of Appellate Defense on the appeal. By order filed September 10, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal based upon Applicant's request to "drop the appeal". The remittitur was issued October 1, 2012.

The application for post-conviction relief (PCR) was filed October 22, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
 (b) 11
 (c) 11

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

- (a) Counsel failed to object to a constructive amendment of applicant's indictment.
 (b) Counsel failed to object to a constructive amendment - mandatory presumption Jury Charge
 (c) Counsel failed to object to Court's failure to instruct on elements of robbery charge, etc.

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to a constructive amendment of his indictment and charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on trial court's lack of jurisdiction to convict and sentence him for a common law felony murder.

During the trial and the solicitor's direct examination of applicant's alleged codefendant, Jonathan Holloway, the solicitor presented evidence that the applicant and Holloway planned to sell the victim fake drugs as a pretense to actually "rob the victim for his money". Tr. p. 770-771. In addition, during the State's closing, the solicitor made numerous references to its presentation of its robbery evidence to persuade the jury that it could convict the applicant of felony murder if it found that the State had proved that committed the murder during the robbery. Tr. p. 551, L. 14-21; Tr.p. 552, L. 9-13; Tr.p. 553, L. 14-21; Tr.p. 554, L. 1-9; Tr.p. 555, L. 11-19; Tr.p. 557, L. 1-15; Tr.p. 571, L. 14-19.

Following the solicitor's closing argument, the Judge again reminded the jury of the felony murder offense charged in applicant's indictment. Tr.p. 775, L. 17-24. The Judge went on to instruct the jury, in relevant part, that it must accept as correct the law as he charge it and apply it to the evidence as it find and then reach its verdict. Tr.p. 711, L. 12-17. Afterward, the Judge charged the jury on felony (robbery) murder consistent with the solicitor's presentation of evidence and closing argument as follows:

The law allows a jury to infer malice if you conclude that the homicide was the proximate direct of the "commission of a felony" and in that regard "robbery" would be a felony under our law. You can imply that malice existed if a person is in the commission of a felony at time of the fatal blow. Even if the facts are proven that are sufficient to raise an inference of malice, this inference would simply be an evidentiary fact to be considered by you along with all of the evidence in the case, and "you must" give it such weight as you determine it should receive as to whether or not malice has been proven beyond a reasonable doubt. Tr.p. 717, L. 4-17.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's omission of any jury charge on the elements of a robbery offense in his case.

In applicant's case, the court constructively amended a robbery offense to his felony murder indictment. Consequently, the court failed to instruct the jury on any elements of the robbery offense², but nonetheless instructed the jury that it had to consider the robbery to prove the murder. Hence, without to convict the applicant of the felony murder charged in his indictment.

Since there was no instruction on the element for proof of the robbery offense presented and charged in applicant's case, trial counsel was ineffective for failing to request such instruction and that failure was per se prejudicial. See Hudgins v. Moore, 524 S.E.2d 105 (S.C. 1995).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to judge's constructive amended-mandatory presumption jury charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the trial court's lack of jurisdiction to convict and sentence him for common law felony murder.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to the erroneous admission of his hot in violation of his Fourth Amendment right.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to State's introduction of graphic crime scene photos of victim's body.

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence

required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Christian L. Rogers, Esquire regarding when the hearing should be set.⁴

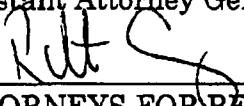
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

December 20, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

BRYANT Kenyatta A -
00346659,

) 2012CP4007146
)
)

) Applicant,
)

) v.
)

) CERTIFICATE OF SERVICE
)

) 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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Christian L. Rogers, Post Office Box 2324 , Columbia, SC 29202

DATED December 20 2012.



Jean R. Indriago
Legal Assistant

State of South Carolina) In the Court of Common Pleas
) Fifth Judicial Circuit
 County of Richland) 2012-CP-40-07146

Kenyatta A. Bryant,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
 _____)

December 8, 2014
 Columbia, South Carolina

B e f o r e:

The Honorable J. Ernest Kinard, Jr., Judge

A p p e a r a n c e s:

Aimee Zmroczek, Esquire
 Attorney for the Plaintiff/Appellant

Joshua L. Thomas, Esquire
 Attorney for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E X

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Charlie Johnson, Jr.	
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS ENTERED --

1 MR. THOMAS: Last case this morning is *Kenyatta Bryant*
2 *vs. the State of South Carolina*. It's 2012-CP-40-7146.
3 Mr. Bryant was indicted in April, 2010, for murder;
4 represented on that charge by Charlie Johnson.

5 He went to trial June 20 through 23 of 2011; convicted
6 as indicted. The Honorable James Barber sentenced him to
7 45 years for murder.

8 Did file an appeal. Susan Hackett represented him on
9 appeal, but he voluntarily dismissed that at the Court of
10 Appeals; remittitur was returned in October, 2012.

11 Shortly thereafter, in October, 2012, he filed this
12 PCR, alleging various allegations of ineffective assistance
13 of counsel. He is represented by Aimee Zmroczek, and the
14 State's ready to proceed.

15 THE COURT: Okay.

16 MS. ZMROCZEK: Good morning, Judge, and I apologize
17 for my --

18 THE COURT: It's all right. You can't be two places
19 at once.

20 MS. ZMROCZEK: Thank you. Your Honor, we would call
21 Charlie Johnson to the stand.

22 THE COURT: All right. How bout tell me what -- what
23 your positions are so I might know what I'm listening to.

24 MS. ZMROCZEK: Oh. Certainly. Your Honor, Mr. Bryant
25 has filed -- he has alleged several different arguments. I

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 5

1 think that the strongest argument -- and I've told him this
2 over and over -- he was charged with murder based on a
3 concept of felony murder. Your Honor, the State did not
4 prove the underlying felony, and so that would -- I would
5 purport to be our -- our strongest argument.

6 He also had recently -- and I provided this to -- to
7 the Attorney General's Office -- amended his PCR
8 application to include allegations that there was some sort
9 of deal made with the testifying co-defendant that was not
10 revealed to the Court. And ...

11 (Ms. Zmroczek confers with the applicant briefly.)

12 MS. ZMROCZEK: And Your Honor, he alleges that -- in
13 his original PCR application, that he had some defenses
14 that he discussed with his attorney, and his attorney
15 refused to raise those at ---

16 THE COURT: All right.

17 MS. ZMROCZEK: --- the trial.

18 CHARLIE JOHNSON, having been first
19 duly sworn, testifies as follows:

20 DIRECT EXAMINATION BY MS. ZMROCZEK:

21 Q Mr. Johnson, are you currently practicing law?

22 A Yes, I am.

23 Q Where are you practicing?

24 A Here in Columbia.

25 Q And how long have you been in practice?

1 A Nineteen years.

2 Q In 2011 or 2010, when this case was indicted in 2011,
3 when this case went to trial, were you currently practicing
4 as well?

5 A Yes, I was.

6 Q How many cases did you have at that time?

7 A You mean --

8 Q Approximately.

9 A What, the -- how many cases I'd done up until that
10 point?

11 Q How many cases were you working on at the time of --
12 of this case going to trial?

13 A I wouldn't know.

14 Q Okay. Would -- would you say it was a light caseload,
15 a medium caseload, or a heavy caseload?

16 A I wouldn't -- I wouldn't -- I mean, I have cases. I
17 mean, no more than normal.

18 Q Okay. How -- how -- what percentage of -- of your
19 practice was dedicated to criminal?

20 A 100 percent.

21 Q 100 percent? Were you appointed or retained for Mr.
22 Bryant?

23 A I think I was appointed.

24 Q You think -- you think you were appointed?

25 A Uh-huh.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON

7

1 Q Was he in jail at the time?

2 A Yes.

3 Q How many times did you meet with him prior to trial?

4 A Numerous times. At least 10.

5 Q At least 10? When you met with him, what -- what did
6 you do in -- in order to discuss the allegations based on
7 his case? What -- what were the substance of those
8 discussions?

9 A I took all the evidence and we went over it, all the
10 evidence, piece by piece. I presented all the evidence to
11 him. I told him what I thought our best chances were as
12 far as a defense and discussed the case with him.

13 Q And which -- which -- what strategies did you think
14 were best for -- as far as your defense?

15 A Well, I mean, Kenyatta always indicated to me that he
16 did not shoot anyone. He indicated to me what happened in
17 the case, that it was the other co-defendant that actually
18 committed the crime, and that he was not present at the
19 time that it was committed.

20 Q Did he provide you specific alibi information?

21 A Well, he gave me information as -- I don't know if it
22 would be alibi, but he told me where he was and -- and said
23 he was in the house or on the way to the house or at --
24 towards the house when he heard a gunshot. That kind ---

25 Q And were ---

1 A --- of stuff.

2 Q Sorry. And were you able to corroborate or did you
3 investigate -- or what did you do to investigate that
4 information?

5 A I hired an investigator. We investigated the case.
6 We went to the house; we went to the scene of the -- of the
7 incident. We went to the house a number of times as far as
8 the area where the -- the victim was killed. I had a
9 private investigator, and we went over all the -- the
10 scene, the crime scene.

11 Q And were there any plea offers made in this case?

12 A I don't remember.

13 Q If you -- would you have conveyed those to Mr. Bryant?

14 A If there was, I -- I conveyed them to him.

15 Q What sort of negotiations did you engage with the
16 Solicitor's Office?

17 A As I say, I met with the Solicitor's Office. I -- I
18 got the evidence. The solicitor was Luck Campbell, and we
19 sat down and talked and went over everything. I actually
20 was -- stopped in to negotiate. And as I say, I can't
21 remember. I don't want to say anything wrong, but I can't
22 remember the point that she did make an offer. Not that --
23 but if there was one, I communicated it to ---

24 Q And ---

25 A --- my client.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON

9

1 Q --- what was your understanding of what Mr. Bryant
2 wanted in this case?

3 A He always told me he wanted to go to trial because he
4 didn't do it.

5 Q And what sort of advice did you give him based on the
6 evidence that you were prevent -- presented with?

7 A I basically told him that he had some -- some things
8 in the case that I thought was -- was good issues that
9 could be brought up. But that, at the end of the day, that
10 it would be left up to a jury; and that if a jury believed
11 our case, then he was gonna walk out the door with me. And
12 if a jury didn't, then they were gonna take him out the
13 back door.

14 Q And what did you think was the issues -- the strongest
15 issues in his case were?

16 A Well, I think the stronger issue was my belief of the
17 State lack of evidence that Kenyatta committed the crime.

18 Initially I -- if I remember right, I think the State
19 believed Kenyatta and his story, and actually did not
20 arrest him at that time. And then later on I think the co-
21 defendant then gave a different, and then at that time,
22 that's when he was arrested and the State decided to
23 prosecute both individuals.

24 But I think they decided -- once they found, I think
25 it was a fingerprint on the window and the hat, they

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 10

1 believed that Kenyatta was the person that committed the
2 crime.

3 Q And was that fingerprint found on the -- that
4 fingerprint was found on the outside of the house, correct?

5 A No. The door, the car door.

6 Q On -- I mean -- sorry. On the outside of the car
7 door.

8 A Yes.

9 Q Okay. And did you make any argument regarding --
10 regarding the location of the fingerprint ---

11 A Yes.

12 Q --- and the lack of sufficiency?

13 A Yes.

14 Q Did you make those arguments to the -- to the jury?

15 A Yes.

16 Q And what evidence did you put up in the case? Did you
17 put a defense? Did you put forward a defense?

18 A You're gonna have to refresh me on that. I don't --
19 I don't remember exactly what evidence we put up as far as
20 defense-wise.

21 Q You -- you ---

22 A It's been awhile.

23 Q Do you -- you'd advised Mr. Bryant to take the stand
24 or did y'all have conversations about ---

25 A Yes.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON

11

1 Q --- him taking the stand?

2 A We definitely did.

3 Q And did he take the stand?

4 A Yes.

5 Q And what -- did you counsel him on the -- the pros and
6 cons of putting up a defense?

7 A Yes.

8 Q He was only indicted for murder; is that correct?

9 A If that's what the record reflects, yes.

10 Q Okay. And -- but you understand that it was based on
11 the felony murder rule?

12 A I'm not aware of a felony murder rule in South
13 Carolina. So, no.

14 Q You're not aware of the felony murder rule?

15 A Not in South Carolina. There is none.

16 Q Okay.

17 A The -- the -- the prosecution argument was the "hand
18 of one is the hand of all."

19 Q So accomplice liability?

20 A Similar, yes.

21 Q Okay. And did you put -- in addition to Mr. Bryant
22 and the witnesses that they put -- or the other witnesses
23 that you put up, did you -- when you made your argument
24 that they had not proved the -- the intent at the directed
25 verdict, was there a reason that you did not renew that at

1 the end of the trial?

2 A I think at the end of the trial I did renew it. At
3 the end of the trial, I argued that -- I always -- if -- if
4 the record show I didn't do it, it wasn't intentional. But
5 I think I renewed all my objections at the end of the
6 trial.

7 Q Okay. And there was an issue as well with the hat
8 that was found.

9 A Yes.

10 Q And I believe that the hat was found -- it was a
11 question of whether or not it was voluntarily left or -- or
12 secured?

13 A Correct.

14 Q Is there -- and I know that you made those arguments
15 pre-trial. Is there a reason that you didn't make those
16 arguments to the jury?

17 A Because the judge ruled in pre-trial that he was gonna
18 let the hat in. So I made my objection and made it part of
19 the record. It would have been, I thought, a good
20 appealable issue. But apparently my client decided to
21 waive the appeal, which I don't understand why, but I
22 thought those were -- a number of issues, during trial,
23 that was objected to by me, that I thought would be
24 extremely good appealable issues.

25 Q Was there -- and -- and once that it got to the

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 13

1 appellate stage, you were no longer counsel for him,
2 correct?

3 A Correct.

4 Q And what was -- do you recall what sort of mitigation
5 you were able to -- to provide at the sentencing stage?

6 A Mitigation was his lack of record.

7 Q He'd never been arrested before?

8 A Never been arrested before; he was born and raised
9 here; he had family members; and has a support system.

10 Q And did you inquire into the -- and did you inquire
11 into the negotiations -- I believe that the -- the co-
12 defendant testified and received a reduced sentence. Did
13 you inquire into those negotiations prior to and during
14 trial?

15 A Yes, I did. I even asked him on the stand did he
16 receive any type of special thing, and he stated "no."

17 Q And you are aware that -- that just shortly after this
18 trial, he did get a deal to voluntary manslaughter.

19 A No, I'm not.

20 Q Okay. But you would agree, if the record reflects
21 that, that he did.

22 A Yeah. But I mean ---

23 Q Okay.

24 A But I had -- I had no knowledge of what deal he got.
25 I had nothing to do with that. He wasn't sentenced til

1 after this case was over.

2 Q And I believe that you said that you -- your
3 investigators spent numerous -- you and your investigator
4 spent numerous times discussing the alibi. What witnesses
5 did you put up, besides Mr. Bryant, regarding his alibi?

6 A I did -- did -- it was never a question -- Mr. Bryant
7 didn't -- did not have a alibi that he wasn't there. He's
8 never told me that. He's always admitted that he was
9 there, that he did not have anything to do with the murder,
10 and that he was running away at the time that the gun was
11 fired. There were no -- I needed no witnesses to confirm
12 that. I had no witnesses for that.

13 Q It was the knowledge and intent that you were focusing
14 on?

15 A Well, yes. But I mean, there were no witnesses to --
16 to show, except for the co-defendant, that could testify
17 who actually pulled the trigger and killed the individual.
18 There was no other witnesses. There was no alibi witnesses
19 to put on the stand.

20 MS. ZMROCZEK: Beg the Court's indulgence.

21 (Ms. Zmroczek confers with the applicant.)

22 Q And the basis of the State's theory was that this
23 murder occurred under the premise of an armed robbery,
24 correct, or attempted armed robbery?

25 A Yes and no. The -- the -- the statements were -- and

DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 15

1 -- and my client even testified when he got on the stand
2 that -- that he knew the individual, the victim, that they
3 was friends; that this other individual was -- was high and
4 acting erratic. And when he saw the victim with a certain
5 amount of money, that's when the -- the co-defendant
6 decided that he was gonna rob someone.

7 So my client statement was it was never his intent on
8 robbing anyone. He did say that -- that they might have
9 gave him -- it's been awhile. So if I remember right -- I
10 guess the record will reflect -- but he did say something
11 about they might have gave him -- at some point, I remember
12 some statement about the drugs not being real or something
13 of that nature.

14 Q And did you ever move to quash the indictment -- you -
15 - you didn't move to quash the indictment prior to the
16 beginning of trial, did you, for -- for the lack of -- of
17 specific knowledge as to the malice intent of the murder?

18 A I -- I didn't see that. I -- I -- it was -- it was an
19 indictment for murder. There was an individual that was
20 dead. I did not see that -- I was not aware of any malice
21 intent necessary for that to go forward. My argument would
22 have been that they could not prove that he did the crime,
23 and it was my intent to show that he was not the person
24 that killed the individual.

25 Q But you would agree with me that -- that the elements

1 of murder are to unlawfully cause the death of -- of
2 another, with malice aforethought?

3 A That's the definition, yes.

4 Q And those were the elements that the State had to
5 prove.

6 A Yes.

7 Q Okay.

8 MS. ZMROCZEK: I have no further questions at this
9 time, Your Honor.

10 THE COURT: All right.

11 MR. THOMAS: May it please the Court.

12 THE COURT: Okay.

13 CROSS-EXAMINATION BY MR. THOMAS:

14 Q Mr. Johnson, kind of redundant here, but let me step
15 back through a couple of things with you. You said you had
16 numerous meetings with Mr. Bryant?

17 A Yes.

18 Q And during those meetings, you had a chance to go over
19 with him all the State's discovery?

20 A Yes.

21 Q And you also heard from him his version of events --
22 you heard his version.

23 A Correct.

24 Q And based on that, what defenses did you develop for
25 us? Could you just give us --

1 A My basic defense was a very simple one: That he was
2 present; he did not know what the co-defendant intent were
3 -- were; when he found out about it, he attempted to
4 withdraw his self from the action by leaving the car; and
5 that the co-defendant then killed the victim.

6 Q So during your discussions with him, he basically said
7 he denied that he -- he basically said he was running away
8 from the car at the time he heard the shots.

9 A Correct.

10 Q But he also testified at trial -- I'm assuming,
11 correct me if I'm wrong, that this is consistent with your
12 discussions with him. He testified that he -- the co-
13 defendant told him he was going to rob the victim.

14 A When they went in the store, if I remember right, I
15 think -- I have the -- the transcript, I guess, will show
16 what he said.

17 But if I remember right, he said that the -- they had
18 to go to the store to get some change. And when they rode
19 to the store with the victim, he reached, I think, above
20 the -- I think he pulled the -- the visor down. And -- and
21 they saw that he had, like, some hundred dollar bills,
22 something like that. Something he had to get some change
23 for. And then that's when the -- the co-defendant decided
24 he was gonna rob the victim.

25 Q And he also knew at that time that the co-defendant

1 had a gun on him or he'd seen the co-defendant with a gun
2 earlier?

3 A I don't know if he had seen it. He might have seen it
4 earlier. I'm not sure, but I -- I guess the record would
5 reflect what he said, but I can't remember for sure.

6 Q So basically the State's evidence was there were some
7 phone records indicating communication between Mr. Bryant
8 and the victim?

9 A Correct.

10 Q And then there was the co-defendant's testimony.

11 A Correct.

12 Q And that -- the co-defendant's testimony was that
13 there was a struggle as the co-defendant was trying to rob
14 him, and then Mr. Bryant basically walked around the car
15 and shot the victim.

16 A Correct.

17 Q Okay. And then there was a hat that was recovered?

18 A When they -- a few days later or so, they -- they came
19 and arrested my client. He had a sweater cap or something
20 on at the time.

21 He was taken to the jail in a particular officer car
22 and interrogated. From there he was taken to jail and
23 apparently -- I think it was a few days or a week later --
24 almost a week/week and a half later, the officer discovered
25 -- said he was cleaning his car out and he found a hat

1. stuck in his seat where he had -- where he alleged that my
2 client was sitting; and that he alleged that my client put
3 the hat there.

4 My argument was that that was too much of a lapse of
5 time between the time that my client rode in the car and
6 they found the hat; and that anybody could have put that
7 hat there, as well as anybody could have contaminated the
8 hat as well. And they was using the DNA on the hat that
9 indicated that was the blood of the victim.

10 Q Okay. So the victim's blood was on the hat that they
11 found in the officer's truck.

12 A Correct.

13 Q And the officer testified that he recalled Mr. Bryant
14 wearing that hat the day he was picked up?

15 A That [sic] what he said.

16 Q And the hat was in the officer's truck. It wasn't in
17 Mr. Bryant's truck or somebody else's car. It was the
18 police officer's?

19 A Police officer's truck. And I made objection to that
20 coming in.

21 Q You objected to that pre-trial.

22 A Yes.

23 Q Let's talk about the -- this indictment a little bit.
24 Do you have a copy of the indictment up there with you?

25 A No.

1 MR. THOMAS: Your Honor, may I approach?

2 THE COURT: You can do it.

3 (Mr. Thomas hands a document to the witness.)

4 Q You said you reviewed this indictment before trial,
5 right?

6 A Yes.

7 Q And you said you didn't see any problems with it in
8 terms of stating the elements of the crime murder?

9 A No. As I stated, it was the State's position that my
10 client was actually the trigger man that killed the
11 individual. In looking at this indictment, it -- it states
12 that "with malice aforethought," that my client killed
13 Andrew Decker by means of a gunshot. Malice aforethought
14 can be shown by a gunshot to the head.

15 Q And it can also be shown by other actions, say,
16 walking around a car and -- and pulling the trigger,
17 anything like that?

18 A Right. Well, it -- it met the State theory of what
19 happened. I didn't -- I did not see anything that -- that
20 -- that would have caused me to object to it.

21 Q And we've talked about this felony murder rule. We
22 don't have a felony murder rule in South Carolina?

23 A No, we don't.

24 Q What we have is a -- basically there's a standard jury
25 charge. You still have to prove malice to prove murder,

1 correct?

2 A Correct.

3 Q But there is a standard jury charge that says that you
4 can infer malice from certain behaviors: use of a weapon,
5 the other person's behavior, or perhaps, the commission of
6 a crime? That sound right?

7 A Correct.

8 Q Okay. So it's really not a felony murder rule. It's
9 a felony -- it's an inference of malice from the commission
10 of a felony.

11 A Well, in this case, what happened was that it could be
12 inferred, but in this case, the State position was that my
13 client was the trigger man. If the State proved their case
14 to the jury that he was the trigger man, malice is not
15 inferred, malice is there because it was -- and they would
16 show that -- they showed evidence that it was -- the person
17 was killed by a gun, and that if -- if the jury believed
18 that my client committed the murder, then there's no
19 inference. I mean, it -- it's -- it's there -- they --
20 that it was committed by a gun.

21 I -- I saw no reason to object to that because it was
22 our position that my client didn't do it.

23 Q So it's safe to say your -- your trial strategy going
24 into this thing was to prove that he didn't do it. That
25 was ---

1 A Correct.

2 Q --- your strategy. And the State's position,
3 obviously, was not -- because basically Mr. -- Mr. Bryant's
4 story was: They went there; co-defendant decided to rob
5 him; he ran away.

6 A Correct.

7 Q State's position was: They were in the car; they
8 decided to rob him together; struggle breaks out; Mr.
9 Bryant walks around and shoots the victim.

10 A Correct. Which is why they decided to use the co-
11 defendant to testify against Mr. Bryant because Kenyatta
12 had agreed to testify against the other co-defendant. So
13 the State decided who they were going to believe or not.

14 Q You said you recalled renewing all your objections ---

15 A I believe I did.

16 Q --- your motions at the end of trial?

17 A I think -- I don't -- actually at directed verdict.

18 MR. THOMAS: May I approach, Your Honor?

19 THE COURT: Okay.

20 (Hands a document to the witness.)

21 Q I'm just going to show you page 730 of the transcript,
22 starting at line 17. Would you just read that quietly to
23 yourself.

24 (The witness complies.)

25 Q And then let me know if that refreshes your

RE-DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 23

1 recollection on you renewing of objection to motions.

2 A Yeah. Basically I asked for a motion notwithstanding
3 the verdict, and I stated that I believed that the -- the
4 jury didn't meet it's burden at that time. So I -- I
5 didn't specifically say that I renewed my other objections.

6 Q And as far as your discussions with Mr. Bryant about
7 trial strategy, is the trial strategy you employed at
8 trial, is that the strategy you discussed with him?

9 A Yes. The strategy was to do everything I could to
10 show that he did not kill the victim.

11 Q Thank you, Mr. Johnson. That's all I have.

12 MS. ZMROCZEK: I just have a few follow-up questions.

13 RE-DIRECT EXAMINATION BY MS. ZMROCZEK:

14 Q Mr. Johnson, you would agree with me or do you recall,
15 at the beginning of the trial, that you represent you had -
16 - represented to the Court that you had been appointed six
17 months prior, correct?

18 A Correct.

19 Q And in fact, Mr. Bryant tried to relieve you at the
20 beginning of trial, correct?

21 A If that's what the record show, I ---

22 Q Okay.

23 MS. ZMROCZEK: Your Honor, may I approach?

24 A I mean, if that's what the record shows --

25 Q Oh. Okay.

RE-DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 24

1 A I don't disagree, if that's what the record is.

2 Q And he stated that -- that he felt like that there was
3 a bunch of -- there was a lack of communication and things
4 that -- that he had asked you to do that he -- that -- that
5 hadn't been done prior to trial, correct?

6 A Okay. Correct.

7 Q And during closing arguments -- and I'll -- I'll show
8 you the record if it will help you reflect -- but Ms.
9 Campbell -- I believe you said Luck Campbell was the
10 solicitor.

11 A Right.

12 Q And on page 653 of the trial record, she stated that
13 they were -- (as read): "They were acting together, and
14 ironically, why did it take the two of them if they weren't
15 planning a robbery?"

16 So she was actively arguing about the murder as a
17 result of the armed robbery that was alleged to be claimed,
18 correct?

19 THE COURT REPORTER: Alleged to be ...?

20 MS. ZMROCZEK: Alleged to be claimed.

21 Q Or alleged to occur.

22 A I don't -- I'm having a hard time following you on --

23 Q Okay. During her closing argument -- and I -- and
24 I'll -- I'll show you.

25 MS. ZMROCZEK: If I may approach, Your Honor.

RE-DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 25

1 A I remember what she said.

2 Q Okay. That she was arguing -- she was arguing that
3 this murder occurred as a result of an armed robbery that
4 was being planned.

5 A It was the State position that both individuals had
6 planned an armed robbery, yes.

7 Q And that -- and that the murder occurred as a result
8 of that attempt to carry out that armed robbery, correct?

9 A Yes.

10 Q Okay. And that that's where the malice element of
11 their argument was coming from.

12 A Once again, I don't -- it could be. I don't know what
13 her theory was. My thinking was that the malice, as relate
14 to my client, was proven by the State indicating that he
15 was the one that pulled the trigger and killed someone.
16 Not the argument about that he assisted because it was
17 always State position that he was the one that pulled the
18 trigger.

19 Q And -- and -- and -- and it's your -- how many murder
20 trials have you tried prior to this case?

21 A 30.

22 Q And it's your indication that felony murder was not --
23 is not a rule in South Carolina.

24 A I've never known of it. I -- it's -- I've never known
25 of felony murder being allowed in South Carolina.

RE-DIRECT EXAMINATION BY MS. ZMROCZEK - CHARLIE JOHNSON 26

1 Q Had -- had you been aware that that was applicable to
2 this case, would you have argued it differently?

3 A No. I would -- as I -- as I stated, as I looked at
4 the case, it was the argument of the solicitor that my
5 client killed someone, not that he assisted, not that he
6 was there. Their whole argument on that whole case was
7 that he pulled the trigger. It was my trial strategy, and
8 still my belief to this day, that he didn't do it. And it
9 was my intent to prove that he didn't do it; therefore, I
10 probably would not have argued any different than what I
11 did.

12 Q Okay. Thank you.

13 MR. THOMAS: No re-direct, Your Honor -- re-cross.

14 THE WITNESS: Your Honor, can I be relieved?

15 MR. THOMAS: No objection.

16 THE COURT: I don't know. They gonna have other
17 witnesses?

18 MS. ZMROCZEK: Your Honor, I -- I call Mr. Bryant to
19 the stand.

20 THE COURT: He'd better hang around.

21 THE WITNESS: Okay.

22 KENYATTA BRYANT, having been first
23 duly sworn, testifies as follows:

24 MS. ZMROCZEK: And Your Honor, his voice is a little
25 scratchy this morning. If I just put the water up here, it

State of Mississippi vs. [REDACTED] In the Court of Common Pleas
County of [REDACTED] Fifth Judicial Circuit
[REDACTED] vs. [REDACTED]
[REDACTED] Cup of water [REDACTED]

DIRECT EXAMINATION BY MS. ZMROCEK:

Q Mr. Bryant, where do you currently live?

Kenyatta A. Bryant,

A Perry.

Plaintiff,

Q Where do you currently live?

vs.) Transcript of Record

A In prison, Perry.

State of South Carolina,

Q Which prison?

Defendant.

A Perry Correctional.)

Q Make sure that you speak into the microphone.

December 8, 2014

A Perry, Perry Correctional Columbia, South Carolina

B e f o r e:

Q Perry Correctional.

The Honorable J. Ernest Kinard, Jr., Judge

A Yes, ma'am.

Q p pHowadirdaypucceme:to be there?

A ~~Aimee Zmoocek~~-Esquired for murder.

Attorney for the Plaintiff/Appellant

Q What were your charges?

Joshua L. Thomas, Esquire

A Murderer by the State had been robbing him and it ended

up in jury discretion.

Q Okay. Were you ever involved in a robbery? CVR

Circuit Court Reporter

A I never was indicted for robbery. The robbery never

presented on no face of the indictment at all. My lawyer

couldn't object to robbery because the robbery was

presented during the -- the -- during the presentation of

the evidence, during the trial, and the closing argument.

The -- the judge added robbery in the close -- in the

1 jury instruction. He allowed the jury to -- for malice in
2 commission of a felony, which was a unindicted felony I
3 never was indicted for.

4 Now, from my understanding, that's how -- that's --
5 that's a violation of my constitutional right, only be
6 tried for a charge that only been presented and true billed
7 by a grand jury. I never was indicted for the robbery at
8 all.

9 Q And that -- and that -- and that's your biggest
10 complaint, about how you ended up here, was because -- and
11 -- and I just want to be sure that I heard you clearly --
12 that you were charged only and indicted with murder --

13 A Yes, ma'am.

14 Q -- but that during the jury charges, that the -- the
15 elements of armed robbery were presented to the jury for
16 their consideration in the murder indictment.

17 A Basically what I said, they used the robbery to find
18 me guilty for the murder. He allowed the jury to infer
19 malice from the commission of a felony. The -- the judge
20 allowed the jury to commission -- infer a robbery for
21 commission of a felony.

22 He told the jury that robbery would be -- robbery
23 would be a felony in South Carolina. So the only way the
24 jury could infer malice from is from the felony.

25 Now, you got -- the felony down that I was indicted

DIRECT EXAMINATION BY MS. ZMROCZEK - KENYATTA BRYANT 29

1 for was just the robbery. The robbery the only one that
2 exist. So he allowed the jury to infer malice for me,
3 really it's -- it goes off -- off top.

4 So what I'm saying is if the robbery never was placed
5 in that jury discretion, how could you convict me for
6 murder? It's the -- felony don't exist. I'm not indicted
7 for the felony.

8 Now, my -- my lawyer, he should have objected to it
9 because he know I wasn't indicted for the robbery. He --
10 you know, that's basically --

11 Q Did you discuss these concerns with your attorney
12 during the trial?

13 A See -- which I never know until I went to -- when I
14 got -- til I got to prison, that I was not indicted for the
15 robbery. And I found out was in -- when -- that the -- the
16 judge charged the robbery, he should have known. He went
17 to college for this, so he should have known that I wasn't
18 indicted for the robbery. He should have objected to it.

19 Q You had several other complaints about the conduct of
20 your attorney. Tell the judge what those were during --
21 prior to and during the trial.

22 A He -- well, really, my -- my main concern was that he
23 say he came -- he came and saw me a couple of times. But
24 really it wasn't true.

25 But that ain't what I'm here for today. I'm ready

1 today to talk about this -- robbery, an offense that he
2 didn't object to.

3 Q And that's -- and -- and -- and the only indictment
4 you would ever see, ever charged, and ever convicted of was
5 murder.

6 A Is robbery -- is murder.

7 Q Is murder.

8 A Yeah. The judge tell the jury that I'm indicted for
9 murder. They -- they know that I'm indicted for murder.
10 They -- it's -- it's nowhere around it. It's no refuting.
11 I ain't indicted for the robbery.

12 MS. ZMROCZEK: And Your Honor, I would simply point to
13 the record, beginning at page 650, in or around 650, which
14 starts at the solicitor's argument and goes to the end of
15 the trial, including the jury charges, that that's the
16 issue that he's raising.

17 THE COURT: All right.

18 MS. ZMROCZEK: At this time, please answer any
19 questions that the Attorney General has -- Assistant
20 Attorney General has for you.

21 THE WITNESS: Yes.

22 MR. THOMAS: May it please the Court.

23 THE COURT: All right.

24 CROSS-EXAMINATION BY MR. THOMAS:

25 Q So the only thing you're here for is to complain about

1 the fact you weren't indicted for the robbery?

2 A No. I got several more issues, too. About the
3 abandonment issue, that he say ---

4 THE COURT REPORTER: Abandonment?

5 A About the -- about the abandonment issues that he say
6 he -- that he say he objected to. He didn't object to
7 abandon the issue -- the omission of evidence. So it
8 couldn't be reserved for appellate review. So all that he
9 said I could argue that on direct appeal, I wish I could
10 because it never was preserved. He -- a motion to my -- he
11 argue it and he -- he -- and he do agree that the hat --
12 the hat was in the van.

13 But what he didn't tell y'all that I told the police
14 where that hat was, and I requested the hat. So I never
15 did own a hat. So how can I be abandon something that I
16 never did own?

17 Q All right.

18 A If I tell you ---

19 Q How many ---

20 A If I tell you some -- if I left something in your car
21 and I tell you -- what your name is? You don't mind? What
22 your name is? I'm saying what your name is?

23 Q My name is -- you can just call me "Mr. Thomas."

24 A Mr. Thomas, if I leave something in your car, I call
25 you, I say, "Mr. Thomas, I left my jacket in your car."

1 Now -- and you find it and you -- you said -- would you say
2 I abandoned it if I told you where it was?

3 Q Okay. Here's what we're going to do: I'm going to
4 ask some questions of you, and you can answer them. If you
5 feel like you need to expound upon them, you can. But my
6 turn to ask questions.

7 So let's try it this way. You said you only met with
8 him a couple of times.

9 A (No audible response.)

10 Q Okay.

11 THE COURT REPORTER: Is that a "yes"?

12 A Yes.

13 Q Did he ever share discovery with you? Did he share
14 the State's evidence?

15 A No.

16 Q Didn't do that. Did you ever give him a list of
17 witnesses to go look at?

18 A My -- my family, the ones that came and testify.

19 Q Okay. So he did go talk to --

20 A Uh-huh.

21 Q -- call people to testify that you told him to.

22 A Yeah. He did that.

23 Q And your story -- you -- you told him your version of
24 what happened that night.

25 A Yeah.

CROSS-EXAMINATION BY MR. THOMAS - KENYATTA BRYANT 33

1 Q Okay. And that was basically you were going to sell
2 some fake dope to this --

3 A Yeah.

4 Q -- this client, this friend of yours. While you were
5 in the car, your co-defendant said that he was gonna rob
6 the victim. He told you that.

7 A Yeah.

8 Q Okay. And you were -- basically, the only place your
9 story got reversed from the co-defendant's is you say he
10 shot him and he said you shot him.

11 A Yeah.

12 Q Okay. State's theory was that you shot him.

13 A Yeah.

14 MR. THOMAS: Thank you, Mr. Bryant. That's all I
15 have.

16 MS. ZMROCZEK: I have no further questions, Your
17 Honor.

18 THE COURT: (To the witness) You can step down.

19 (The witness complies.)

20 MS. ZMROCZEK: Your Honor, those are all the witnesses
21 I have to present. I would like to make argument and --
22 and I believe that you are reading a copy of -- do you have
23 a copy of the transcript in front of you?

24 THE COURT: Yes.

25 MS. ZMROCZEK: Okay.

1 THE COURT: And -- and so far, I have -- yeah. And
2 I'm a speed reader. You might want to know that.
3 Everybody knows that. So, so far I have read the
4 summations of Luck Campbell, summations of Mr. Johnson,
5 Judge Barber's charge, testimony of the defendant. And I
6 am now reading the testimony of someone named "Jonathan
7 Holloway.

8 MS. ZMROCZEK: That -- that would be the co-defendant,
9 Your Honor.

10 THE COURT: And I understand who that is, I'm just
11 saying ---

12 MS. ZMROCZEK: Okay.

13 THE COURT: --- I am -- that's where I am at this
14 point, and that's all that I have read. So I'll listen to
15 you.

16 MS. ZMROCZEK: Okay. Sorry. I just -- what I wanted
17 to say, Your Honor, is that there's been numerous testimony
18 or a lot of testimony that the felony murder rule does not
19 exist in South Carolina. And I would point the Court to
20 South Carolina case of *Gore v. Leeke*. It's 261 SC 308.

21 In that case the felony murder rule became a
22 substantive rule of law and no longer presumption. And
23 that rule deals with the inferred malice, and it says that
24 (as read): "The inferred malice only applies to felonies
25 that are either inherent or foreseeable to danger of human

1 life."

2 Your Honor, we would argue that regardless of who's
3 theory it was of who pulled the gun, they put the co-
4 defendant up; and in their closing arguments, the State
5 argued and requested instructions based on that underlying
6 felony, a felony for which Mr. Bryant was never indicted
7 for and which was never proved.

8 We would argue that there was burden-shifting in the
9 closing to prove that there was no armed -- arm robbery.

10 Additionally we would argue that counsel erred to --
11 to preserve that objection (clears throat) -- excuse me --
12 as far as when the malice -- when the malice was either
13 inferred or implied.

14 The -- the strong presumption of the arguments that --
15 and the charges read that the inferred malice came from the
16 underlying robbery. So we would certainly object that the
17 case law based on *Gore v. Leeke*, and its progeny, would
18 show that the felony rule does -- felony murder rule does
19 exist in South Carolina, and it was improperly argued; and
20 to this day, still unknown to defense counsel.

21 Inherent danger of felonies to determine the nature
22 and surrounding of the circumstances, especially in a case
23 where a client is facing murder, Your Honor, which carries
24 a penalty of, which you know, day-for-day, 30 to life, on a
25 client who had never been arrested before, these were --

1 these were arguments that should have been examined,
2 objected to, and preserved by counsel's defense.

3 For those reasons, Your Honor, and for that strong
4 reason particularly, we would argue that counsel was
5 ineffective in not doing so, and request that this case be
6 remanded for a new trial.

7 MR. THOMAS: Thank you, Your Honor. Just in reply to
8 that, I stand by what Mr. Johnson said. There's no felony
9 murder rule in South Carolina. What we have instead is a -
10 - you can infer malice from the commission of a felony.
11 That is not a substantive rule of law. It's a permissible
12 inference.

13 *Norris* and *Lowery* are cases that followed up on *Gore*.
14 And basically, those cases say that it -- it's a
15 permissible inference, it's a standard jury charge that the
16 -- that the judge can give.

17 In any case, it doesn't -- the element that still has
18 to be proven to prove murder is malice. It's not the
19 underlying felony. There's -- South Carolina is the only
20 state, from -- from what I've seen, that has a no-felony-
21 murder rule.

22 Every other state has a statute of some sort, or
23 codified statute, that basically says if you commit -- if
24 someone dies during the commission of a felony, that is
25 felony murder.

1 We don't have that in South Carolina; therefore, the
2 underlying felony is not an element of the crime;
3 therefore, it doesn't have to be proven beyond a reasonable
4 doubt.

5 And I would also note that even in states that do have
6 a felony murder rule that require the proof of the
7 underlying felony -- especially Florida would be the one
8 state that I can cite to -- they still say that it's not
9 error to not charge the elements of the underlying felony
10 when the State's not proceeding on a felony murder doctrine
11 theory.

12 In this case there was no mention of it. The State
13 was basically alleging that Mr. Bryant was the actual
14 shooter, consistent with what Mr. Johnson said. And again,
15 the evidence is pretty overwhelming in this case against
16 him. So no matter what, he cannot prove prejudice.

17 Thank you, Your Honor.

18 THE COURT: Okay. Well, in my 26-year career, I
19 believe I've charged felony murder as -- 18 to 20 times.
20 But I don't think it helps him in this case having read the
21 whole thing.

22 I mean, Jonathan kind of does him in. His testimony
23 does him in. In the light most favorable to him, he was
24 going to sell him dope, which you can infer malice under
25 the charge as such, not the case that you read where it

1 says criminal activity has to be foreseeable that this will
2 happen and so forth. But that's not the whole charge.

3 If you're going to sell dope, you can anticipate that
4 problems might arise and so forth. And the judge went into
5 great detail about hand of one/hand of all, committing an
6 unlawful act, and so forth. Didn't define robbery as such,
7 but jurors have been around. "Gun to the head, give me the
8 money," they don't need an instruction on that.

9 So I don't believe I can help you. But y'all can both
10 submit orders, if you'd like. Give you something to do.

11 MS. ZMROCZEK: Thank you, Your Honor. If -- if I may,
12 I -- may I have 10 days to submit an order?

13 THE COURT: Well, you have -- Christmas is coming.
14 Take -- take 30 days.

15 MS. ZMROCZEK: Okay.

16 THE COURT: And send it to Camden with a self-
17 addressed stamped envelope, both of y'all.

18 MS. ZMROCZEK: And thank you. And I'll make sure to -
19 - to copy the solicitor.

20 MR. THOMAS: Thank you, Your Honor.

21

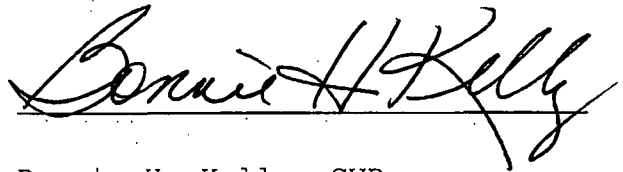
22

-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 8th day of December, 2014.

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



Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

July 26, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Kenyatta Bryant, #346659,

Case No. 2012-CP-40-7146

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2015 FEB -9 AM 11:14
JENNIFER W. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 22, 2012. Respondent made a timely Return on or about December 20, 2012. The Court convened an evidentiary hearing into the matter on December 8, 2014, at the Richland County Courthouse. Applicant was present at the hearing and represented by Aimee J. Zmroczek, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Charlie J. Johnson Jr., Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the appellate records. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2010, the Richland County Grand Jury indicted Applicant for murder (2010-GS-40-1103). Charlie J. Johnson Jr., Esquire ("trial counsel"), represented Applicant. On June 20, 2011, Applicant proceeded to trial

before the Honorable James R. Barber III and a jury. On June 23, 2011, the jury found Applicant guilty as indicted. Judge Barber sentenced Applicant to forty-five (45) years imprisonment.

Applicant filed a timely notice of appeal, but voluntarily withdrew his direct appeal. The South Carolina Court of Appeals dismissed the appeal on September 10, 2012. The Court of Appeals returned the remittitur to the circuit court on October 1, 2012.

II. ALLEGATIONS

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

1. "Ineffective assistance of trial counsel"

- a. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to a constructive amended of his indictment and charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on trial court's lack of jurisdiction to convict and sentence him for a common law felony murder."
- b. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to the judge's omission of any jury charge on the elements of a robbery offense in his case."
- c. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to judge's constructive amended-mandatory presumption jury charge, and failure to move for a verdict in arrest of judgment and entry of judgment of acquittal based on the trial court's lack of jurisdiction to convict and sentence him for common law murder."
- d. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to the erroneous admission of his had in violation of his Fourth Amendment right."
- e. "The applicant was denied the right to effective assistance or trial counsel by counsel's failure to object to State's introduction of graphic crime scene photos of victim's body."

At the evidentiary hearing, Applicant sought relief on the following grounds:

1. Ineffective assistance of counsel for failing to object to jury instructions that did not require the State to prove the underlying felony to support a felony murder charge.

2. Ineffective assistance of counsel for failing to object to the introduction into evidence of Applicant's hat.
3. Prosecutorial misconduct for failing to disclose a plea bargain with Applicant's co-defendant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. The Court finds trial counsel's testimony to be credible. Correspondingly, the Court finds Applicant's testimony not credible. The Court further finds trial counsel conducted a reasonable investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003), regarding Applicant's specific allegations.

A. Summary of Testimony

Trial counsel testified he has practiced criminal defense for nineteen (19) years. He met with Applicant at least ten (10) times during the course of his representation. During these meetings, trial counsel discussed all of the State's evidence with Applicant. He also discussed any possible defenses Applicant may have. Trial counsel testified Applicant indicated he was not present when the shooting happened. Based on this information, trial counsel believed the best defense strategy was to argue the State could not prove Applicant actually shot the victim, and that Applicant was not acting in concert with the co-defendant in robbing the victim.

Trial counsel retained an investigator and visited the scene of the murder. He also recalled interviewing Applicant's family and other individuals with Applicant the night of the

murder. Trial counsel recalled the determining factor in the case was whether the jury believed Applicant's version of events or the co-defendant's version. Trial counsel testified he understood there was no felony murder in South Carolina. Rather, he believed the jury could infer the element of malice from the fact the killing was committed during a drug robbery. Trial counsel understood the State's theory of the case to be that Applicant shot the victim during a robbery.

Trial counsel recalled cross-examining the co-defendant in an effort to show the co-defendant was the shooter. He also recalled asking the co-defendant about his plea deal, and the co-defendant indicating he had no deal. Trial counsel also recalled attempting to suppress Applicant's hat that was found in a police vehicle previously used to transport Applicant for questioning.

Applicant testified he was never charged with robbery. He believes he should not have been convicted of murder because he was not also convicted of robbery. Applicant testified he could not have been convicted of murder under the felony murder rule because the judge did not instruct the jury on the elements of the underlying felony. Applicant admitted he was planning to sell fake drugs to the victim when the co-defendant decided they were going to rob the victim instead. Applicant also testified trial counsel should have renewed the objection to the introduction of the hat because the hat was not abandoned in the police vehicle.

B. Ineffective Assistance of Trial Counsel

Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning

of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to Object to Instruction on Felony Murder Inference

The Court finds Applicant failed to meet his burden to demonstrate trial counsel was ineffective in failing to object to the judge's instructions on the felony murder inference. South Carolina is one of the few jurisdictions that does not have a felony murder statute. Gore v. Leeke, 261 S.C. 308, 315, 199 S.E.2d 755, 757 (1973). Instead, our state follows the common law doctrine of felony murder that allows a permissible inference of malice from the commission of a dangerous felony. See Lowry v. State, 376 S.C. 499, 506, 657 S.E.2d 760, 764 (2008).

Thus, the pertinent element to be proved in a felony murder case in South Carolina is malice aforethought. See S.C. Code Ann. § 16-3-10 (“‘Murder’ is the killing of any person with malice aforethought, either express or implied.”). In other jurisdictions with the legislatively adopted crime of felony murder, the commission of the underlying felony is a substitute for malice aforethought. See, e.g., Robles v. State, 188 So. 2d 789, 793 (Fla. 1966) (“If premeditation is so vital a part of the crime of murder in the first degree, it must follow that the elements of the felony of burglary, which may be proved in lieu of premeditation, are equally vital and should therefore have been the subject of instructions to the jury.”). Thus, those jurisdictions require proof of the elements of the underlying felony. Id. Because South Carolina adheres to the common-law definition of murder, proof of the elements of the underlying felony need not be established. Therefore, trial counsel was not deficient for failing to request instructions on the elements of armed robbery.

Furthermore, trial counsel was not deficient because the trial judge issues adequate and correct jury instructions on the inference of malice. The South Carolina Supreme Court has endorsed the following charge on implied malice from the commission of a felony:

“The law says if one intentionally kills another during the commission of a felony, the implication of malice may arise. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.”

State v. Norris, 285 S.C. 86, 92, 328 S.E.2d 339, 343 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) and State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also Lowery, 376 S.C. at 506, 657 S.E.2d at 764 (approving similar charge). The trial judge’s charge on the felony murder inference was nearly a verbatim recitation of this

approved charge. (Trial Tr. p. 713, lines 6-17). Because the trial judge issued the instruction endorsed by the Supreme Court, trial counsel had no grounds for an objection to the charge. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency for failing to make arguments where "it would have been futile for Attorney to have made such arguments").

Regardless, the Court further finds Applicant failed to demonstrate he was prejudiced by the trial judge's jury instruction. Jury instructions must be reviewed in light of the whole charge and not in isolation. Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)). Here, the trial judge gave a complete and thorough charge on the elements of murder. (Trial Tr. p. 711, line 21-p. 713, line 17). He also instructed the jury on the theory of accomplice liability (Trial Tr. p. 713, line 18-p. 715, line 25) and criminal intent (Trial Tr. p. 716, line 12-p. 717, line 2). Viewing the charge as a whole, the trial judge's instruction on the felony murder inference was did not prejudice Applicant. The instruction was proper in light of the facts of this case.

Furthermore, no prejudice occurred even if the elements of armed robbery should have been charged to the jury. The evidence adduced by the State at trial indicated it was proceeding on a theory that Applicant shot the victim. Because the State's theory was one of malice murder, and not felony murder, the trial judge was not required to instruct the jury on the elements of armed robbery. See Alicea v. State, 392 So. 2d 960, 961 (Fla. Dist. Ct. App. 1980) (noting that, in jurisdiction where elements of underlying felony must be proven, error in the felony murder instruction is harmless where the evidence supports a jury finding of premeditated murder). Furthermore, although the jury was not instructed on the elements of armed robbery, they were allowed to use their common sense in deliberations. Even though the jury was not instructed on the elements of armed robbery, they surely understood the act of holding a victim at gunpoint

and taking money from him constitutes the crime of armed robbery. See State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 325-26 (1985) (defining armed robbery, common law robbery, and larceny). Thus, there could be no error from the lack of an instruction on the elements of armed robbery under the facts of this case.

Finally, the Court finds the overwhelming evidence of Applicant's guilt precludes a finding of prejudice. The evidence at trial indicates Applicant and the co-defendant became passengers in the victim's car with the intention of selling him fake drugs. At some point, the co-defendant decided they would rob the victim instead. The victim resisted this armed robbery. While the victim was struggling with the co-defendant, Applicant exited the passenger side of the vehicle, walked around the car to the driver's side, and shot the victim. Applicant's fingerprints were on the driver side door of the car, and the victim's blood was on his hat. In light of this overwhelming evidence, the Court finds Applicant failed to demonstrate how he was prejudiced by the inclusion of an instruction on the felony murder inference. Hutto v. State, 387 S.C. 244, 249, 692 S.E.2d 196, 198 (2010) ("No prejudice occurs, despite deficient performance, when there is overwhelming evidence of guilt." (citing Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009))).

2. Failure to Suppress Applicant's Hat

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to object to the introduction of Applicant's hat. Initially, the Court notes the alleged "search" in this case was actually an inadvertent discovery while the officer was installing a child safety seat in his vehicle. Thus, it is questionable whether a Fourth Amendment "search" even occurred in this case. Cf. State v. Abdullah, 357 S.C. 344, 353-54, 592 S.E.2d 344, 349 (Ct. App. 2004) (inadvertent discoveries do not trigger protections of Fourth Amendment). In

this factual scenario, where the officer was not acting in his official duties when he discovered the hat, the Court finds this was not a "search" for purposes of the Fourth Amendment.

Regardless, Applicant did not have standing to object to any search of the police vehicle. The Fourth Amendment does not protect an individual from a search or seizure when he has no privacy interest in the premises searched. State v. Robinson, Op. No. 27463 (S.C. Sup. Ct. filed Nov. 12, 2014) (Shearouse Adv. Sh. No. 45 at 31, 36) ("[T]o claim the protection of the Fourth Amendment, a defendant must demonstrate that he had an actual and reasonable expectation of privacy in the place searched." (citations omitted)). Because the vehicle searched belonged to the police officer, Applicant cannot claim a privacy interest in any items he would have left in the vehicle. See State v. Maybank, 352 S.C. 310, 316-17, 573 S.E.2d 851, 855 (Ct. App. 2002) (defendant has no privacy interest in vehicle driven by another if he is not in the vehicle). Similarly, Applicant's mere ownership of the seized hat is not sufficient to lend standing to challenge the seizure. Id. at 317, 573 S.E.2d at 855 (citing Rawlings v. Kentucky, 448 U.S. 98 (1980); Alderman v. United States, 394 U.S. 165 (1969)). Likewise, Applicant's actions in secreting the hat under the vehicle seat demonstrate an intent to abandon the property. Because the property was abandoned, Applicant had no right to challenge its admission at trial. See United States v. Stevenson, 396 F.3d 538, 546 (4th Cir. 2005) ("When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable, and he is precluded from seeking to suppress evidence seized from it." (citing United States v. Leshuk, 65 F.3d 1105 (4th Cir.1995); Abel v. United States, 362 U.S. 217 (1960))). Therefore, the Court finds Applicant failed to demonstrate trial counsel was ineffective in failing to object to the introduction of the hat because such an objection would have been unsuccessful. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

C. Prosecutorial Misconduct

The Court finds Applicant failed to meet his burden to show the State committed prosecutorial misconduct by withholding information about a plea deal with the co-defendant. Applicant bears the burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 799-899 (1989) (citing Wasman v. United States, 468 U.S. 559 (1984)). Generally, prosecutorial misconduct involves a solicitor's improper efforts to collect evidence or unfair trial tactics. State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998) (citations omitted). Because Applicant alleges the State presented untruthful testimony regarding the co-defendant's plea deal,¹ he bears the burden of proving the co-defendant's testimony was untruthful. United States v. Griley, 814 F.2d 967, 971 (4th Cir. 1987) (citing Dansby v. United States, 291 F.Supp. 790 (S.D.N.Y. 1968)). Furthermore, Applicant must also show, in addition to the impropriety of the testimony, a reasonable likelihood the testimony affected the judgment of the jury. See Giglio v. United States, 405 U.S. 150, 154 (1972) ("We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict'" (citations omitted)).

The trial record indicates the State had not entered into a plea bargain with the co-defendant at the time of trial. The solicitor stated she had not reached any agreement with the co-defendant. (Trial Tr. p. 268, line 20-p. 269, line 5). The co-defendant's attorney confirmed the solicitor made no promises to the co-defendant. (Trial Tr. p. 269, lines 6-14). Applicant testified he had no deal in place, but hoped he would get some help after his testimony. (Trial Tr. p. 291, line 24-p.293, line 3; p. 313, line 24-p. 314, line 2). The mere fact the co-defendant

¹ See Napue v. Illinois, 360 U.S. 264, 269 (1959) (Fourteenth Amendment prohibits "conviction obtained through use of false evidence" involving plea negotiations).

may have been allowed to plead to a lesser-included offense at a later date does not overcome the clear testimony in the record that no deal was in place at the time of trial. Instead, the co-defendant's trial testimony accurately reflects his expectations of the eventual outcome of his prosecution. Viewing the record as a whole, the Court finds Applicant has not demonstrated his conviction was obtained with the use of false testimony such as to run afoul of the standard set forth in Napue.

Furthermore, Applicant has not shown how he would have been prejudiced even assuming the solicitor, the co-defendant's attorney, and the co-defendant were being untruthful about the terms of the plea negotiations. The co-defendant admitted he expected leniency in exchange for testifying. Any further information about the State's negotiations with the co-defendant would be cumulative impeachment evidence. See State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693-94 (1996) (no Brady violation where impeachment evidence was merely cumulative). Furthermore, because there was overwhelming evidence Applicant shot the victim, further exploration of the co-defendant's expectations regarding his cooperation would not have led to a different result in this trial. See State v. Taylor, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) (court must consider alleged Brady violations in the context of the entire record (citing United States v. Agurs, 427 U.S. 97 (1976))). Therefore, the Court finds Applicant has not shown the jury would have reached a different result had they been informed the co-defendant later would be allowed to plead to a lesser charge.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Specifically, the Court notes Applicant testified at the

hearing that he only sought relief on the foregoing grounds. Accordingly, the Court finds Applicant has abandoned any further allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

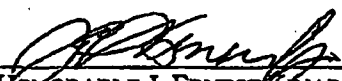
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 29 day of January, 2015.

Camden, South Carolina


THE HONORABLE J. ERNEST KINARD, JR.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KENYATTA BRYANT, #346659

Plaintiff,

vs.

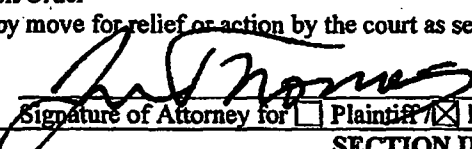
STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-7146

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Almee J. Zmroczek, Bar No. 77193 Address: PO Box 11961, Columbia SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Josh L. Thomas, Bar No. 100777 Address: PO Box 11549, Columbia SC 29211 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	
1/7/15 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, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

 RICHLAND COUNTY
 FILED
 2015 FEB - 9 AM 11:14
 JEANETTE W. MCPHIDE
 C.C.R. & O.S.

SCANNED

ARREST WARRANT

I-900996

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

CASE #1003203822

against

Kenyatta Andre Bryant

Address:

Columbia, SC 29204-

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 11 Weight: 140

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: R Martin - 1024

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant: Kenyatta Andre Bryant

on

Signature of Court Officer, Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant R Martin

being duly sworn deposes and says that defendant Kenyatta Andre Bryant

did within this county and state on or about 03/22/2010

State of South Carolina (or ordinance of) ☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

In the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did
the crime set forth and that probable cause is based on the following facts:That on or about MARCH 22, 2010 while at [REDACTED] in the WAVERLY Magisterial District of Richland County, it
is believed that one KENYATTA ANDRE BRYANT did commit the crime of MURDER because he did with malice and
aforethought, while armed with a firearm, shoot Andrew Decker causing his death. The defendant and co-defendant have given
sworn written statements of participating in the armed robbery of the victim which lead to the death of the victim.
RCS Case #1003203822

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/22/2010 defendant Kenyatta Andre Bryant

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 03/24/2010

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved
S.C. Attorney General
April 21, 2003
SCA 518CERTIFIED COPY
OF CRIMINAL
CASE FILED
C.C.R. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

violates the criminal laws of the

JEANETTE W. McBRIDE
C.C.R. & G.S.
2010 MAR 29 PM 12:16
RICHLAND COUNTY
FILED

817

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BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

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Address: _____
Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandINDICTMENT/CASE#: 2010 -GS- 40 - 1103Kenyatta VS. BryantA/W#: I 900 946

AKA:

Date of Offense: March 22, 2010Race: BSex: M

Age:

S.C. Code §: 16-03-0010DOB: [REDACTED]SS#: [REDACTED]CDR Code #: 0116

Address:

City, State, Zip:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Murderin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The pleas: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 42 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp: _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$
\$56-5-2995 (DUI Assessment)	\$12 \$
\$56-1-289 (DUI Breath Test)	\$500 \$
\$35.13 (Public Def/Prob)	\$25 \$
\$73.3, 1B TP (Law Enforce. Funding)	\$25 \$
\$33.7, 1B TP (Drug Court Surcharge)	\$100 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ \$
\$90.11 TP (SCCJA Surcharge)	\$5 \$
TOTAL	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____ \$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 0110Sentence Date: 3/23/10

CERTIFIED TRUE COPY

OF ORIGINAL FILED

[Signature]

C.C.C. 836.8.

RICHLAND COUNTY
SOUTH CAROLINACourt Reporter: D. Helms

WITNESSES

(S) R Martin - Richland County Sheriff

ARREST WARRANT NUMBER

1900996

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date:

APR 14 2010

VERDICTForeperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-1103

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

42

THE STATE
vs.

KENYATTA ANDRE BRYANT

Indictment for
MURDERSC Code: 16-03-0010
CDR Code: 0116
FELONY-EXEMPT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
APR 14 2010
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 14, 2010, the Jurors of
Richland County present upon their oath:

MURDER

CDR: 0116-16-03-0010,0020

That Kenyatta Andre Bryant did in Richland County, on or about March 22, 2010,
feloniously, willfully, and with malice aforethought, kill one, Andrew Decker, by
means of gunshot wound to the head, and that the said victim died as a
proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of
Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.

W. B. Giese
WARREN B. GIESE, SOLICITOR