

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Brian M. Gibbons, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

QUANELL MARQUAN MCILWAIN,

APPELLANT

APPELLATE CASE NO. 2014-002539

RECORD ON APPEAL

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KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 those three test then you are certified to do firearms
2 identification for the FBI laboratory.

3 I successfully completed the program in 1991 and
4 examined cases for them until I retired from the FBI in
5 1997 where I came to work for SLED during basically the
6 same job.

7 Q. Have you been called upon to give expert testimony as
8 a firearms and tool marks identification expert in the
9 courts of this state in the past?

10 A. Yes I have.

11 Q. Probably how many times?

12 A. I have been in my total career probably been accepted
13 as a expert witness in all cases but at least two hundred
14 and seventy-five to two hundred and eighty times in various
15 state, federal and territorial courts.

16 SOLICITOR BARFIELD: Your Honor, at this time I'd
17 offer Mr. Whitler as an expert in firearm's and tool mark
18 identification.

19 MR. JONES: No objection.

20 THE COURT: All right, without objection so qualified.

21 BY SOLICITOR BARFIELD:

22 Q. Now, I want to talk about firearms for a little bit
23 and I want to just ask you some general questions.

24 Well let me ask you this first. Did you get called
25 upon in your capacity with SLED to examine some items

1 concerning a Lancaster Police Department case which was
2 assigned SLED Lab Number L11-06004?

3 A. Yes I did.

4 Q. Now before we get into those specifics - Well what
5 items did you have from Lancaster Police Department?

6 A. Based on -

7 Q. The item number and description first.

8 A. They submitted four bullets which we call Items 3
9 through 5 and Item 10. Then Item 11 which was a Smith
10 and Wesson .357 magnum revolver model 686. And then one
11 fired .380 auto caliber cartridge case.

12 Q. Now let me go ahead and ask you about the .380
13 caliber cartridge case. Was anything else submitted in
14 connection with that .380 caliber fired cartridge case for
15 you to do any work on?

16 A. No. It was the wrong caliber. 380's can't be fired
17 in a .357.

18 Q. Okay. Now I'm gonna hand you some things. First of
19 all State's Exhibit Number Thirty-five. Take a look at
20 that and if you need to open it certainly feel free to.

21 A. State's - Yes I've seen this before.

22 Q. And first of all what - Did that get a SLED Item
23 Number?

24 A. Yes it did.

25 Q. What Item Number is that item?

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 A. It is Item 10. It's a fired bullet.

2 Q. And do you know the source of that bullet in
3 conjunction with your receiving it at SLED do you know
4 where law enforcement got that bullet from?

5 A. On the bag - I have no personal knowledge. On the
6 bag it says bullet removed from Jones' back during autopsy.

7 Q. Okay. All right, sir. Now, I'm gonna show you also
8 State's Exhibits Forty-four and Forty-five and Forty-six
9 and ask if you can identify what they are?

10 A. These are also three fired bullets. State's Exhibit
11 Forty-four is Item 3. State's Exhibit Forty-five is Item
12 4 and State's Exhibit Forty-six is Item 5.

13 Q. All right, I'm gonna hand you one more thing.

14 State's Exhibit Number Forty-seven and ask if you will
15 open that box up and tell me if you can identify what that
16 is?

17 A. Yes, sir. This is a .357 magnum revolver and it says
18 State's Exhibit Forty-seven is Item 11.

19 Q. And how many shots is that revolver?

20 A. It will - Six.

21 Q. Okay. Do some revolvers hold different numbers than
22 six?

23 A. Yes.

24 Q. Okay. You're looking at those things. Is there
25 someway you can look at that thing if I didn't even have it

1 in an envelop with any writing on anything could you look
2 at each of those items I've handed you and tell that
3 they're things that you've had your hands on and work with?

4 A. Yes.

5 Q. How?

6 A. Cause I marked all the items with a scribe.

7 Q. All right. Now, when you have fired bullets and you
8 have a firearm and you want to determine if those bullets
9 were fired by that firearm, what did you do at SLED to make
10 those determinations?

11 A. The first thing you do is test fire, the revolver in
12 this case, to obtain the test bullets. By doing this it
13 enables me to say with absolute certainty that I know where
14 those test bullets came from; that those bullets were fired
15 by this gun.

16 Then I take those test bullets and put them on a
17 comparison microscope that allows you to look at two
18 objects at the same time side by side. I take one of the
19 question bullets that's submitted and I put it on one side
20 on what is called a stage which is really a bullet holder
21 if you will. You take the test bullet and put it on the
22 other side and then you optically align them and try to
23 match up the marks on the test - the submitted bullet with
24 marks on the test bullet.

25 Q. How do marks get on the bullets?

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 A. Marks get on the bullets when they go down the
2 barrel of the firearm. When the barrel is made there are
3 manufacturing marks that are left in the barrel. Also as
4 the gun is fired and used maybe if it's not cleaned
5 properly or somebody's over cleaned it, scratched the
6 barrel, all this contributes to putting the unique marks in
7 the barrel which when the bullet passes over it they pick
8 up these marks in many cases.

9 If you find sufficient agreement of the marks on the
10 submitted bullet with the marks on the test bullet, then
11 you're able to say the bullet was fired by that gun. If
12 there's not sufficient agreement then you will have to say
13 it could have been fired by this gun or another gun with
14 similar rifling characteristics. If for some reason the
15 class characteristics were on it for example this gun has
16 five grooves in the barrel. The bullets that were
17 submitted also had five grooves.

18 For some reason a bullet had six grooves then you
19 could automatically eliminate it based strictly on the
20 class characteristic that a six groove bullet can't come
21 out of a barrel with five grooves in it. And in this case
22 all the bullets had the same class characteristics, the
23 same diameter, same number of landing grooves, same widths
24 of those landing grooves and I was able to compare those
25 bullets.

1 Q. Is there - Are there times when you get a fired
2 bullet that you can't make any determination about?

3 A. Yes. And in a lot of cases it's not like you see on
4 television you put it up on the scope and two minutes later
5 it says match match, the lights are flashing and all this
6 stuff. You can actually work hours on bullets and still
7 not be able to find enough marks to say that it was
8 absolutely fired by that gun.

9 Q. Are there times when bullet are fired and there's not
10 enough of it left or there's so much damage to it that you
11 can't get any identifying marks off it?

12 A. Yes sometimes it's the case where the bullet is just
13 too damaged and not much left. Sometimes you can have a
14 complete bullet and a gun just doesn't mark well.

15 Q. Okay.

16 A. It's not a guarantee.

17 Q. All right. Now although - Well, you weren't - Were
18 you called upon to do any comparisons of fired cartridge
19 cases in this case?

20 A. No.

21 Q. All right. Now, as to State's Exhibit - I don't
22 remember my number. Let's go through Forty-three - Excuse
23 me, Forty-four, Forty-five and Forty-six specifically and
24 you give me the number you want to talk about first.

25 Did you compare State's Forty-three to test bullets

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 from the pistol and from the revolver Item 11?

2 A. I don't have a Forty-three.

3 Q. I'm sorry.

4 A. I've got --

5 Q. I'm reading the number wrong.

6 A. I start Forty-four.

7 Q. Okay. Forty-four, Forty-five and Forty - - -

8 A. Forty-six and then Thirty-five.

9 Q. Okay. Forty-four.

10 A. Forty-four is Item 3. Well let me just simplify it.

11 Q. Sure.

12 A. The submitted bullets were out of State's Exhibit
13 Forty-four, Forty-five, Forty-six and Thirty-five. I was
14 able to compare - I compared all four of these bullets with
15 test bullets from State's Exhibit Forty-seven, revolver,
16 and determined that State's Exhibit Forty-four, Forty-five
17 and Thirty-five which are my Item's 3, 4 and 10 were fired
18 by the State's Exhibit Forty-seven revolver.

19 Q. Now, again, let me - I'm gonna interrupt you just a
20 minute, but State's - SLED Item Number 10, State's Exhibit
21 Thirty-five I believe?

22 A. Yes.

23 Q. Was which bullet in relation to where it was recovered
24 or the source of the bullet?

25 A. It's according to the bag it was recovered during the

1 autopsy.

2 Q. Okay. Now how about the fourth fired bullet?

3 A. State's Exhibit Forty-six which was my Item 5 it was
4 not enough agreement of the marks to enable me to say it
5 was fired by this revolver. However it had the same class
6 characteristics and it could a been fired by this revolver
7 or another revolver with similar rifling characteristics.

8 Q. And can you tell me is the unidentified fired bullet
9 of the same caliber as the identified ---

10 A. Yes.

11 Q. --- or matching fired bullets?

12 A. Yes. It's the same caliber, same rifling
13 characteristics meaning the same number, same direction of
14 twist, same measurements. It's just not enough individual
15 marks for me to say it was fired by this gun and couldn't
16 have been from something else.

17 Q. And how certain are you in your findings?

18 A. Well it's - On the other three I'm certain. This one
19 is I'm also certain that its not, I can't tell you that it
20 was fired by it but it could have been fired from it.

21 Q. All right. Now, did you prepare a report containing
22 your findings?

23 A. Yes I did.

24 Q. And I'm gonna hand you a two page stapled document
25 and ask you if you can identify what that is?

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 A. It's a copy of my report.

2 SOLICITOR BARFIELD: Your Honor, at this time I'd
3 offer Mr. Whitler's report as State's Number Fifty-two.

4 MR. JONES: No objection, Your Honor.

5 THE COURT: Without objection admitted into evidence.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER FIFTY-TWO,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR BARFIELD: Thank you, Mr. Whitler. Answer
9 anything Mr. Steen or Mr. Jones has.

10 MR. JONES: No questions for this witness.

11 THE COURT: All right. Thank you, sir. You can step
12 down and you're free to leave.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: All right, call your next witness.

15 SOLICITOR BARFIELD: Give me just a second.

16 Call Kimberly Ingram.

17 MADAM COURT REPORTER: Mr. Barfield, you left a weapon
18 up here on the witness stand.

19 MR. STEEN: Your Honor, may we approach on this
20 witness?

21 THE COURT: Yes, sir.

22 Hang on, ma'am. Hang on one second.

23 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
24 OF THE JURY AT 02:18 P.M..)

25 MR. BARFIELD: Call Kimberly Ingram.

KIMBERLY INGRAM: DIRECT BY SOLICITOR BARFIELD

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1 MR. STEEN: Your Honor, for the record I would say
2 that this witness testified under inadmissible character
3 evidence.

4 THE COURT: All right. Objection over ruled.

5 MR. STEEN: Thank you, Your Honor.

6 THE BAILIFF: Raise your right hand.

7 (WHEREUPON, KIMBERLY
8 INGRAM, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 DIRECT EXAMINATION

11 KIMBERLY INGRAM BY SOLICITOR BARFIELD:

12 Q. Tell us your name please, ma'am.

13 A. Kimberly Ingram.

14 Q. Ms. Ingram, do you live here in Lancaster?

15 A. Yes, sir, I do.

16 Q. Did you know Terrance Antonio Jones?

17 A. Yes, sir, I do.

18 Q. How did you know him?

19 A. He was my first cousin.

20 Q. And what did you all call him?

21 A. Tonio.

22 Q. How old was he when he died?

23 A. Thirty-six.

24 Q. Who is his daddy?

25 A. Robert Sanders.

KIMBERLY INGRAM: DIRECT BY SOLICITOR BARFIELD

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1 Q. Who was his birth mother?

2 A. Rosa Lee Jones.

3 Q. Is she living now?

4 A. No, sir.

5 Q. Is Mr. Sanders mar - Is Robert Lee Sanders married
6 now?

7 A. Yes, sir.

8 Q. And what's Tony's step momma's name?

9 A. I don't recall.

10 Q. That's fine. Did Tonio have brothers and sisters?

11 A. Yes, sir, he did.

12 Q. And how many brother's and sisters did he have?

13 A. One brother and two sisters.

14 Q. Okay. Did he work?

15 A. Yes, sir, he did.

16 Q. Where did he work that you knew of?

17 A. He worked in Columbia, South Carolina at this - this
18 like farm. I don't recall the exact name of it.

19 Q. Okay. Where did he live when he died? Where was
20 he staying?

21 A. He was back here in Lancaster.

22 Q. Okay. Was he married?

23 A. No, sir, he wasn't.

24 Q. Did he have any children?

25 A. No, sir, he didn't.

1 Q. And when did you find out that he had died?

2 A. I got a phone call from my mother that same night.

3 Q. Okay.

4 SOLICITOR BARFIELD: Thank you, ma'am. Answer
5 anything Mr. Steen or Mr. Jones has.

6 MR. STEEN: No questions.

7 THE COURT: All right. Thank you, ma'am, you may step
8 down.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Call your next witness.

11 SOLICITOR BARFIELD: Your Honor, could we take a short
12 break? Can we approach?

13 THE COURT: Yes, sir.

14 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
15 OF THE JURY AT 02:21 P.M..)

16 THE COURT: All right, ladies and gentlemen, we gonna
17 take a brief recess. Been here for almost an hour this
18 afternoon so let's take a recess. We'll come get you here
19 in a moment. Don't talk about the case.

20 (JURY EXITS COURTROOM AT 02:22 P.M..)

21 THE COURT: I was gonna go ahead and request from the
22 defendant concerning his right to testify at this time.
23 You want to stay in here for that?

24 SOLICITOR BARFIELD: I'll stay.

25 THE COURT: Okay. Then we'll take a full recess.

1 All right, Mr. McIlwain, raise your right hand for me.

2 (WHEREUPON, QUANELL MCILWAIN,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE COURT: All right, thank you. You can be seated.
5 Just pull that microphone to you there at your table cause
6 I ask questions before you and I want to make sure you
7 understand okay. Did you hear me?

8 MR. MCILWAIN: Yes, sir.

9 THE COURT: All right. At this time I'm gonna explain
10 to you certain rights that you have and if you don't
11 understand anything I say please let me know and if you
12 want me to explain anything in more detail I'll be glad to
13 do that. Do you understand?

14 MR. MCILWAIN: Yes, sir.

15 THE COURT: Okay. Now the State has not officially
16 rested yet but I've been advised by the Solicitor that he's
17 most probably gonna what's called rest which means it's
18 your turn or the stage of the trial now where you are able
19 to present your defense assuming that I do not grant a
20 directed verdict in the case. Do you understand that?

21 MR. MCILWAIN: Yes, sir.

22 THE COURT: All right. So let's assume for the
23 purpose of this discussion I don't grant a directed verdict
24 motion cause the State has rested yet and you are entitled
25 to present your defense. Now as I know you and your

1 lawyer's have been over you have the right to remain
2 silent. Okay.

3 MR. MCILWAIN: Yes, sir.

4 THE COURT: Silence is considered speech because you
5 have the right and protections given to you by the Fifth
6 Amendment to the United States Constitution as well as
7 other amendments which say no person shall be compelled in
8 any criminal case to be a witness against themselves.

9 This means you may not - you cannot be required to
10 testify in this case. Now you have the right to testify if
11 you want to but nobody can make you testify. This is a
12 personal right and nobody can waive this right except for
13 you. Do you understand that?

14 MR. MCILWAIN: Yes, sir.

15 THE COURT: Okay. Now if you do decide to testify
16 you will be subject to the same rules that govern other
17 witnesses and you may be examined and cross examined on any
18 relevant issue in the case. Just like your lawyers have
19 tried to make witnesses look bad in front of the jury or
20 get the testimony more favorable to you or one of the
21 witnesses that the State presented actually had a criminal
22 record which they let the jury hear about, you know, if you
23 testify the State's lawyer could do that with you. Do you
24 understand that?

25 MR. MCILWAIN: Yes, sir.

1 THE COURT: So that means if you have any convictions
2 for crimes involving dishonesty or a false statement or
3 crimes which are punishable by more than one year and I
4 determine that the approbative value they question you
5 about that outweighs any prejudicial effect you could be
6 questioned on that. Do you understand that?

7 MR. MCILWAIN: Yes, sir.

8 THE COURT: And of course that would be the State
9 trying to attack your credibility or believability.

10 Now, do you understand everything we've gone over so
11 far?

12 MR. MCILWAIN: Yes, sir.

13 THE COURT: Okay. Now if you decide to testify that's
14 your own personal decision and that decision must be made
15 freely voluntarily and intelligently with knowledge of all
16 these constitutional protections give to you. Do you
17 understand that?

18 MR. MCILWAIN: Yes, sir.

19 THE COURT: And if you don't testify I am going to
20 instruct the jury that they cannot even bring it up in the
21 jury room when they are looking over the evidence and
22 deliberating the case. They can't give that any weight
23 whatsoever because you have an absolute right to not
24 testify if you don't want to. Do you understand that?

25 MR. MCILWAIN: Yes, sir.

1 THE COURT: All right. Now have you spoken with your
2 attorneys about whether or not you're gonna testify?

3 MR. MCILWAIN: Yes, sir.

4 THE COURT: All right. And do you understand
5 everything I've explained to you?

6 MR. MCILWAIN: Yes, sir.

7 THE COURT: Do you have any questions at all about
8 what I've explained to you?

9 MR. MCILWAIN: No, sir.

10 THE COURT: All right. Do you wish to talk to your
11 lawyers anymore at this time?

12 MR. MCILWAIN: No, sir.

13 THE COURT: All right. Are you satisfied with your
14 lawyers so far?

15 MR. MCILWAIN: Yes, sir.

16 THE COURT: Have they answered all your questions?

17 MR. MCILWAIN: Yes, sir.

18 THE COURT: All right. So having gone over everything
19 with your lawyers, considering everything I've talked
20 about, do you wish to testify?

21 MR. MCILWAIN: No, sir.

22 THE COURT: All right. Thank you.

23 All right, anything further?

24 MR. STEEN: No.

25 THE COURT: All right. Thank you. We're in recess.

1 SOLICITOR BARFIELD: And, Your Honor, again just want
2 to make myself clear. We're in recess now for me to decide
3 whether I'm gonna rest.

4 THE COURT: Right. Then when you come back if you
5 rest --

6 We're still on the record right, Wanda?

7 MADAM COURT REPORTER: Yes, sir.

8 THE COURT: Okay. When you come back and if you say
9 you rest we're gonna then that's when I'll send the jury
10 back out, hear any motions from the defense as well as go
11 over the Fifth Amendment right again with the defendant and
12 then we'll go from there.

13 SOLICITOR BARFIELD: And go from there means we gonna
14 have a little bit of a break?

15 THE COURT: Go from there and I'll give you a little
16 bit of a break between the time you rest.

17 Does the defense at this time intend to put anything
18 up?

19 MR. STEEN: No, Your Honor.

20 THE COURT: Okay. All right, thank you.

21 (COURT IN RECESS AT 02:28 P.M..)

22 (COURT BACK IN SESSION AT 02:35 P.M..)

23 THE COURT: Bring 'em in.

24 THE BAILIFF: The jury's coming in.

25 (JURY REENTERS COURTROOM AT 02:39 P.M..)

1 THE COURT: All right, all members of the jury are
2 present.

3 Solicitor, you can call your next witness.

4 SOLICITOR BARFIELD: Your Honor, that's the case for
5 the State of South Carolina.

6 THE COURT: The State rest?

7 SOLICITOR BARFIELD: Yes, sir.

8 THE COURT: All right, ladies and gentlemen of the
9 jury, I hate to do this again to you but you gonna have to
10 get right back up and go right back to your jury room.
11 Sorry, I got some matters of law I need to deal with and I
12 will get you back here expeditiously. Thank you for
13 understanding. Do not discuss the case. It's good
14 exercise at least.

15 (JURY EXITS COURTROOM AT 02:40 P.M..)

16 THE COURT: Mr. Steen.

17 MR. STEEN: Your Honor, at this time I move for a
18 directed verdict as to all three charges. Even when viewed
19 in the light most favorable to the State the State has not
20 provided - the State has only provided circumstantial
21 evidence that my client has possessed a gun which is the
22 essential element of all three charges.

23 THE COURT: All right. Solicitor.

24 SOLICITOR BARFIELD: Your Honor, I think there is
25 ample evidence that Mr. McIlwain is the shooter. I think

1 you just simply can't ignore the testimony of Tanisha
2 Nelson who says the man who was face to face with her and
3 handed her a telephone moments later pulled out a gun and
4 started shooting.

5 THE COURT: I agree with the State, I believe there is
6 ample evidence in the record which would allow the trier of
7 fact to deliberate on the three charges. There is direct
8 eye witness testimony in addition to other circumstantial
9 testimony which would survive a directed verdict so I
10 respectfully deny your motion.

11 MR. STEEN: Thank you, Judge.

12 THE COURT: All right, Mr. McIlwain, you don't need to
13 stand or be sworn in again, I'm just gonna reiterate to you
14 that now we've reached the stage of the trial where you get
15 to present your defense. Your lawyers have advised me that
16 they are just gonna rest and no witnesses would be called
17 on your behalf nor will you be testifying. Is that
18 correct?

19 MR. MCILWAIN: Yes, sir.

20 THE COURT: All right. Do you understand what we went
21 over less than ten minutes ago?

22 MR. MCILWAIN: Yes, sir.

23 THE COURT: Do you want me to go over it with you
24 again your right to remain silent and your right to not
25 have to testify if you don't wish to?

1 MR. MCILWAIN: No, sir.

2 THE COURT: All right. Do you understand that right?

3 MR. MCILWAIN: Yes, sir.

4 THE COURT: All right. And you still wish to not
5 testify?

6 MR. MCILWAIN: Yes, sir.

7 THE COURT: All right. Anything else you - any other
8 questions you have about any questions I - any other
9 questions that you have about what I may have told you?

10 MR. MCILWAIN: No, sir.

11 THE COURT: All right. Mr. Steen, you wish for me to
12 go over anything else with your client?

13 MR. STEEN: No, Your Honor.

14 THE COURT: Do you have any other questions for your
15 client at this time concerning his right to testify or not
16 to testify?

17 MR. STEEN: No, Your Honor.

18 THE COURT: All right. Thank you. We'll be in
19 recess, Solicitor, so you can be ready to move right into
20 closing arguments once the jury comes back.

21 SOLICITOR BARFIELD: Can we have until three o'clock?

22 THE COURT: Yes, sir.

23 SOLICITOR BARFIELD: Thank you.

24 THE COURT: All right, we're in recess till three.

25 (COURT IN RECESS AT 02:43 P.M..)

1 (COURT BACK IN SESSION AT 02:58 P.M..)

2 THE COURT: All right, thank you. We'll come back to
3 order. All right, gentlemen, anything before we bring the
4 jury in?

5 SOLICITOR BARFIELD: Nothing from the State.

6 MR. STEEN: No, sir.

7 THE COURT: All right. Thank you.

8 All right, bring 'em in.

9 Solicitor, any question about the order of argument?

10 SOLICITOR BARFIELD: I'd like to go last.

11 THE COURT: Well I don't think the rules allow you to.

12 SOLICITOR BARFIELD: No, sir, there is no question
13 about it.

14 THE BAILIFF: The jury's coming in.

15 (JURY REENTERS COURTROOM AT 03:02 P.M..)

16 THE COURT: All right, all members of the jury are
17 present. The State has rested.

18 Mr. Steen, you may call your first witness.

19 MR. STEEN: The Defense rest at this time, Your Honor.

20 THE COURT: The Defense rest. Anything in reply from
21 the State?

22 SOLICITOR BARFIELD: No, sir.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen of the jury, we've now reached
25 the stage of the trial where you will hear closing

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 arguments from the attorneys for the parties. Remember
2 what I told you at the outset of the trial on Monday about
3 closing arguments or summations. At the conclusion of the
4 arguments presented by the attorneys I will then instruct
5 you on the law as it pertains to the issues which have
6 arisen in this case. Thank you very much for your
7 undivided attention to the lawyers.

8 Solicitor.

9 SOLICITOR BARFIELD: If the Court please.

10 Mr. Steen, Mr. Jones.

11 It's been a long week and a lot of stuff still sittin
12 there with nothing in your hands. It's all in your head.
13 And we got all these notes and all these things we want you
14 to remember over the course of these last several days.

15 I'm gonna take a few minutes to go over some things
16 with you. I will tell you that starting Monday through the
17 end of this trial I'm doing my dead level best to convince
18 you that Quanell McIlwain shot and killed Tony Jones, Tonio
19 Jones, in Pardue on May 29th of 2011 and I submit to you
20 that the evidence shows that he did. I want talk to you
21 about some things, some miscellaneous things before I get
22 into the case itself.

23 First of all, Quanell McIlwain is charged with murder
24 which the judge is gonna define for you in a little bit.
25 And murder is the unlawful killing of another person with

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 malice aforethought expressed or implied. That's a lot of
2 legal mumbo jumbo but it's a killing and clearly this case
3 is about a killing. No doubt about it Tonio Jones got shot
4 twice with a .357 cannon and died out there in Pardue or
5 out at the hospital after being shot in Pardue. It was a
6 killing. There's no question about it.

7 What is malice? The judge is gonna give you all kinds
8 of definitions of malice but I submit to you malice
9 basically means meanness. Just meanness, a heart deprived
10 of any social - sense of social justice. A heart deprived
11 of any kind of good will at all. Meanness, wickedness,
12 evilness. Malice can be expressed meaning I walk up to
13 Bill Graham over there and I say I hate your guts and I'm
14 gonna kill you. That's expressed malice.

15 Malice can also be - Excuse me - can also be inferred
16 by actions if not necessarily by words. And I submit to
17 you that the law says you can find malice from the killing
18 of another person with the use of a deadly weapon and we
19 have that in this case. We have that big ole .357 revolver
20 which was used in this case and that shooting somebody with
21 a .357 revolver is malicious as anything can get.

22 The malice has to be aforethought. What does that
23 mean? Aforethought means at some point before the fatal
24 shot is fired that malice has to be formed in the brain of
25 the person who's firing that shot. It doesn't mean

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 aforethought like last week when I'm putting together my to
2 do list for this week, I'm gonna put on my list go kill
3 Tonio Jones. It means some point, even a fraction of a
4 second before that trigger gets - starts getting pulled,
5 Quanell McIlwain had to be malice in his heart when he shot
6 Tonio Jones.

7 That's what murder's all about. It's a lot of legal
8 definitions but it's really a common sense thing. Just a
9 shooting, a killing of another person with that malice,
10 with that meanness, with that evil intent, and it results
11 in that death. That's what murder's all about.

12 You also have another charge against Quanell McIlwain
13 which is possession of a firearm during the commission of a
14 violent crime. And I submit to you, and the judge I think
15 will tell you, that murder is definitely a violent crime.
16 So if you conclude that Quanell McIlwain shot and killed
17 Tonio Jones, and he shot him with that pistol, then you
18 find him guilty of possession of that firearm during the
19 commission of the violent crime.

20 He's charged with a third offense which is also a
21 firearm's related offense, which is possession of a firearm
22 or ammunition by a person who has been convicted of a
23 violent felony crime. There are elements of that one of
24 which is a prior conviction for a violent felony crime.
25 And the parties stipulated at the beginning of this case

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 that Quanell McIlwain has in fact been convicted of a
2 violent felony crime. So again, if you conclude that even
3 if you just conclude he possessed that pistol that makes
4 him guilty of that offense.

5 Now, credibility. You've heard a bunch of witnesses'
6 in this case and you've got to decide as to those
7 witnesses', as to each of those witnesses', and as to
8 everything each of those witnesses' said do I believe 'em.
9 That's called credibility. It's again, common sense
10 determination. When you're talking to somebody on the
11 street you're always forming an opinion about do I believe
12 what this guy's telling me. Do I believe what this girl's
13 saying to me. And that's what judging credibility is all
14 about and you do that looking at a lot of different things.

15 You look at what interest any witness might have in a
16 case or in the outcome of a case. You look at whether the
17 witness has some connection good or bad to the person that
18 he's giving testimony about. You look at how the witness
19 appears on the witness stand. Some people sometimes maybe
20 you can just look at and you can just say he ain't acting
21 right, I don't believe he's telling me the truth. Or on
22 the other hand some witnesses' seem very sincere and you
23 can tell that that witness is being level with you and
24 telling you the truth.

25 Who are the witnesses' in this case? And I hesitate

1 to use this phrase but who are the witnesses' that
2 testified against Quanell McIlwain? Who are the witnesses'
3 that the State called to prove to you that Quanell McIlwain
4 shot and killed Tonio Jones? By and large particularly the
5 ones that gave the most damning testimony are Quanell
6 McIlwain's buddies. These aren't people who have a beef to
7 pick with Quanell McIlwain who came in - who made up stuff
8 to tell the police and then who came to court and repeated
9 that made up stuff that they told the police to try to get
10 him in trouble.

11 These are his buddies by and large. And you can again
12 going back to how a witness appears to you on the witness
13 stand you can see it in the testimony of some of these
14 people. See it, not hear it, but you can see it in the
15 testimony of some of these folks who were his buddies and
16 who got caught up in this, no fault of their own, were
17 somewhere where something bad happened and had information
18 and the police found out they had information and the
19 police go track 'em down and the police get 'em to tell 'em
20 that information and now they're stuck in the middle of a
21 dad gum murder case. They didn't want to be here and you
22 could see it when these witnesses' were on the stand. You
23 could see how it pained some of them to have to tell what
24 they told on Quanell McIlwain. And I submit to you that
25 goes to their credibility.

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 It wasn't a flippant thing for them, it wasn't just
2 this is just another day and I got to go to court for a
3 little while. It was tough for some of those people to be
4 on that witness stand telling you what they knew about what
5 Quanell McIlwain had done but they came in here and they
6 did it and they told you the truth.

7 I go first and Mr. Steen or Mr. Jones or both go last
8 and so I have to kind of guess at some of the stuff they're
9 gonna talk about and I'm gonna try to do that on a couple
10 of things. We don't have the bologna. Well, I wish we did
11 have the bologna which had a bullet hole in it which was
12 taken off the Gurney under the back board when Tonio Jones
13 was being treated there at the ER. And the officer, I
14 think Fireball, told you he picked up the bologna back and
15 it look like it had a bullet hole in it and they logged it
16 into evidence and put it in the refrigerator and apparently
17 at some point it just got so nasty they didn't keep it.

18 That wouldn't tell us anything other than there was a
19 bullet hole in a packet of bologna that was found under
20 Tonio Jones' body at the ER. I don't need the bologna. I
21 got two bullet holes in Tonio Jones' body which we know got
22 fired by that gun. Don't worry about the bologna. Worry
23 about it if you want to. The State doesn't take anything
24 for granted in this case. We ask you to examine it all.
25 But I submit to you and I'm not being flippant about the

1 case either but I submit to you the bologna doesn't make
2 any difference.

3 We don't have the fired cartridge cases, the six fired
4 cartridge cases that came out of that .357. It'd be nice
5 to have them but we don't have 'em because we didn't find
6 out about 'em until over a week later when Timothy Nelson
7 was talked to by Phillip Hall and he said I took 'em out of
8 the gun and I put 'em in a dirty diaper and I put 'em in
9 the trash. Well it's a week later and the trash is gone.
10 We don't have 'em. I submit to you it doesn't really
11 change the case at all. We don't have the black shirt and
12 the black hat that Justine Nelson, Justine Gladden, found
13 in her kitchen closet and that he sister Dawnetta
14 Montgomery took and put in the dumpster at some apartments.
15 That got discovered days after this case occurred and days
16 after any investigation started too. We don't have it.

17 What we do have though is we have Justin Gladden
18 telling you that black hat and that black shirt that I
19 found in my kitchen closet the morning - later on in the
20 morning of the shooting were worn by Quanell McIlwain
21 earlier that day in the wee hours of the morning in 1701
22 Pardue as he's there with all those other people in her
23 apartment.

24 I can't explain how they got in her closet. I'm not
25 gonna attempt to explain it cause I don't know. The State

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 doesn't know. Maybe you know and maybe you'll figure it
2 out. Maybe you'll come up with a theory that makes sense
3 to you. But their there and we don't have 'em.

4 What do we have in this case? I hesitate to go
5 through each witnesses' testimony with you cause there have
6 been a bunch of 'em. But I am gonna hit on some of what
7 some of those folks said.

8 You might also hear from the Defense that the State
9 hasn't proved Quaneil McIlwain did this, a whole number of
10 other people could have done this shooting of Tonio Jones
11 in Pardue. The first one that comes to mind is Timothy
12 Nelson. He'll get up here, maybe, I don't know; maybe
13 he'll get up here and argue to you you got the shooter, the
14 shooter was on the witness stand, Timothy Nelson. I submit
15 to you, ladies and gentlemen, that doesn't make a lot of
16 sense that Timothy Nelson is the shooter.

17 Timothy Nelson might be stupid but he's not a killer
18 and he's not Tonio Jones' killer. Timothy Nelson is not
19 the shooter because how many witnesses' told you he was
20 inside 1701 when the shots rang out. Who told you Timothy
21 Nelson was in 1701 when the shots got fired? Again, I
22 apologize for flipping through notes but that's the only
23 way I can get to it.

24 Jatoya Wright: Timothy Nelson was in 1701 at the time
25 of the shooting. Dawnetta Montgomery: Timothy Nelson was

1 in 1701 at the time of the shooting. Justin Gladden had
2 gone upstairs but when she went upstairs Timothy Nelson was
3 in 1701 and a short time later the shooting occurred.

4 Keith Benson: Of all the people that were pained to
5 be here and did not want to be here Keith Benson is number
6 one on the list. He and Quanell are buddies and he was in
7 1701 when this shooting happened and what did Keith Benson
8 tell you about Timothy Nelson when the shooting happened?
9 He said he was sitting right here beside of me in the
10 kitchen at the time of the shooting.

11 Who else told you Timothy Nelson was there at the time
12 of the shooting? Of course Timothy did. They might get up
13 here and argue to you that Qua Stevens shot Antonio Jones.
14 Qua Stevens wasn't even in Pardue when the shooting
15 happened. We know that from several different sources. He
16 said he left, Tanisha Nelson said he left in her car. The
17 whole argument culminated in more arguing because he was
18 leaving in Tanisha Nelson's car. He was gone from Pardue
19 when the shooting happened. And we further know that
20 because he's on the phone calling Quanell McIlwain's phone
21 when the shooting happened. I'll talk about phone records
22 in a little bit. It ain't Qua Stevens that shot Tonio
23 Jones cause he's gone from Pardue.

24 Now, let's go back and talk about Timothy Nelson for a
25 minute. He's inside, he hears shots, he runs out the front

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 door and yells this is BS and the reason he yells this is
2 BS is because - and this makes sense - he told you this -
3 that they're all having a good time in 1701. You know you
4 can't imagine four o'clock in the morning being anywhere
5 having a good time except in the bed asleep - but they're
6 having a good time in 1701 and now some idiot has fired a
7 gun outside and well what's that gonna do? It's gonna call
8 Phillip Hall and his whole crowd and they gonna roll into
9 Pardue and the party's over.

10 What's significant about that? The firing of the gun
11 that Timothy Nelson didn't click that somebody had been
12 shot and told you even as he went to the front door and
13 yelled BS he didn't know anybody had been shot. And he
14 runs through the apartment and goes out the back door and
15 that's when he sees Quanell McIlwain over the fence. And I
16 guess it's just stupid but he takes the gun, Quanell throws
17 him the gun and Timothy Nelson ends up with the gun.

18 Now that doesn't make any sense unless you believe
19 that Timothy Nelson did not know somebody had been shot.
20 He knew somebody had shot but he did not know somebody had
21 been shot with that gun. Otherwise it wouldn't have made
22 any sense for him to take it but he took it.

23 What else tells you Timothy Nelson is not the shooter?
24 Timothy Nelson runs to the back, gets that gun thrown over
25 the fence to him, and he's in possession of the gun after

1 the shooting. If he was the shooter would he have gone
2 back into 1701, right inside the door where this shooting
3 just happened, and pull that gun out and start messing
4 around with it in a room full of people who are now
5 witnesses' that he's now got the gun? The fact that he
6 didn't know somebody had been shot initially again explains
7 and makes legitimate his testimony that he didn't know
8 anybody had been shot and that's why he didn't have any big
9 problem having that gun.

10 Well, the girls in the apartment had a big problem
11 with everything because somebody has been shot and they
12 know it. And they see him in there with the gun and what
13 they do, they run him out. They run him out of the house
14 with the gun and he ends up taking the gun over to Lynwood
15 and throwing it in the creek.

16 Now, what else about Timothy Nelson tells you he's not
17 the shooter? Of course he's out there and people know his
18 name, people have seen him in the apartment with the gun
19 and he's throwing it in the creek and a week later he goes
20 to the police. He goes to the police. The police don't go
21 to him. Maybe they would have eventually found it, maybe
22 you'll conclude he couldn't run far enough to get away from
23 'em but he didn't wait on them to come find him. He went
24 to them and he told them everything he knew. And he told
25 'em where the gun was and they went and found the gun as a

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 result of that.

2 He told 'em what he did with the fired cartridge
3 cases. That makes sense that he's not the shooter because
4 he went to the police and he told 'em what he knew. And he
5 led 'em to evidence and it's not very good evidence on his
6 - from his perspective I guess.

7 How do we know - Why do I ask you to find Quanell
8 McIlwain guilty of killing Tonio Jones? Number One,
9 because he did. And Number Two, because I submit to you
10 the State has proven that he did. And again, you've got to
11 go back and remember who these people are that came in here
12 and testified. They're not his enemies, they're his
13 friends and acquaintances.

14 What have we got? We got Tanisha Nelson and Qua
15 Stevens who get into an argument and at some point I submit
16 to you Quanell McIlwain knows that those two are going at
17 it out there. And Quanell McIlwain minutes before the
18 shooting has a confrontation with Qua Stevens and basically
19 tells him you ought not to be talking to that girl like
20 that. And of course Qua Stevens being the smart guy he is
21 smarts back off at him and says "Who's gonna stop me?" And
22 Quanell McIlwain has a gun and pulls it out and shows it
23 and the gun is described by Qua Stevens as a chrome or
24 silver .357 magnum I believe. This gun right here in this
25 box, State's Exhibit Number Forty-seven.

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 So minutes before the shooting we've got Quanell
2 McIlwain being in possession of a gun that is consistent
3 with what we know is the gun that killed Tonio Jones.

4 Farther back than that KB, Keith Benson, sometime
5 earlier that night Keith Benson tells you he told the
6 police - Excuse me - This is where again where you know
7 that witnesses' don't really want to be here and really
8 don't want to be telling you things because Keith Benson
9 hedged a little bit about what he had told the police.

10 He told the police as he read from his statement as I
11 examined him on the witness stand, he told the police that
12 that night back out behind 1701 he saw Quanell McIlwain
13 with a big ole chrome .350 - He said a big ass gun. You
14 look at it. I ain't gonna say the word again but this is a
15 big ole gun. He saw Quanell McIlwain with a gun, a chrome
16 or silver .357 behind 1701 moving it from one side of his
17 waste to the other. Sometime in the dark, in the dark
18 hours, his buddy Keith Benson sees Quanell McIlwain with
19 that gun.

20 What else is significant about behind 1701? We got
21 the whole thing about going over the fence. And of course
22 you got to decide whether you believe a witness saw what a
23 witness said he or she saw, but what did witnesses' tell
24 you about the lighting behind 1701? A big ole security
25 light, two of 'em. Two of 'em back there behind 1701. So

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 the stuff that was observed by witnesses' behind 1701 was
2 in a well lite area and they certainly had a great
3 opportunity to view what they viewed.

4 Tanisha Nelson is being run all over the place out
5 there in Pardue cause she and Qua are going at it and he
6 chases her down around toward the 1600 building and he kind
7 of gives up the chase and she realizes she doesn't need to
8 be running anymore so she goes back into 1701 Pardue where
9 her baby now is because Dawnetta Montgomery went over to
10 1706 and got the baby. So you know the fracas is over
11 between her and Qua and she's going back into 1701 and
12 she's gonna get her baby and she's gonna go home. And
13 who's in there when she goes in there? She - Timothy
14 Nelson is in there. Tanisha Nelson told you Timothy Nelson
15 is in 1701 when she goes in and he's in 1701 when she comes
16 out.

17 Who else is in 1701? Quanel McIlwain is in 1701 when
18 she goes back in to get her baby so she can go home. And
19 she walks out after being there for a few minutes she grabs
20 and gathers up her baby and she walks out and she's going
21 home. It's four o'clock in the morning, it's time to go
22 home, but she's going home. And Quanel McIlwain walks out
23 behind her. And Quanel McIlwain shortly thereafter comes
24 up to her with State's Exhibit Number Thirty-three and says
25 here Qua wants you. She is as close as arms length as she

1 can be from Quanell McIlwain when Tanisha Nelson takes this
2 phone from him. She knows who's out there. There is no
3 mistake about who it is she's talking about. It's Quanell
4 McIlwain. He walks up to her and hands her a phone and
5 says hey, here, Qua wants you, and ditches his phone with
6 her. Little did he know he wasn't gonna get it back and we
7 were gonna have it.

8 They are that close. She is not mistaken about who
9 she sees out there and it's Quanell McIlwain. And then
10 poor ole Tony Jones, Tonio Jones by all accounts got
11 nothing to do with nothing that's going on out there. He
12 hadn't been in 1701, he hadn't been partying with the rest
13 of 'em. Tonio Jones was looking for cigarettes at some
14 point that night. Maybe he was gonna trade bologna for
15 cigarettes. That might sound ridiculous to you but maybe
16 that's exactly what the bologna was all about. But he
17 hadn't done anything to anybody.

18 He just happens to be walking through and he comes -
19 He comes from this area right here somewhere and ends up
20 walking down the sidewalk in front of the 1700 building.
21 It was the worst possible time for Tonio Jones to be in
22 Pardue with Quanell McIlwain out there with that .357
23 wherever he had it stuck on him. And I can't begin to
24 explain to you why Quanell McIlwain shot Tonio Jones. I
25 don't have to prove that. First of all motive for a

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 killing is not an element of the crime. I don't have to
2 prove to you whey the killing occurred.

3 But maybe, and you may want to think yourselves why
4 Quanell McIlwain shot and killed Tonio Jones. Maybe he
5 thought Tonio Jones was Qua Stevens who had come back? We
6 already know there was some animosity between the two of
7 them as a result of what had happened earlier that night
8 despite the fact that they were buddies. But whatever
9 reason for whatever reason Quanell McIlwain pulls out this
10 .357, walked - hands the phone to Tanisha Nelson - walks
11 off from her as she's talking to Qua Stevens, pulls out
12 that gun and in an instant is firing off shots.

13 Now, she told you she's there. The bullet skips are
14 there. Tonio Jones is there, Quanell McIlwain has to be
15 here. And those bullets are zinging right by where Tanisha
16 Nelson is holding her four or eight or whatever month old
17 baby is and holding Quanell McIlwain's phone. And Tonio
18 Jones is in the middle and takes two shots out of depending
19 on how many you want to believe four or five or six, three,
20 four, five or six shots. The witnesses said different
21 numbers but I submit to you probably unloaded that .357.
22 Timothy Nelson said all six of the bullets in the gun had
23 been fired and he dumped out six fired cartridge cases.

24 And Tonio Jones takes one here and he takes one here
25 and he goes down. And you heard the damage that bullet to

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 his upper chest caused. He didn't stand a chance. He was
2 - His heart was still quivering some when they got there
3 and started working on him but he wasn't gonna make it and
4 he didn't make it and he died. And you heard Doctor Ross
5 describe what killed him.

6 White t-shirt. Sometime that night Quanell McIlwain
7 had on a black shirt, not a white t-shirt. But sometime
8 that night Quanell McIlwain took off that black shirt
9 because we know we found his black shirt that witnesses'
10 found his black shirt in Justine Gladden's apartment. He
11 is going over the fence in a white t-shirt.

12 Now, Timothy Nelson tells you a story that you might
13 conclude just doesn't make any sense. And it might be
14 easier to conclude that if Timothy Nelson is the only one
15 that tells you that story. But he's not the only one that
16 tells you that story cause Justine Gladden told you that
17 story too. Justine Gladden, lets look at her for a minute
18 and her connection to her knowledge of Quanell McIlwain.

19 What did she tell you? She knew him well. They had
20 gone to school together. Hadn't seen him in a good while.
21 There is no indication she was hostile toward him or had
22 any animosity toward him and certainly he was in her
23 apartment and was welcome there presumably. And they were
24 so close that she joked at him about getting fat since they
25 got out of school. She didn't come up here to bury him.

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 She come up here to tell you the truth.

2 And what did she tell you about what happened behind
3 her apartment? She goes to the back door and she sees a
4 gun in a white shirt over the fence. She couldn't say who
5 it was. Timothy Nelson told you it was Quanell McIlwain
6 but Justine Gladden told you a guy in a white t-shirt is
7 going over the fence and she told you she saw the gun being
8 tossed over the fence and Timothy Nelson taking it.

9 Two people who back up or another person who backs up
10 Timothy Nelson's testimony about how he ended up in
11 possession of this gun. And if you have trouble believing
12 Timothy Nelson, ask yourself is there any reason I
13 shouldn't believe Justine Gladden? She and Timothy Nelson
14 didn't get together and make that up. She reported and
15 testified to you about what she actually saw which so
16 happens to be what actually happened as Timothy Nelson
17 described it to you.

18 If Timothy Nelson had been the shooter he'd a been the
19 one jumping over the fence but he didn't.

20 Now what did Quanell McIlwain do? Quanell McIlwain at
21 ten o'clock Sunday morning which coincidently is probably
22 less thirty minutes or thirty minutes or so after Tanisha
23 Nelson is sitting in Phillip Halls patrol car at her momma
24 in law's house pointing to Quanell McIlwain's picture as
25 the guy who did this killing. Where's Quanell McIlwain?

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

-609-

1 At ten o'clock that Sunday morning Quanell McIlwain is gone
2 over to his buddy Mauricio Richardson's house in York
3 County.

4 Mauricio Richardson got no beef with Quanell McIlwain.
5 He's again, another buddy, they're close. He's got no
6 reason to make up something to tell the police, and then
7 come in here and tell y'all something that's not true, that
8 makes Quanell McIlwain guilty of a crime or to suggest that
9 he's guilty of a crime. Mauricio Richardson says I'm in my
10 bed at ten o'clock Sunday morning and there's a knock on my
11 door and it's Quanell McIlwain.

12 What's important about that? He's got on a white t-
13 shirt. Same white t-shirt I submit that he was wearing
14 when he jumped the fence at the back of the 1700 building
15 at Pardue. He is on the run hours after this - he's
16 committed this killing he is on the run.

17 What's he tell Mauricio? I shot somebody. I shot
18 somebody. No detail, no where it was or what time it
19 happened, but I shot somebody. And somebody knocks on your
20 door at ten o'clock in the morning or anytime and says I
21 shot somebody you really don't want 'em hanging around.
22 And that's exactly what happened. Mauricio put him on his
23 way.

24 Is there any reason for you to think Mauricio
25 Richardson would have made that up that Quanell McIlwain

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

-610-

1 came to me and told me he shot somebody; is there any
2 reason you can think of that Mauricio Richardson would have
3 made that up? No. I submit to you there is no reason in
4 the world for you think Mauricio Richardson is lying about
5 that. He's telling you the truth and he didn't want to
6 have to tell it but he came and he told it. And he told
7 you Quanell McIlwain admitted shooting somebody.

8 What we got after that? Let me talk about these phone
9 records for a minute. You got phone records here. Ms.
10 Tell from Atlanta came up here and told us about phone
11 records. She told us a couple of things. Number One: I
12 would - Nobody in this courtroom more than me would be able
13 to tell you we'd like to be able to tell you that we
14 checked the record on this phone, this 577-5387 number and
15 it had Quanell McIlwain's name written all over it. It
16 doesn't. And she explained to you that these prepaid
17 phones sometimes they're not even gonna know whose phone it
18 is. So I can't tell you that's his phone, I wish I could
19 but I can't.

20 But what can I tell you? I can tell you that Qua
21 Stevens said my number was 235-0935. And Qua Stevens told
22 you right after I left Pardue and minutes before the
23 shooting I called Quanell McIlwain's phone which has the
24 number. I called this phone, State's Exhibit Number --

25 It's in my hand. Qua Stevens told you a little bit

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

-611-

1 after I left Pardue I called State's Exhibit Number Thirty-
2 three, this telephone. And the city police department came
3 into possession of State's Exhibit Number Thirty-three,
4 this telephone, and took a picture of the number that that
5 phone uses, State's Exhibit Number Twenty-eight, and that
6 number is 577-5387. And the Lancaster City Police
7 Department sent a search warrant to Verison to get them to
8 send them the records for that phone. And low and behold
9 Qua Steven's number is connected, 235-0935 is connected
10 with this phone that Quanell McIlwain gave Tanisha Nelson -
11 577-5387. I think Ms. Tell said about a dozen times in the
12 period around the time this shooting occurred.

13 And you will have these records back there and it will
14 probably give you a headache trying to figure them out too.
15 But you will have these records back there. These numbers
16 are shown on here and I invite you to look at 5/29 of 2011
17 between the hours of two and four o'clock in the morning
18 and you count the number of times those two phones are
19 connected. And that is consistent with Tanisha Nelson
20 telling you Qua Stevens called me on Quanell's phone. And
21 Qua Stevens telling you I dialed Quanell's phone because he
22 was out there and I knew he could get in touch with her and
23 put me on the phone with her.

24 Quanell McIlwain starts off in York County. We get
25 SLED involved trying to track phones and we can't fully

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

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1 explain all that to you but basically bottom line is by
2 June 23rd of 2011 almost a month after this killing
3 occurred, Quanell McIlwain is tracked down in Lawton,
4 Oklahoma. Lawton, Oklahoma half way across the country
5 almost a month later. He's been on the run the whole time.
6 His name came up that morning of the shooting.

7 He was the suspect that morning of the shooting.
8 Phillip Hall and the Lancaster Police Department with SLED
9 and the US Marshall's and everybody else, are looking for
10 him everywhere. And he is hiding and on the run for almost
11 a month before he gets picked up on June 23rd in Lawton,
12 Oklahoma.

13 Is that what you would expect of man who has shot and
14 killed somebody in front of witnesses' in Pardue Apartments
15 in Lancaster, South Carolina? That's exactly what you
16 would expect though. Take off, get ghost, be gone, don't
17 get found. But his luck ran out and he got caught.

18 It's been a long week.

19 I beg the Court's indulgence one moment.

20 (PAUSE.)

21 SOLICITOR BARFIELD: One more thing, maybe two or
22 three more but one more thing at least. We got - We tried
23 to do several things in this case that didn't produce
24 anything. You got a couple of red solo cups. Who's the
25 country singer who did the red solo cup song? Well we had

CLOSING ARGUMENT: BY SOLICITOR BARFIELD

-613-

1 a red solo cup and a clear solo cup and they're at the
2 scene of a crime and if we get DNA off those cups it
3 doesn't tell us who shot somebody but it might tell us who
4 had at some point possession of that cup which was at the
5 scene of a crime. We didn't get any DNA.

6 We didn't get any fingerprints off those cups. We
7 tried and we didn't get any fingerprints off those cups.

8 Gunshot residue. Ila Simmons from SLED, formerly from
9 SLED, told you Tonio Jones didn't have any gunshot residue
10 on his hands which tells you a couple of things. He didn't
11 fire a gun and he wasn't real close to a gun that got fired
12 at him, even the .357 which she said would spray GSR maybe
13 ten feet or so. And that is consistent again with Quanell
14 McIlwain being this way, Tonio Jones being a little bit
15 more toward 1801 and the shots being fired toward 1801.

16 But what we do have in this case is the gun. The gun
17 that Timothy Nelson said Quanell McIlwain threw over the
18 fence. The gun that Justine Gladden said the guy in the
19 white t-shirt threw over the fence. The gun that Timothy
20 Nelson led the police to. We've got that gun. And we've
21 got a bullet out of Tonio Jones' body. And we got two out
22 of three bullets that were dug out of the ground at Pardue
23 that Ken Whitler said that gun shot. We got the murder
24 weapon and we got the murder weapon in Quanell McIlwain's
25 hands by three people. By Keith Benson, by Qua Stevens and

CLOSING ARGUMENT: BY SOLICITOR BARFIELD
BY MR. STEEN

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1 by Tanisha Nelson. And we got Justine Gladden seeing it
2 getting thrown over the fence.

3 You got your killer. He's sitting right over there in
4 the stripe shirt. Study it all.

5 Again I don't take anything for granted. Question
6 everything you need to question. Argue with yourselves -
7 among yourselves. But I submit to you when all is said and
8 done, and you've looked at everything you've heard in this
9 courtroom, there is no perfect case, witnesses' don't get
10 on the witness stand and all say the same exact thing.

11 If they did it would look like Barfield had 'em all
12 rehearsed. It doesn't work that way. But I submit to you
13 when you boil this whole down and you look at everything
14 you know, you look at Quanell McIlwain being seen with a
15 gun by Keith Benson earlier matching that description,
16 Quanell McIlwain being seen by Qua Stevens minutes before
17 the shooting matching that description, Quanell McIlwain
18 handing a telephone to Tanisha Nelson almost at the moment
19 of the shooting, phone records corroborating Qua Stevens
20 saying I called Quanell's phone, Tanisha Nelson saying the
21 man who just walked up to me and handed me that phone is
22 the man who walked off and starting shooting close enough
23 that she could see the fire coming out the end of that
24 cannon in that box; Timothy Nelson seeing Quanell McIlwain
25 over that fence tossing him that gun; Justine Gladden

CLOSING ARGUMENT: BY MR. STEEN

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1 seeing the guy in the white shirt over the fence tossing
2 the gun, Mauricio Richardson telling you Quanell McIlwain
3 came to me within hours and said I shot somebody, and
4 Quanell McIlwain being ghost and gone for almost a month
5 before he's tracked down in Oklahoma, you look at all of
6 that and I submit to you you will conclude beyond a
7 reasonable doubt that Quanell McIlwain is guilty of all
8 three of these offenses.

9 We appreciate it and I ask you to find him guilty.

10 Thank you.

11 THE COURT: Thank you, Solicitor.

12 Mr. Steen.

13 MR. STEEN: Thank you, Your Honor.

14 Good afternoon. Thank you all for putting up with us
15 all week.

16 Here we are thirty-five witnesses' later and I still
17 have the privilege of representing an innocent man. On
18 Monday I told you this case was already a mud hole and it
19 was that way before any attorney ever got involved. And I
20 think after everything this week the evidence still shows
21 that. It looks to me that the State is using the mud in
22 this case to actually hide the innocence of my client.

23 The Solicitor is up here saying these - the witnesses
24 is his witnesses that he called and that he chose who to
25 call or testifying - They testified the way they did

CLOSING ARGUMENT: BY MR. STEEN

-616-

1 because they want to protect Quanell - protect somebody
2 else. They testified the way they did cause it's over
3 three and a half years later and they don't recall what
4 happened.

5 Que Black. The Solicitor spent a lot of time on him.
6 He's asking you to believe in Que Black. A person who
7 knowingly lied to police, knowingly destroyed evidence,
8 knowingly destroyed evidence again. But instead on the
9 stand that's my third version of what happened. He knows
10 what he's doing. He's not stupid, he's smart. Who - He's
11 trying to cover up an event and this is the way he's doing
12 it.

13 Did you notice how all the witnesses' that Solicitor
14 Barfield said or you know saying Quanell did it? On the
15 day of the incident they do nothing. On May 29th they said
16 I heard shots, didn't see anything. Qua Nelson then
17 destroys the gun, the bullets. And Dawnetta destroys the
18 clothes that the shooter was wearing. Then bam, Quanell
19 wasn't here he was out there it had to be him.

20 That makes perfect sense. Let's tell 'em nothing,
21 let's destroy the evidence, then that's telling something
22 when there's no way for Mr. McIlwain to prove his innocence
23 now.

24 The judge is gonna charge you on the law about when a
25 party destroys evidence in a case. You have the right to

CLOSING ARGUMENT: BY MR. STEEN

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1 infer if you believe he destroyed the evidence that that
2 evidence would be against him. And especially if there's a
3 possibility that it could be used to clear another man's
4 name.

5 You saw the test they ran on the guns but no
6 conclusions. Know why because it sat in a creek for seven
7 days thanks to Mr. Barfield's primary witness he's trying
8 to use to put Mr. McIlwain in jail. He says that everyone
9 saw Que Black in 1701. Two witnesses' didn't. Semaj and
10 Justine. That's half the witnesses' Mr. Barfield said saw
11 him in 1701.

12 Mr. Barfield admit he's the one that had possession of
13 the gun. There has been no reliable evidence during this
14 whole trial that Mr. McIlwain had this gun. Que Black
15 admits to having the gun. Numerous witnesses' say Que
16 Black had a gun. The only witness that says Mr. McIlwain
17 had a gun, Keith Benson who also said yeah I had it too so
18 did Que Black. So did every other guy out there. It was
19 Pardue on Saturday night we were playing around. That does
20 not make Mr. McIlwain the guilty party here because a bunch
21 of guys are playing with a gun on a Saturday night.

22 He said Mr. Que Black had nothing to hide so he can't
23 be guilty. He testified that no one saw him clean those
24 bullets out. He did that in secret. Then the ladies came
25 around and said they heard the clicking. They actually

CLOSING ARGUMENT: BY MR. STEEN

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1 heard the clicking of him taking out the bullets and that's
2 how they figured out he had the gun. He didn't openly show
3 everybody, he was keeping it a secret. Who keeps secrets?
4 Who destroys evidence? Guilty people.

5 Mr. Barfield testifies - I mean Mr. Barfield argues
6 that he turned himself into the police seven days later.
7 You heard law enforcement testify they went to his mom's
8 house. He wasn't there and he flagged him down later that
9 day. Just because he flagged him down was in response to
10 them coming to get him. That's not turning yourself in.
11 That's the cops coming to get you. You're not there then
12 going to turn yourself in.

13 He filled out a Miranda. He got questioned like he
14 had done something wrong. You know why? Cause he did do
15 something wrong. You got Qua Stevens the man who was on
16 the phone with Tanisha Nelson as she said my client is
17 shooting Mr. Jones. You've heard every law enforcement,
18 LMS person testify 4:08 is dispatch time, we were right
19 there no more than two minutes away. That's 4:05 a.m. You
20 heard Mr. Stevens testify, you got the records. Please
21 look at those records. Numbers don't lie. The last phone
22 call made from Mr. Stevens phone to the phone that Ms.
23 Nelson's alleging to be the shooter's was at 3:53 a.m..

24 I know you may say whoa that's only like ten minutes
25 difference. When is the shooting? Ten minutes is a big

CLOSING ARGUMENT: BY MR. STEEN

-619-

1 difference. There is not a shooting you wait ten minutes
2 then let's call the cops. You heard testimony I called the
3 cops immediately. Cops are called the earliest make the
4 latest what 4:05. It doesn't make sense. Look at 4:05
5 they said numbers don't lie.

6 Mr. Barfield again picking the facts that he likes.
7 Mr. Richardson he testified that Quanell shot somebody. He
8 testified that Quanell - Let me get this right. He
9 testified that Mar was taking up for somebody got in an
10 argument with some girl's boyfriend and shot somebody.

11 That's a big difference than what the solicitor is
12 trying to allege today. Different victims, different
13 nicknames, different reasons. He's trying to use that
14 reason to create a motive, a malice in this case when
15 there's not one.

16 Going back to Qua Stevens for the same thing. He's
17 saying just because he had the incident with Qua Stevens he
18 had to commit this crime. You heard Qua Stevens talking,
19 he was calling him immediately back trying to talk to his
20 girl. He wasn't concerned about the incident with Quanell.
21 He was concerned about talking to Tanisha. He didn't - The
22 phone wasn't handed to Tanisha because Quanell had to shoot
23 the guy. That's not what she's testifying to. She's
24 testifying that her boyfriend calls Quanell's phone to talk
25 to her. And that's the case it doesn't line up with when

CLOSING ARGUMENT: BY MR. STEEN

-620-

1 the shooting occurred.

2 And so the Solicitor argues that him ending up in
3 Oklahoma is another sign that he's guilty. He produced no
4 evidence that Mr. McIlwain knew the cops are after him for
5 this crime. The only evidence I guess he put up post
6 incidence was Mr. Richardson who doesn't discuss this
7 crime. I don't know - I don't know how - This means you
8 all have seen the facts. It's more along the lines of the
9 Qua Stevens incident than this incident. It just doesn't
10 make sense.

11 He talks about the lighting in the back how everybody
12 could see everything. How it was so important. It was so
13 important why did law enforcement take a picture back there
14 two days ago instead of SLED taking a picture back three
15 and a half years ago when this happened? They I believe
16 knew nothing happened in the back yard because the State's
17 eyewitnesses were misleading police and hiding stuff. They
18 didn't know.

19 They could have testified they could have looked they
20 could have had all the evidence then. If it was so bright
21 how does Tanisha Nelson run around - You heard her. She
22 run around here. You heard Qua Nelson, Que Black,
23 testimony that he ran from here to here and this is where
24 it happened. This is at the same time. She said she saw
25 what was going on here. Ask her was he running around

1 here. How did she see that without seeing someone yelling
2 hey throw me that junk? Again, it just doesn't make sense.

3 The Solicitor says a white t-shirt, that's why he's
4 guilty. A bad day when that's the solicitor's evidence
5 that he's wearing a white t-shirt he has to be guilty.
6 Probably half this world would be guilty right now.

7 You want to know why he's wearing a white t-shirt?
8 Because the clothes - He ask every single witness that was
9 here what did Mr. McIlwain have on but he gets up here and
10 says but those clothes don't matter cause I ain't got 'em.

11 He ask about 'em they mattered. And one of your
12 witnesses destroyed them. And law enforcement didn't
13 attempt to find them. Throw them away at a church or
14 somewhere on the way to church. Couldn't attempted to
15 look. Not saying it would a happened but because the
16 attempt to find evidence they could prove someone's
17 innocent or prove someone else's guilt. They're trying to
18 use evidence that they destroyed against my client. That's
19 a wind fall for the state and it's just not right.

20 Let's talk about Ms. Nelson. I guess we can call her
21 the eyewitness, the only one that truly I guess is alleged
22 to seen anything. Her testimony, we'll just start right at
23 when she leaves 1701 but with Quanell walking right behind
24 her. Okay. She's in front of 1705 they do the phone hand
25 - She's standing in 1705 on Quanell's phone but the shooter

CLOSING ARGUMENT: BY MR. STEEN

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1 - I mean the guy that walks by is in front of 1703 or 1704
2 and the shooter is two more apartments down that way.

3 Ms. Nelson, did you recognize the victim? No it was
4 dark and shadowy. But two more apartments this way at the
5 same time you can easily recognize the person. You
6 recognize Quanell but you don't recognize the victim, you
7 don't see people in the back yard, and she said she heard
8 nothing and saw nothing else. The only thing she saw that
9 night was Quanell farther away from anyone else. It just
10 doesn't make sense.

11 Going back to her testimony you heard her say it.
12 Even the officer that talked to her at the crime scene she
13 only knew the shooter as SK. She testified that she went
14 to the police department and they showed her A: SK is
15 Quanell and this is Quanell. Then what four hours later
16 she's identifying Quanell on a six person lineup that's
17 been in use against Quanell today here in court.

18 She's saying that law enforcement told me who it was
19 and that's who I told them it was and that was their
20 evidence. Again, it doesn't make sense.

21 Again, Ms. Nelson you heard a lot of people testify
22 she don't have a phone it wasn't working some other excuses
23 they probably got thrown around this week. You heard - I
24 forgot her name - Ms. Tell from Verison and you got the
25 records yourself. Take that number it ends in 576 its in

1 there ten times between 3:50 and 4:20 a.m. The phone
2 wasn't broke. It's clearly calling that number quite a few
3 times. And Ms. Nelson's alleging she doesn't know Quanell
4 and she had seen him one time before at Pardue. She may or
5 may not knew where he lived. But now she knows everything
6 about him. See, this just doesn't make sense.

7 The weapon. Again, a weapon that could have had
8 exculpatory evidence that would make my guy innocent was
9 destroyed by the State's eyewitness. Nothing we can do
10 about it except beg you all to take that into
11 consideration. Again, more people was saw with the gun
12 than Quanell was saw with the gun that night. But yet he's
13 the one sitting here on trial.

14 And Mr. Barfield spent a lot of time talking about the
15 people who live in 1701. I guess they are the main -
16 That's where the kick back was according to Ms. Montgomery.
17 Of the five people who testified that were at 1701 all five
18 testified that Mr. McIlwain - Four of 'em testified that
19 Mr. McIlwain having gone for at least thirty minutes. The
20 other one I think she stated he already had left. I'm not
21 sure exactly how long it had been so I'm not gonna argue
22 that who it was. Semaj, he had been gone for a long time.
23 Lawnetta hadn't seen him since she got off from work at
24 eleven o'clock. Justine had went to bed thirty minutes
25 prior to any shootings and she don't know who was in the

CLOSING ARGUMENT: BY MR. STEEN

-624-

1 apartment at the time. And Keith said he had left thirty
2 minutes prior to the shooting.

3 People that Mr. Barfield just told you were saying
4 Quanell did it. They didn't say he did it. They didn't
5 say he was in the apartment but he also said he was gone at
6 least thirty minutes before the shooting.

7 Ms. Nelson she saw everything but in 1702 Ms. Izzard
8 even though we know the shooter was directly in front of
9 her apartment she saw a body, she heard a gun shot, went to
10 her window saw Mr. Jones body for lack of a better term
11 before it hit the ground but she didn't see a shooter.
12 That makes no sense when this is happening according to
13 Tanisha Nelson directly in front of her apartment.

14 The Benson's they're in 1704. All neutral witnesses.
15 They didn't see anything and that was their story and
16 that's what they kept it was. It didn't become it was
17 Quanell after I didn't know anything like the other people
18 was.

19 Oh one more thing I just want to throw in there. The
20 clothes. We all know the clothes were found in a closet in
21 1701. That may be the only consistent fact in this case.
22 Only one person left 1701 after the shooting. They came
23 back in. Que Black. How else would those clothes go from
24 allegedly on the shooter who was also Quanell McIlwain back
25 right then to be inside of 1701 by the time I guess the

1 next few minutes when Que Black gets back. Quanell did not
2 enter. That's another consistent fact. No one says
3 Quanell came back to that apartment after the shooting.

4 So how did Quanell which the State is alleging those
5 were his clothes and he left them at 1701 there is no way
6 unless every single witness in this trial is lying to what
7 happened that those clothes - that Quanell could put those
8 clothes back into 1701.

9 I will end it right there. I would ask that you look
10 at this case see that Mr. McIlwain doesn't even control his
11 own destiny here but he didn't. He doesn't control the
12 evidence. Mr. Barfield, our chief prosecuting officer
13 wants you to believe witnesses' who lie to police, about
14 the stand, to show evidence, to show evidence again,
15 destroy more evidence, people who say law enforcement told
16 me who the person was, and people who really didn't know
17 anything.

18 When you come back in that jury room I would ask that
19 you look at those phone records. Those are the only thing
20 that - I mean the State's alleging that's his phone, you
21 know there's no proof of that. But that's the only
22 connection, that's the best connection they got to Quanell
23 is alleging for no basis that that's his phone number. And
24 that's okay because Verison, it's a prepaid and it's pretty
25 much his fault that he got a prepaid phone so he can't

CLOSING ARGUMENT: BY MR. STEEN

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1 prove his innocence which obviously is the way it's
2 supposed to work. But thank you. Please take your time
3 and look at the evidence. Mr. McIlwain did not do this.

4 I don't know what happened in Pardue three and a half
5 years ago on that Saturday night. I'm not alleging that
6 Mr. McIlwain wasn't there. He just didn't shoot Mr. Jones
7 at 1701. The State has put no evidence forth of any malice
8 except for malice can be inferred from the use of a deadly
9 weapon. Well like I said, you can infer that the weapon
10 was against Mr. Que Black and can prove Mr. Quanell is
11 innocent. Taking both of those in consideration they don't
12 have malice. For those reasons I would ask that you find
13 Mr. McIlwain not guilty. Thank you.

14 THE COURT: All right. Thank you, Mr. Steen.

15 Ladies and gentlemen, we've been in here just over an
16 hour right now. Before I charge you the law which may take
17 a little time let's take a brief refresher break. Five
18 minutes just run to the restroom and get you a cup of water
19 or something and then come back in here and I will instruct
20 you on the law before you begin your deliberations. Okay.

21 You all do not discuss the case and I've not given you
22 the law yet. Okay. Thank you.

23 (JURY EXITS COURTROOM AT 04:05 P.M..)

24 THE COURT: All right, we're at ease.

25 (COURT IN RECESS AT 04:06 P.M..)

CHARGE TO THE JURY:

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1 (COURT BACK IN SESSION AT 04:13 P.M..)

2 THE BAILIFF: Jury coming in.

3 (JURY REENTERS COURTROOM AT 04:14 P.M..)

4 THE COURT: All right, all members of the jury are
5 present. And Mr. Foreman, and ladies and gentlemen of the
6 jury, I find that its easier for you to listen carefully
7 and to pay more attention when I'm down here with you
8 rather than seated up there talking into a microphone.
9 Okay. So that's why I'm down here with you cause its very
10 important what I say to you so I want you to listen
11 carefully to what I say.

12 Remember at the outset of the this trial I told you
13 you are not gonna be able to take notes and it's very time
14 consuming to try to pull back transcribed testimony for you
15 to consider so you have to pay very close attention to what
16 each witness says. The same goes for my jury charge to
17 you.

18 Now, Mr. Foreman, and member of the jury, you've heard
19 the testimony and the evidence and the arguments of both
20 the State and the Defense. I will now explain to you the
21 law that applies to this case.

22 Now, under the constitution and the laws of South
23 Carolina, you are the finders of fact in this case. I do
24 not have the right to pass upon the facts or even to
25 express an opinion that I may have as to what I think the

CHARGE TO THE JURY:

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1 facts may be because that is solely a matter for you, the
2 jury, to determine.

3 Now as jurors then it's your duty to determine the
4 effect, the value, the weight, and the truth of the
5 evidence presented during this trial.

6 Now, as the judge, the trial judge, it's been my
7 responsibility to preside over the trial of this case and
8 to rule upon the admissibility of the evidence offered
9 during the trial. Now you are to considered only the
10 testimony which has been presented from that witness stand
11 together with any exhibits which may have been made a part
12 of the record. You will have all of that back there with
13 you during your deliberations.

14 I also have the additional duty to charge you the law
15 as I am now doing applicable to this case. As the
16 presiding judge, I am the sole judge of the law just like
17 you are the sole judge of the facts. It is your duty as
18 jurors then to accept as correct and to apply the law as I
19 now state it to you to reach your verdict.

20 Now, the fact that I may instruct you on various
21 subjects in this case, must not be taken as indicating what
22 my opinion is as to the facts or what your verdict should
23 be. Finally, I charge you, ladies and gentlemen, that you
24 should not be concerned with what you think the law ought
25 to be, but rather what I charge you the law is.

1 Now you're also the judges, the sole judges, of the
2 credibility also known as the believability of the
3 witnesses who have testified and of the evidence which has
4 been presented during this trial. Now in passing upon
5 credibility, you can take into consideration many things,
6 such as the demeanor of the witness and the manner in which
7 he or she testified. Whether or not a witness had reason
8 to be biased or prejudiced, or whether or not a witness'
9 testimony was contradicted on the one hand or supported and
10 corroborated on the other hand.

11 All these things you will consider, bearing in mind
12 that you should give the defendant the benefit of any
13 reasonable doubt.

14 It becomes your duty as jurors to analyze and to
15 evaluate the evidence and determine that evidence which
16 convinces you of its truth.

17 Now, I instruct you and I emphasize to you that the
18 fact that the defendant did not testify is not a factor to
19 be considered by you in any way in your deliberations and
20 in your consideration on the question of guilt or innocence
21 of the defendant. It must not be considered by you in any
22 manner whatsoever. A defendant has the constitutional
23 right to remain silent, and the assertion of this right
24 must not be considered by you in your deliberations.

25 So I repeat, under your oath, you are to draw no

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1 conclusion whatsoever from the fact that the defendant in
2 this case did not testify. The fact that the defendant did
3 not testify should not even be discussed in the jury room.
4 The burden of proof, as I have stated to you, is on the
5 State of South Carolina. The defendant is not required to
6 prove his innocence. The burden of proof remains on the
7 state to prove guilt beyond a reasonable doubt.

8 Now a person who has a past criminal record is
9 competent to testify during a trial. A past record does
10 not affect the ability of that witness to testify. The
11 past criminal record may only be considered by you, if at
12 all, in determining that witness's believability.

13 Remember, you're the sole judges of the facts in the
14 case and believability of any and all of the witnesses.

15 There has been evidence presented that witnesses have
16 made prior statements which may not be consistent with the
17 witness's present testimony. You may use this evidence to
18 decide whether or not to believe the witness. You may also
19 use this evidence of the earlier contradictory statement to
20 determine the truth of those statements. It is up to you
21 as jurors to decide whether to believe the earlier
22 statement or the testimony given at trial.

23 As I've stated to you several times the rules of
24 evidence ordinarily do not permit witnesses to testify as
25 to opinions or conclusions. There is an exception however

1 made for people we call expert witnesses who by some
2 specialized training or education has a background where
3 they are allowed to testify in the form of an opinion.
4 Those witnesses we call expert witnesses. There were eight
5 expert witnesses in this case.

6 Now to give opinion testimony in an area does not mean
7 that you have to accept the opinion as jurors, but it's
8 evidence for you to use in any way you see fit and give it
9 the weight and credibility that you think it deserves.

10 An expert witness's testimony is to be given no
11 greater weight than that of other witnesses just because
12 they're an expert. Further, you are not required to accept
13 an expert's opinion even though it may not contradicted.

14 Now in any trial there is generally two types of
15 evidence which are presented. What you call direct
16 evidence and what you call circumstantial evidence.

17 Direct evidence is the testimony of a person who
18 claims to have actual knowledge of a fact, such as an
19 eyewitness. It is evidence which immediately establishes
20 the main fact sought to be proved.

21 Circumstantial evidence is a - I'm gonna use some
22 legal mumbo jumbo that I'm gonna explain it to you okay.

23 Circumstantial evidence is a proof of a chain of facts
24 and circumstances which indicate the existence of a fact.
25 It is evidence which immediately establishes collateral

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1 facts from which you can infer the main fact.

2 Circumstantial evidence is based on inference and not on
3 personal knowledge or observation.

4 For example, imagine you're on a winter night like
5 we're fixin to have tonight and in the morning, and you
6 look outside and you see the brown grass on your lawn right
7 before you go to bed. The next morning you wake up and you
8 see snow on your front lawn as well as footprints going
9 through the snow. Well, first you can infer that it snowed
10 even though you didn't actually see it snow cause you're
11 lawns white now. You can secondly infer that somebody
12 walked on your lawn. You see these are things that you can
13 infer even though you didn't see it snow and even though
14 you didn't see somebody on your lawn.

15 Now the law makes absolutely no distinction between
16 the weight or value to be given to either direct or
17 circumstantial evidence. Nor is there a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence. You need to weigh all of the evidence in
20 the case, and after weighing all of the evidence, if you
21 are not convinced of the guilt of the defendant beyond a
22 reasonable doubt, you must find him not guilty.

23 Now, the fact that the defendant was arrested,
24 charged, and indicted is not evidence in this case and
25 cannot be considered by you as evidence of guilt to this

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1 case, nor does it create any presumption or inference of
2 guilt. The indictments are simply the formal written
3 instruments which contain the charges made against the
4 defendant. An indictment is merely the formal document by
5 which a case is brought in to court.

6 Let me talk about presumption of innocence. Now the
7 Defendant has pled not guilty to the charges in the
8 indictments, and that plea places the burden on the State
9 to prove the defendant guilty. Now a person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent.

12 I charge that it is an important rule of law that a
13 defendant in a criminal trial, no matter what the
14 seriousness of the charges may be, will always be presumed
15 not guilty for the crime which the indictment was issued
16 unless guilt has been proven by evidence satisfying you the
17 jury of that guilt beyond a reasonable doubt.

18 I'm gonna explain what a reasonable doubt is here
19 momentarily. Ladies and gentlemen, this presumption of
20 innocence does not end when you begin your deliberations,
21 but it accompanies the defendant throughout the trial until
22 you reach a verdict. The presumption of innocence is like
23 a robe of righteousness. I'm wearing a robe, now just
24 imagine a robe placed about the shoulders of the defendant
25 which remains with the defendant until it has been stripped

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1 from him by evidence satisfying you of his guilt beyond a
2 reasonable doubt.

3 Now, ladies and gentlemen, this presumption of
4 innocence is not a mere legal theory and it's not just a
5 legal phrase. It is a substantial right to which every
6 defendant is entitled unless you, the jury, are satisfied
7 from the evidence of the defendant's guilt beyond a
8 reasonable doubt.

9 So what is a reasonable doubt in the law?

10 A reasonable doubt is a doubt which makes an honest,
11 sincere, conscientious juror in search of the truth the
12 hesitate to act. Now proof beyond a reasonable doubt must
13 therefore be proof of such a convincing character that a
14 reasonable person would not hesitate to rely and act upon
15 it in the most important of his or her own affairs.

16 Now, proof beyond a reasonable doubt can also be
17 described as proof that leaves you firmly convinced of the
18 defendant's guilt. Now, there are very few things we know
19 in this world with absolute certainty, and in criminal
20 cases the law does not require proof that over comes every
21 possible doubt. If, based on your consideration of the
22 evidence, you are firmly convinced that the defendant is
23 guilty, then you must find him guilty. If on the other
24 hand you think there is a real possibility that he is not
25 guilty, then you must give him the benefit of the doubt and

1 find him not guilty.

2 Now there was an issue in this case concerning the
3 identification of the defendant as the person who committed
4 this crime. The State has the burden of proving identify
5 beyond a reasonable doubt. You must be satisfied beyond a
6 reasonable doubt of the accuracy of the identification of
7 the defendant before you may convict him.

8 Identification testimony is an expression or belief or
9 impression by a witness. You must determine the accuracy
10 of the identification of the defendant. You must consider
11 the believability of each identification witness in the
12 same way as any other witness. You may consider whether
13 the witness had an adequate opportunity to observe the
14 offender at the time of the offense. This will be affected
15 by things like how long or short a time was available or
16 how far or close the witness was, the lighting conditions,
17 and whether or not the witness had the chance to see or
18 know the person in the past.

19 And once again I instruct you the burden of proof is
20 on the State and this extends to every element of the crime
21 charged. And this specifically includes the burden of
22 proving beyond a reasonable doubt the identify of the
23 defendant as the person who committed the crime. So if,
24 after examining the testimony, when you are deliberating you
25 have a reasonable doubt as to the accuracy of the

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1 identification, you must find the defendant not guilty.

2 In this case there are allegations of spoilation or
3 destruction of evidence. The State not only has the burden
4 of proof of guilt but it also has the burden of producing
5 evidence which could establish the innocence of the
6 defendant.

7 Now when evidence is lost or destroyed by a party, you
8 may infer that the evidence which was lost or destroyed by
9 that party would have been adverse to that party. If you
10 find first that the evidence was spoiled or destroyed and
11 if you further find that the evidence could help establish
12 the innocence of the defendant, you may then consider those
13 facts in deciding whether or not the State has met its
14 burden of proof.

15 The Defendant is charged with murder. The State must
16 prove beyond a reasonable doubt that the defendant killed
17 another person with malice aforethought.

18 Malice is hatred, ill will, or hostility towards
19 another person. It is the intentional doing of a wrongful
20 act without just cause or excuse and with an intent to
21 inflict an injury or under circumstances that the law will
22 infer an evil intent.

23 Malice aforethought does not require that malice
24 exists for any particular time before the act is committed,
25 but malice must exist in the mind of the defendant just

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1 before and at the time of the act being committed.
2 Therefore, there must be a combination of the previous
3 intent and the act.

4 Malice, aforethought may be expressed or inferred. Now
5 these terms, express and inferred, do not mean different
6 kinds of malice but merely the manner in which the malice
7 may be shown to exist. That is either by direct evidence
8 or by inference from the facts and circumstances which are
9 proved. Express malice is shown when a person speaks words
10 which express hatred or ill will for another or when the
11 person prepared beforehand to do the act which was later
12 accomplished. For example lying in wait for a person or
13 any other acts or preparation going to show that the deed
14 was within the defendant's mind that would be a definition
15 of expressed malice.

16 Now malice can also be inferred from conduct showing a
17 total disregard for human life. Inferred malice may also
18 arise when the deed is done with a deadly weapon. A deadly
19 weapon is any article, instrument, or substance which is
20 likely to cause death or great bodily harm. A handgun or
21 firearm is a deadly weapon.

22 Possession or display of a firearm during the
23 commission of a violent crime.

24 The defendant is charged with possession of a firearm
25 during the commission of a violent crime. The State must

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1 prove beyond a reasonable doubt that the defendant was in
2 possession of a firearm or visibly displayed what appeared
3 to be a firearm during the commission of a violent crime.

4 In order to find the defendant guilty of possession of
5 a weapon during the commission of a violent crime, you must
6 first find the defendant guilty of a violent crime. Murder
7 is defined as a violent crime.

8 The State must prove beyond a reasonable doubt that
9 the weapon furthered, advanced, or helped in the commission
10 of the crime.

11 Possession of a firearm by a person convicted of a
12 felony violent crime.

13 It is unlawful for a person who has previously been
14 convicted of a violent crime, that is classified a felony
15 offense, to possess a firearm or ammunition within the
16 state of South Carolina.

17 The State and the defense have stipulated that the
18 defendant has previously been convicted of a felony violent
19 crime.

20 Almost done.

21 You heard the parties stipulate at the outset of the
22 trial there was a stipulation agreed to by the parties and
23 the parties may be stipulation in writing at any stage of
24 the proceedings or orally at the hearing - at hearing or
25 trial agree upon any pertinent facts that may come before

1 the court. Stipulations can be received in evidence
2 before, or at, at a hearing and when received in evidence,
3 they shall be binding on both parties.

4 In other words, think about a stipulation like this.
5 On a rainy day both parties may stipulate that it is
6 raining outside without either side having actually prove
7 it. Both the state and the defense have stipulated the
8 defendant has previously been convicted of a felony violent
9 crime.

10 A firearm. A firearm means any machine gun, automatic
11 rifle, revolver, pistol, or any weapon which will, is
12 designed to, or may be readily converted to expel a
13 projectile.

14 Possession. To prove possession, the State must prove
15 beyond a reasonable doubt that the defendant had both the
16 power and the intent to control the disposition or use of
17 the firearm. Possession may be either actual or
18 constructive.

19 Let's talk about actual possession. Actual possession
20 means that the object was in the actual physical custody of
21 the defendant.

22 Constructive possession means that the defendant had
23 dominion and control or the right to exercise dominion and
24 control, over either the firearm itself or the property on
25 which the object was found or firearm was found.

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1 Those are all the legal definitions for the things
2 which have come before you this week. Let me talk to you a
3 little bit about deliberation and what it means.

4 The word deliberation is defined as careful
5 consideration weighing up with a view to a decision.

6 Now the genius of our jury system, ladies and
7 gentlemen, is that it allows twelve good people, both men
8 and women, from differing backgrounds, life experiences,
9 and perspectives to consider the evidence, talk about it,
10 and ultimately reach a verdict.

11 The task of a jury is called deliberations for a
12 reason - You, the jurors are to consider the evidence in
13 this case carefully and deliberately - and discuss it in a
14 calm, thorough, and courteous manner.

15 Now remember you are not partisans or advocates for
16 one side or the other. You are judges of the facts.
17 You're sole duty is to sort through the information you
18 received in this trial from the witness stand, from the
19 documents in evidence being presented to you. And of
20 course from the law that I'm giving to you now, and you are
21 to find the truth from the evidence presented.

22 The supreme law of our land, the United States
23 Constitution, affords everyone a day in court and a fair
24 trial. So this case is very important to both sides
25 because it is their day. I charge you to listen to the

1 views of your fellow jurors, carefully consider their
2 viewpoints, and courteously discuss the evidence. Remember
3 you're doing something deliberately, you're not in a big
4 hurry, and you are tasked with a duty of utmost importance.

5 Now in conclusion you've been selected by both the
6 state and the defendant to be fair and impartial. It is
7 your duty then in your deliberations to determine the truth
8 in this case, giving the defendant the benefit of every
9 reasonable doubt on the charges. And from the facts which
10 you determine to be true, you take and apply the law which
11 I have just given you and thus arrive at a verdict which
12 speaks the truth in this case.

13 I have told you the standards that you have to apply
14 to the charges in the indictments.

15 You've heard the evidence, and now you've heard the
16 law. Whatever your verdict is as to the indictment, guilty
17 of not guilty, Mr. Foreman, you will indicate it by marking
18 the jury's decision in the blanks on the verdict form. You
19 will then sign and date the verdict form.

20 Let me go over the verdict form with you. It has
21 three charges in the order of indictment. The first one
22 says we the jury unanimously find the defendant Quanell
23 McIlwain concerning the offense of murder you have the
24 choice of not guilty or guilty. If you choose not guilty,
25 you do not answer question two. It says that on the

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1 verdict form. Then you would go to question three.

2 Question two is the same except it pertains to
3 possession or displaying a firearm during the commission of
4 a violent crime. Question three is similar except it deals
5 with possession of a firearm by a person convicted of a
6 felony violent crime.

7 Although you're the only one who signs the verdict
8 form, the verdict as you just heard me say must be
9 unanimous. Okay. So remember that, Mr. Foreman, you're
10 not authorized to write the verdict until all of you have
11 agreed to what the verdict should be.

12 Now, ladies and gentlemen, I'm gonna send you to your
13 jury room but for the last time do not begin to discuss the
14 case until you have received all of the exhibits as well as
15 the verdict form. Once you receive the exhibits and the
16 verdict form, that will be your signal to begin talking
17 about the case and deliberating.

18 Now once you begin your deliberations, ladies and
19 gentlemen, you will deliberate until you've reached a
20 verdict at which time you will knock on the door, advise
21 the bailiff and we will bring you out to receive your
22 verdict. Thank you very much, you may now retire to your
23 jury room.

24 Both the alternates. you all stay here with me. Okay.

25 (JURY EXITS COURTROOM TO DELIBERATE AT 04:37 P.M..)

1 THE COURT: All right, any exceptions to the charge?

2 SOLICITOR BARFIELD: None from the State.

3 MR. STEEN: None from the Defense, Your Honor.

4 THE COURT: All right. If I can get you all to come
5 look at the exhibits and we'll go from there.

6 Thank you all so much for your jury service. You all
7 are free to leave at this point. If you have anything left
8 in the jury room the bailiff's will go get it for you.

9 But your jury service has ended for the week and of
10 course you're exempt and that means for the next three
11 years. Thank you so much for your service to our state and
12 to Lancaster County. You're more than welcome to stick
13 around if you wish to see what happens but you don't have
14 to. All right, thank you very much.

15 (ALTERNATES DISMISSED AT 04:38 P.M..)

16 THE COURT: All right, we're in recess.

17 (COURT IN RECESS AT 04:40 P.M..)

18 (COURT BACK ON THE RECORD AT 05:32 P.M..)

19 THE COURT: Mark this as Court's Exhibit Number One.

20 Okay, Court Exhibit Number Four.

21 (COURT'S EXHIBIT NUMBER FOUR IDENTIFIED AND MARKED,
22 RECEIVED INTO EVIDENCE.)

23 THE COURT: All right, gentlemen, I have received a
24 note from the jury about three minutes ago. We'll say
25 we'll round it off to 5:30 p.m., two questions.

1 Well, one question and one statement.

2 Number One: Was there a relationship between SK and
3 Antonio Jones ever established?

4 Number Two: Clarification of when Tanisha Nelson when
5 she was shown the suspect's picture.

6 My intention will be to bring the jury in and to
7 instruct them that they heard the testimony and the
8 evidence and they are considered - they are to consider
9 only the testimony and evidence received during this trial.

10 Any objection to that charge?

11 SOLICITOR BARFIELD: None from the State.

12 MR. STEEN: None, Your Honor.

13 THE COURT: All right. Bring 'em in.

14 THE BAILIFF: The jury's coming in.

15 (JURY REENTERS COURTROOM AT 05:35 P.M..)

16 THE COURT: All right, all members of the jury are
17 present. Ladies and gentlemen of the jury and Mr. Foreman,
18 I received your question and I will read it for the record
19 and I will give you the following charge after I read it.

20 Question One, was the relationship between SK and
21 Antonio Jones ever established?

22 Number Two, clarification of when Tanisha Nelson when
23 she was shown the suspect's picture.

24 I charge you, ladies and gentlemen, that you've heard
25 the testimony and the evidence both from this witness stand

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1 and you have the evidence that's been received as Exhibits
2 back there in your deliberation room. You must consider
3 only the testimony and evidence which has been given during
4 this trial in your deliberations. Thank you.

5 Please return to your deliberations.

6 (JURY EXITS COURTROOM AT 05:36 P.M..)

7 THE COURT: All right, we're back in recess.

8 (COURT IN RECESS AT 05:37 P.M..)

9 (COURT BACK IN SESSION AT 05:40 P.M..)

10 THE COURT: Is that correct? I understand we have a
11 verdict?

12 THE BAILIFF: Yes sir.

13 THE COURT: Okay. All right, well bring the jury in.

14 Ladies and gentlemen, if you will please withhold any
15 outward sign of emotion as to the verdict's was being read
16 I would greatly appreciate it.

17 THE BAILIFF: Coming in.

18 (JURY REENTERS COURTROOM AT 05:41 P.M..)

19 THE COURT: All right, all members of the jury are
20 present. Mr. Foreman, its my understanding that you and
21 the members of the jury have been able to reach a verdict.

22 MR. FOREMAN: Yes, sir.

23 THE COURT: Is the verdict unanimous?

24 MR. FOREMAN: Yes, sir.

25 THE COURT: All right, if you will please hand the

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1 verdict form to the Clerk.

2 (VERDICT RECEIVED UP BY THE COURT.)

3 THE COURT: All right, Mr. Clerk, you may publish the
4 verdict.

5 MR. CLERK: Yes, sir.

6 We the jury unanimously find the defendant Quanell
7 Marquan McIlwain considering the offense of murder
8 Indictment No. 2011-GS-29-1138 guilty.

9 We the jury unanimously find the defendant Quanell
10 Marquan McIlwain considering the offense of possession or
11 display of a firearm during the commission of a violent
12 crime, guilty.

13 We the jury unanimously find the defendant Quanell
14 Marquan McIlwain considering the offense of possession of a
15 firearm or ammunition by a person convicted of a felony
16 violent crime, guilty.

17 I certify this decision was unanimous, decision of the
18 jury, Roger E. McCain, Foreman, November 13th, 2014.

19 Ladies and gentlemen of the jury, if this be your
20 verdict say so you all by the raising of your right hands?

21 Let the record reflect all jurors raised their right
22 hands.

23 (ALL JURORS AFFIRMED VERDICT BY RAISING THEIR RIGHT
24 HANDS.)

25 THE COURT: Thank you, Mr. Clerk.

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1 Thank you, ladies and gentlemen of the jury, you're
2 jury service has now ended for the week. You are free to
3 leave however you are more than welcome to stay with us as
4 we proceed directly on to sentencing. Thank you for your
5 service.

6 And no jury service tomorrow. You do not have to
7 report. Okay. Or you don't have to call in tonight
8 either. Thank you so much for your service to the state of
9 South Carolina and to Lancaster County.

10 All right. Solicitor, you ready to proceed to
11 sentencing?

12 SOLICITOR BARFIELD: Well no. I'm sorry, I'm not, I
13 got the sentencing sheets I got to get. We can - I can do
14 that --

15 THE COURT: We'll take a brief recess. I want to
16 sentence this evening.

17 SOLICITOR BARFIELD: Yes, sir. I'll be ready in five
18 minutes.

19 THE COURT: All right, we'll do that.

20 Ladies and gentlemen, if you will retire to your jury
21 room so I can speak with you and then we'll come back out.

22 If you wish to stick around that will be fine.

23 (JURY EXITS COURTROOM AT 05:44 P.M..)

24 THE COURT: All right, we're in recess.

25 (COURT IN RECESS AT 05:44 P.M..)

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1 MR. STEEN: Your Honor, I would like to move for a new
2 trial. I mean just for purposes - -

3 THE COURT: We're not in - we're out of the jury's -
4 I'm sorry.

5 MR. STEEN: That's all right. This verdict shocks the
6 conscious and that they had a question and thirty seconds
7 later had a verdict.

8 THE COURT: So you renew all prior motions made during
9 the trial?

10 MR. STEEN: Yes, Your Honor.

11 THE COURT: All right. I respectfully deny those
12 motions.

13 MR. STEEN: Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 We're in recess.

16 (COURT AT EASE AT 05:45 P.M..)

17 (JURY REENTERS COURTROOM AT 06:01 P.M..)

18 (COURT BACK IN SESSION AT 06:02 P.M..)

19 THE COURT: All right, we'll proceed with sentencing.

20 (DEFENDANT, MARQUELL MCILWAIN, REENTERS COURTROOM.)

21 THE COURT: All right, Solicitor, whenever you're
22 ready I'll be glad to hear from you and then I'll hear from
23 Mr. Steen in mitigation at the conclusion.

24 SOLICITOR BARFIELD: And there are family members here
25 and have been here all week and I'm sure some of them want

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1 to speak.

2 THE COURT: Yes, sir.

3 SOLICITOR BARFIELD: Your Honor, Mr. McIlwain's
4 record, juvenile adjudication in '06 for disorderly
5 conduct. In 2007 with a court date of October 18th of 2000
6 he was convicted of four counts of burglary second degree
7 violent.

8 He got five years suspended to five years probation.

9 2009 his probation was violated, it looks like he got
10 six months activated.

11 2010 he had a couple of driving violations, beginner
12 permit and speeding.

13 2010 he had contraband in the jail; threatening the
14 life of a public employee two counts. That's his record.

15 Your Honor, you heard the facts over the course of the
16 last several days and not a whole lot of need to talk much
17 more about the facts. I will simply state Mr. McIlwain
18 should never had a gun. This is another tragic case of
19 somebody having a gun who shouldn't have - had a gun. An
20 event occurred which left another young man dead. His
21 family members here, been grieving his death and I'll let
22 you hear from them when you're ready to hear from them.

23 THE COURT: I'll be glad to hear from them at this
24 time.

25 SOLICITOR BARFIELD: Whoever would like to speak step

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1 up to the microphone and state your name and state your
2 relationship to Antonio and talk real loud.

3 THE COURT: And before you speak let me first of all
4 thank all of you for being here this week. And thank all
5 of you for your decorum as well this week. I appreciate
6 that. Yes, ma'am.

7 A. My name is Pauline Nelson, N-e-l-s-o-n. I am Terrance
8 Jones' great aunt. I help raise him after his mother was
9 killed by a car on Highway 9 Bypass.

10 Your Honor, I thank you for giving me this
11 opportunity. I have been through a lot. I'm sorry but I
12 can't hold my tears back anymore. I lost Tonio 2011 and a
13 year ago I lost his grandmother. She's not able to be
14 here. I thank Mr. Newman.

15 I thank you, Mr. Hall, and I thank you, Mr. Barfield.
16 I thank the jury and I thank everyone else for all that you
17 have done. Tonio didn't deserve this. Tonio may not have
18 been an angel but he wasn't a devil either.

19 Mr. McIlwain, I don't know you but I love you from the
20 bottom of my heart and I have forgiven you for what you
21 have done. God is the only one that gives life and he
22 should be the only one that take it. I'm not gonna prolong
23 time any more but I thank you all for what you all have
24 done.

25 THE COURT: Thank you, ma'am.

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1 Yes, ma'am.

2 Q. My name is Kimberly Ingram and I'm Terrance Jones'
3 first cousin and this took a toll on me. My life just as
4 well as my children. They were highly close to Tonio as I
5 call him. I thank the jury, Solicitor Barfield, Hall, and
6 all that played a part in this conviction. And I'm glad
7 that it has finally came to an end. Tonio did not deserve
8 what he got. He didn't know Quanell just as well as
9 Quanell didn't know him.

10 And if I could I wanted to ask you, Mr. McIlwain, why?
11 But I can't ask you that cause you don't know. And it's
12 ridiculous to take a life and I feel in my heart that you
13 take life you should give one and at the end of the day
14 regardless of how this court goes, God got the last say so.

15 And, Your Honor, I don't know what your suggestions
16 are or what you have in your mind, but my suggestion is
17 life. If the electric chair could be given that - I feel
18 like that is what should be when you give a life you should
19 take one. He needs to suffer for what he did to my cousin.
20 It took a toll on my family just as well as a lot of
21 children. Tony was an angel. He also wasn't a saint. He
22 was a child of God who did not deserve for his life to be
23 taken. He didn't break no law the night of May - the
24 morning of May 29th so therefore I want justice to be
25 served completely.

SENTENCING:

-652-

1 THE COURT: Thank you, ma'am.

2 SOLICITOR BARFIELD: Mr. Sanders. Anybody else?

3 Okay.

4 A. I'm Tonio's grandmother.

5 SOLICITOR BARFIELD: Your name?

6 A. My name is Katherine Crawford and I'm Tonio
7 grandmother's sister. And to my knowledge Tonio he used to
8 live with me. He was helping me out with my three
9 grandkids. He told my son he would help me with 'em. He
10 helped me take care of them when I had nobody else to take
11 care of them. He always come over to me ask me Kat do you
12 need any help with the kids? I told him yeah. So he came
13 over there and helped me out but he did a lot for me. Like
14 I say I know he begged for his life but you know only God
15 knows that.

16 And, Mr. McIlwain, I love you too but only, you know,
17 you shouldn't a did it. May God bless you.

18 SOLICITOR BARFIELD: Thank you, ma'am.

19 THE COURT: Thank you.

20 SOLICITOR BARFIELD: Anybody else?

21 I believe that's all, Your Honor. Thank you.

22 THE COURT: Anything further from the State?

23 SOLICITOR BARFIELD: No, sir.

24 THE COURT: Mr. Steen.

25 MR. STEEN: Thank you, Your Honor.

SENTENCING:

-653-

1 Mr. McIlwain is twenty-four years old. We would ask
2 that you please give him the minimum here which is thirty-
3 five years. That still puts him in jail when he's sixty
4 years old. That's a long time for someone hadn't even hit
5 the mid-twenties yet. He doesn't have any family here
6 today, Your Honor, and if it pleases we ask for some mercy.

7 THE COURT: Mr. Jones, anything?

8 MR. JONES: Nothing from me, Your Honor.

9 THE COURT: Mr. McIlwain, anything you'd like to tell
10 me before I impose sentence?

11 MR. MCILWAIN: Yes, sir.

12 THE COURT: All right.

13 MR. MCILWAIN: Those and to the family and I mean it.

14 THE COURT: All right. Well, Mr. McIlwain, if you
15 will please stand while I impose sentence.

16 A jury of your peers has found otherwise. And I have
17 to respect and I am gonna respect that guilty verdict and
18 I'm gonna impose a sentence which I believe speaks justice
19 in this case. And this was a callous act, this is an
20 intentional act, and it has no place in society.

21 Indictment 11-GS-29-1140 the sentence of the court on
22 the charge of possession of a firearm by a convicted felon,
23 sentence of the court is five years.

24 Indictment 11-GS-29-1139 as to the charge of
25 possession of a firearm during the commission of a violent

SENTENCING:

-654-

1 crime, the sentence of the court is five years concurrent.

2 And lastly for the charge of murder Indictment 11-GS-
3 29-1138 the sentence of the court is life.

4 Good luck to you.

5 (DEFENDANT ESCORTED FROM COURTROOM.)

6 THE COURT: All right, that concludes the trial of
7 this case. Thank you, ladies and gentlemen of the jury.

8 (JURY EXITS COURTROOM AT 06:15 P.M..)

9 THE COURT: All right. We'll see you tomorrow.
10 I told Wanda ten o'clock.

11 (COURT IN RECESS AT 06:15 P.M..)

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WITNESSES

Hall - LPD #11-08855

ARREST WARRANT NUMBER/DOA

M700988 (DOA-7-6-11)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 13 2011

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-29-1138

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

**THE STATE
vs.**

Quanell Marquan McIlwain

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

FILED
OFFICE OF CLERK
OF COURT

2011 OCT 13 A 10:22

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

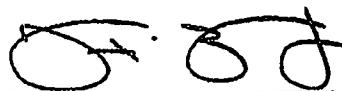
INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Quanell Marquan McIlwain did at 1700 Block of Pardue Street Apartments, in Lancaster County on or about May 29, 2011, feloniously, willfully, and of his malice aforethought kill and murder Terrance Antonio Jones by shooting him with a handgun and the victim did die as the proximate cause thereof on May 29, 2011 at Springs Memorial Hospital, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATE

VS.

Quanell Marquan McIlwain

AKA:

Race: B Sex: M Age:

DOB: SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MurderIn violation of § 16-3-10 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, (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

514

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 LIFE days/months/years 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.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

§14-1-208 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§58-5-2985 (DUI Assessment)	\$12	\$	
§58-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	
3% to County (if paid in installments)		\$	
TOTAL		\$	

Clark of Court/Deputy Clerk
Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-29-1138AW#: M700988Date of Offense: 5/29/11S.C. Code §: 16-3-10CDR Code #: 0116

SENTENCE SHEET

NOV 25 2014

☒ CONVICTED OF or ☐ PLEADS

SC Court of Appeals

CERTIFIED TO BE A TRUE COPY

 days/hours Public Service Employment -Obtain GED ☐Attend Voc: Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmis. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel
\$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Judge Code: Sentence Date 11/13/14

WITNESSES

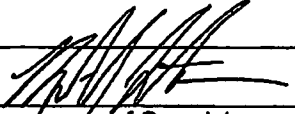
Hall - LPD #11-08855

11/13/11

ARREST WARRANT NUMBER/DOA

M701007 (DOA-7-6-11)

ACTION OF GRAND JURY


 Foreperson of Grand Jury
 Date: OCT 13 2011

VERDICT

TRUE BILL

 Foreperson of Petit Jury
 Date:

 Lit say
 DOCKET NO. 2011-GS-29-1139

 The State of South Carolina
 County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

 THE STATE
 vs.

Quanell Marquan McIlwain 1136-43

Indictment for

 Possession or Display of Firearm or
 Knife During Commission of a Violent
 Crime

 SC Code: § 16-23-490
 CDR Code: 0549
 Class: Felony, F

 FILED
 OFFICE OF CLERK
 OF COURT

2011 OCT 13 A 10:22

 CLERK OF COURT
 LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

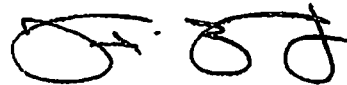
INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That Quaneil Marquan McIlwain did in Lancaster County on or about May 29, 2011, possess or visibly display a firearm or knife, to wit: a handgun during his/her commission of a violent crime, to wit: Murder of Terrance Antonio Jones, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATE

VS.

Quanell Marquan McIlwain

AKA:

Race: BSex: MAge: DOB: SS#: Address: City, State, Zip: DL# SID# *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2011-GS-29 - 1139

AW#: M701007Date of Offense: 5/29/11S.C. Code §: 16-23-490CDR Code #: 0549**RECEIVED**

NOV 25 2014

SENTENCE SHEET

SC Court of AppealsTO: Possession of Firearm During Commission of Violent CrimeIn violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ 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.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

514

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 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.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFIED TO BE A TRUE COPY

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (If paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter: PTUP days/hours Public Service RequirementObtain GED ☐Attend Voc. Rehab. Or Job Corp. JEFF HAMMOND

CLERK OF COMMON PLEAS

May serve W/E beginning AND GENERAL SESSIONS COURT Substance Abuse Counseling LANCASTER COUNTY, S.C.Random Drug/Alcohol Testing ☐

Fine may be pd. In equal consecutive weekly/monthly

pmis. of \$

Beginning

\$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 to be paid to Clerk during probation.Presiding Judge Judge Code: Sentence Date 11/13/14

Frick

DOCKET NO. 2011-GS-29-1140

WITNESSES

Hall LPD 11-8855

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

ARREST WARRANT NUMBER/DOA

M701006 (DOA-7/6/11)

ACTION OF GRAND JURY

**THE STATE
vs.**

Quanell Marquan McIlwain

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 29 2012

VERDICT

**AMENDED INDICTMENT
POSSESSION FIREARM OR AMMUNITION BY
PERSON CONVICTED OF FELONY VIOLENT
CRIME**

SC Code: §16-23-500
CDR Code: 3434
Class: Felony F

FILED
OFFICE OF CLERK
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2012 NOV 29 PM 2:25
CLERK OF COURT
LANCASTER, SC

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

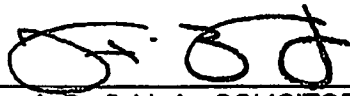
AMENDED
INDICTMENT

At a Court of General Sessions, convened on November 29, 2012, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OF FIREARM OR AMMUNITION BY PERSON CONVICTED OF
FELONY VIOLENT CRIME**

That Quanell Marquan McIlwain did in Lancaster County on or about May 29, 2011, possess a firearm or ammunition, to wit: .357 revolver and ammunition for it, within this state, the Defendant having been previously convicted of a violent crime defined in Section 16-1-60 of the Code of Laws of South Carolina that is classified as a felony offense in violation of Section 16-23-500 of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATE

VS.

Quanell Marquan McIlwain

AKA:

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2011-GS-29 - 1140

AW#: M701006

Date of Offense: 5/29/11

S.C. Code §: 16-23-500

CDR Code #: 3434

RECEIVE

NOV 25 2014

SENTENCE SHEET SC Court of Appa

TO: ☒ CONVICTED OF or ☐ PLEADS
Possession of Firearm/Ammunition by Person Convicted of Violent Felony Crime

In violation of § 16-23-500 of the S.C. Code of Laws, bearing CDR Code # 3434

☒ 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, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

514

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 _____ 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. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ _____
\$14-1-213 (Drug Court Surcharge)	\$150	\$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)		\$ _____
TOTAL		\$ _____

Clerk of Court/Deputy Clerk
Court Reporter: _____Obtain GED ☐Attend Voc. Rehab. Or Job _____
JEFF HAMMOND
CLERK OF COMMON PLEAS
GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmis. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

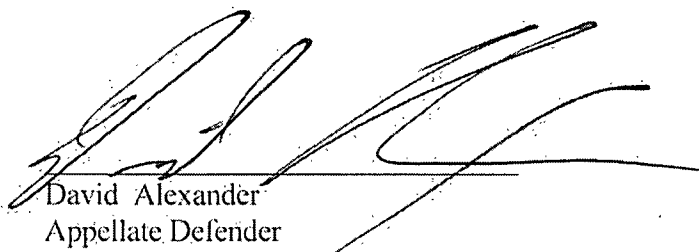
Judge Code: 2168

Sentence Date: 11/13/14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 29th, 2016



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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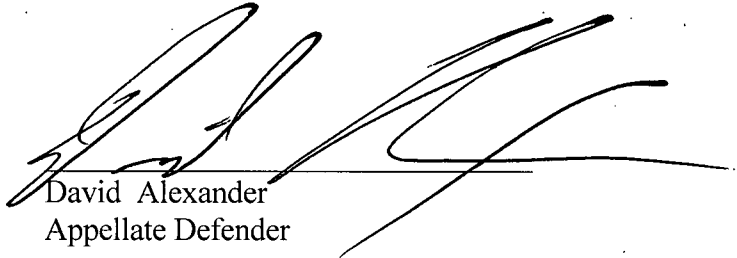
FEB 29 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 29th, 2016



David Alexander
Appellate Defender

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Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT