

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

QUENTIN GAUSE,

APPELLANT

---

SUPPLEMENTAL RECORD ON APPEAL

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KATHRINE H. HUDGINS  
Appellate Defender

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

Attorney for Appellant

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

(803) 734-3727

J. GREGORY HEMBREE  
Solicitor, Fifteenth Judicial Circuit  
Post Office Box 1276  
1301 2nd Ave.  
Conway, SC 29528-1276  
(843) 915-5460

Attorneys for Respondent

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 2 COUNTY OF HORRY ) COURT OF GENERAL SESSIONS

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 4 STATE OF SOUTH CAROLINA )  
 5 ) No. 10 GS 26 01626; 01627  
 6 versus ) 10 GS 26 1225  
 7 ) 11 GS 26 1276  
 8 LADORREAN COLLINGTON )  
 9 Defendant )

TRANSCRIPT  
 OF

10 STATE OF SOUTH CAROLINA ) RECORD  
 11 ) No. 08 GS 26 3133; 3135  
 12 versus ) 11 GS 26 1274; 1275  
 13 )  
 14 QUENTIN GAUSE )  
 15 Defendant )

Conway, South Carolina  
 June 2, 2011

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 17  
 18 B E F O R E :  
 19 HONORABLE STEVEN H. JOHN, Judge

20  
 21 HARRIET P. BENNETT  
 Reporter, S. C. Court Administration  
 22 P. O. Box 86  
 23 Ladson, S.C. 29456  
 24  
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A P P E A R A N C E S :

For Defendant Collington: GREG McCOLLUM, Esq.

For Defendant Gause: RON HAZZARD, Esq.

For the State: H. V. HERRMANN, Esq.  
Assistant Solicitor

Reporter: LINDA McCALL

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1           (The within matter came before the Court on June 2,  
2 2011, at approximately 9:15 A.M.)

3           THE COURT: All right, bring in Mr. Collington and  
4 Mr. Gause, and we will move forward on those issues.

5           We'll be at ease for a moment.

6           (Brief period of recess)

7           THE COURT: All right, we are reentering or recon-  
8 vening the motions that were filed in the matters of the  
9 State of South Carolina versus Ladorrean Collington and  
10 Quentin Lavont Gause.

11          We had suspended one of the motion hearings to re-  
12 ceive further evidence from the issuing magistrate due  
13 to the testimony received from the police officer that  
14 presented the matter to the issuing Summary Court Judge.

15          We will go ahead and go forward with that at this  
16 time. All right, Solicitor.

17          SOLICITOR: Your Honor, I do have a matter that is  
18 outstanding that I would like to address with the Court  
19 before we get to that.

20          I have filed the State's Response to the Defendants'  
21 Motion to Suppress the evidence, which I believe is about  
22 a twelve page response that has now been filed with some  
23 accompanying case law.

24          Again, I would reiterate the argument that I made  
25 previously which is this. Mr. McCollum has cited a case,

1 the McKnight case, and his position is that anyone has  
2 standing to challenge a search warrant for a codefendant  
3 or -- for a codefendant or anyone else's premises in a  
4 particular case in which they are a defendant.

5 I think, given the case law that I have cited to the  
6 Court, that that is just patently untrue.

7 What the case law says is that underneath the stat-  
8 ute are a set of rules which provide that you have to  
9 have certain things in hand in each and every search war-  
10 rant.

11 Those things include, among other things, an affi-  
12 davit and/or a -- or a return to that search warrant.  
13 Once those things -- once those requirements of form have  
14 been met, any question then of sub-  
15 stance; i.e., the probable cause, is a constitutional  
16 argument.

17 In order to make that constitutional argument, of  
18 course, one must have standing, and one must have an ex-  
19 pectation of privacy.

20 The search warrants that were served in these parti-  
21 cular cases -- in the search warrants that were served  
22 in these particular cases, neither of these two Defendants  
23 have any expectation of privacy in the residences that were  
24 searched.

25 They were not properties that were owned by these

1 Defendants. They were not properties that were owned by  
2 relatives of these Defendants, nor places where they had  
3 previously stayed or possibly had ever been.

4 And so the State's position under a number of these  
5 cases, and I would just for appellate purposes, if we  
6 need to do that, like to make my Response to the Motion  
7 a Court's Exhibit or a State's Exhibit at this time.

8 THE COURT: All right. Why don't you mark that as  
9 a State's Exhibit? You will have plenty of opportunity  
10 to argue those matters after we have heard the testimony.

11 The Court is not ready to rule in that regard at  
12 this time.

13 SOLICITOR: Yes, sir.

14 (State's Response to Motion marked for identifica-  
15 tion purposes as State's Exhibit 1)

16 THE COURT: All right. Are you ready to proceed  
17 with the testimony, Solicitor?

18 SOLICITOR: Yes, sir, Your Honor.

19 The State would call Magistrate Court Judge Erin  
20 Butler.

21 THE COURT: Judge, if you wouldn't mind, please,  
22 sir, come around and take the witness stand. Thank you,  
23 sir.

24 ERIN BUTLER, being duly sworn,  
25 testified as follows:

8

1 CLERK: Please have a seat and state your full name  
2 for the record.

3 WITNESS: Erin Butler. B U T L E R.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Mr. Butler, how are you currently employed?

7 A. I'm currently employed as a Horry County Magistrate.

8 Q. And how long have you been employed in that posi-  
9 tion?

10 A. Ten years. About ten years.

11 Q. And were you employed there then in April of 2008?

12 A. Yes, I was.

13 Q. Do you recall an incident that took place about  
14 April 14th of 2008 where the victim in the case, Allen  
15 Smith, was killed?

16 A. From my recollection of the case, one of the offi-  
17 cers, Officer Collins, called me concerning a murder that  
18 was done at that time, and he told me there was a possi-  
19 bility he may have to seek certain warrants on that is-  
20 sue.

21 Q. And was Officer Collins known to you at that time?

22 A. Yes, he was.

23 Q. And who was he employed by at that time?

24 A. Horry County Police.

25 Q. And there have been a number of search warrants that

## MAGISTRATE BUTLER ON DIRECT

1 have already been addressed in this case, and I believe  
2 you signed a search warrant for Detective Collins to al-  
3 low a search on the incident location where the victim  
4 was found. Is that correct?

5 A. From my knowledge, I think that's correct. It's  
6 been a while.

7 Q. And he also brought you another search warrant which  
8 contained grounds for a search of the Defendant  
9 Collington's residence?

10 A. He did.

11 Q. And there also was a search warrant which he brought  
12 to you to provide for a search of an apartment in which  
13 a Codefendant resided. Is that correct?

14 A. Yes, he did.

15 Q. During the time that Detective Collins was there  
16 with you signing those warrants, did you all have an op-  
17 portunity to discuss the case?

18 A. What is usually asked in a search warrant is concern-  
19 ing probable cause for the warrant, and I ask them about  
20 the case. Then once I listen to the information that is  
21 on -- that is outlined on the affidavit I determine whe-  
22 ther I will give them the search warrant or not.

23 Q. And in addition to just the information for the  
24 probable cause, do you and the officers typically discuss  
25 the case and what they're doing in that case?

## MAGISTRATE BUTLER ON DIRECT

1 A. Well, yes, they do.. Again before I issue . .

2 MR. McCOLLUM: Objection, Your Honor.

3 THE COURT: I'm going to allow it. Thank you very  
4 much.

5 MR. McCOLLUM: She is asking . .

6 THE COURT: I understand the question. Maybe you  
7 would make it more clear what is standard practice and  
8 what was followed in this particular case.

9 Thank you.

10 BY SOLICITOR:

11 Q. Is it standard practice for you to discuss the cases  
12 with the officers when they bring these search warrants  
13 in?

14 A. Yes.

15 Q. And I'm going to show you . .

16 THE COURT: Just to follow up on it, do you believe,  
17 Judge, that you followed your standard practice in this  
18 particular matter?

19 BY SOLICITOR:

20 Q. Do you believe that you talked with Detective  
21 Collins about the case?

22 A. Yes. He comes in and provides information to me and  
23 I review it.

24 THE COURT: Thank you very much.

25 Q. And do you recall Detective Rusty Crocker also coming

## MAGISTRATE BUTLER ON DIRECT

1 in the following day with an additional search warrant?

2 A. I do.

3 Q. I hand you what's marked State's Exhibit 2 and ask  
4 if you can identify that for me, at least generally?

5 A. Yes, maam. Yes, I do.

6 Q. And is that a search warrant for 1519 Grainger Road,  
7 Apartment G 8?

8 A. Yes, it is.

9 Q. And did you have an opportunity to read the affida-  
10 vit portion of the search warrant?

11 A. Yes, I did.

12 Q. After reading the affidavit portion of the search  
13 warrant, did you have some discussion with Detective  
14 Crocker as well about how the case was proceeding along?

15 A. Yes. I ask questions any time that they come in on  
16 a matter. Yes, I did.

17 Q. And given the information provided to you, did you  
18 make a determination about whether there was probable  
19 cause to issue that search warrant?

20 A. Yes.

21 Q. I know that it's been a long time, but do you remem-  
22 ber specifically what that information was or just gener-  
23 ally?

24 A. It has been a long time, but basically just general  
25 information. It's been a long time. I can't really say

MAGISTRATE BUTLER ON DIRECT

1 at this point.

2 Q. Do you know whether this particular warrant -- can  
3 you tell me whether this particular warrant was looking  
4 -- whether in this particular warrant they were looking  
5 for individuals or property or both?

6 A. They were looking for -- they had been informed that  
7 somebody -- informed of some other individual from what  
8 I remember on that, and they were looking for property  
9 items as well as the individual themselves.

10 Q. And so the two search warrants which have already  
11 been found to have probable cause, the prior search war-  
12 rants of Detective Collins -- would you characterize  
13 these as being additional information to that information  
14 you received from Detective Collins?

15 A. From my recollection, I do.

16 Q. And the search warrants for Detective Collins, those  
17 were also looking for people and property, is that cor-  
18 rect, sir?

19 A. They were. I remember that much.

20 Q. And this search warrant would be looking for addi-  
21 tion information?

22 A. For additional information.

23 SOLICITOR: I don't have any questions regarding  
24 those particular search warrants, Judge. I don't know  
25 if you would like me to go into them individually or not.

MAGISTRATE BUTLER ON DIRECT

1 THE COURT: It probably would be easier if we would  
2 just stick with each search warrant and have the questions  
3 asked by the Defense as to that particular warrant and  
4 then go from that one if there is any question about the  
5 particular one addressed.

6 BY SOLICITOR:

7 Q. Let me ask you one more question about that one. Is  
8 that the return to that search warrant?

9 A. Yes, it is.

10 Q. And can you tell me whether you typically get a copy  
11 of that return? Is that something you typically would re-  
12 ceive?

13 A. We get a copy of it. It is a part of the process  
14 that it is returned with the information that was gotten  
15 from the warrant.

16 Q. Please answer any questions Mr. McCollum has for  
17 you.

18 THE COURT: All right, Mr. McCollum.

19 CROSS EXAMINATION

20 BY MR. MCCOLLUM:

21 Q. Good morning, Magistrate Butler.

22 A. Good morning, sir.

23 Q. Do you have a copy of the search warrant?

24 A. I have a copy of this one.

25 Q. And the address was 1519 Grainger Road?

## MAGISTRATE BUTLER ON DIRECT

1 A. Yes, sir.

2 Q. Now, this one was issued May 15, 2008, the same as  
3 the previous one, right?

4 A. Right.

5 Q. And you handle a number of cases in your normal dut-  
6 ies as a Judge, right?

7 A. Yes, sir, I do.

8 Q. And you issue a number of warrants beside arrest  
9 warrants, right?

10 A. Yes, sir.

11 Q. And you also work on a number of search warrants  
12 but not as many as arrest warrants, right?

13 A. Sometimes -- it varies. Sometimes it may be dimin-  
14 ished as compared to arrest warrants. Certainly not as  
15 many.

16 Q. And on this particular day, Detective Rusty Crocker  
17 I think came to your house to receive the search warrant,  
18 right?

19 A. At eight forty-five -- yes, sir, I believe I was at  
20 the house.

21 Q. For 1519 Grainger Road. Right?

22 A. Yes, sir.

23 Q. And do you remember -- if you can't, you can't, but  
24 besides the affidavit here which is the reason for the  
25 affiant's belief that the property sought was on the

## MAGISTRATE BUTLER ON CROSS

1 subject premises, do you remember any facts that Detec-  
2 tive Crocker told you at your house that day other than  
3 what is in the last paragraph here on this page?

4 A. All I can remember right off the top of my head was  
5 that they were looking for additional information. They  
6 had linked some individuals to this matter, or some per-  
7 son, and they were looking for additional information. I  
8 remember that part, but it's been a while.

9 Q. I understand. I understand, but do you remember --  
10 do you specifically remember that while Detective Crocker  
11 was under oath that you asked him any specific questions  
12 to add to or enlarge the facts that he was providing to  
13 you?

14 A. I can't hardly remember that. I asked him about the  
15 case but specific things I can't remember.

16 Q. In the last sentence here it talks about a witness,  
17 and this is information that Detective Crocker provided  
18 to you which says, in addition a witness has provided  
19 information about an address, that being 1519 Grainger  
20 road, I guess, . . .

21 A. Uh hm.

22 Q. . . and has physically showed officers the addresses  
23 where the suspects and their accomplices were residing.

24 A. Okay.

25 Q. Now, do you know from looking at the search warrant

## MAGISTRATE BUTLER ON CROSS

1 or from memory who that witness was?

2 A. No, sir, I don't.

3 Q. And Detective Crocker did not specifically give you  
4 or give the Court any information which would establish  
5 that witness' reliability. Right?

6 A. No.

7 Q. They just had a witness who said that these suspects  
8 could be found at this address, right?

9 A. Right.

10 Q. And there was nothing else, right, that you can  
11 recall?

12 A. Not that I can recall.

13 Q. All right.

14 A. Other than at that time from my reflection I felt  
15 there was enough probable cause to issue that.

16 Q. I understand, and at the time you knew that there  
17 had been a homicide?

18 A. Yes.

19 Q. And you knew that the officers wanted to conduct  
20 certain searches, right?

21 A. Yes.

22 Q. And that they were there to try to get permission  
23 to conduct those searches, right?

24 A. Yes, sir.

25 Q. In your position as a Judge, you certainly wanted

## MAGISTRATE ON CROSS

1 to assist the police in conducting the searches, right?

2 A. Yes, sir.

3 Q. But as far as the probable cause, there is really  
4 nothing else that you can add here today other than what  
5 is in that last paragraph, right?

6 A. Not other than that.

7 Q. Thank you. I appreciate it.

8 THE COURT: Mr. Hazzard.

9 MR. HAZZARD: Yes, sir. I'm sorry, but I want to  
10 make it clear to the Court Reporter . .

11 THE COURT: He is now questioning the witness on  
12 behalf of the Defendant, Quentin Gause.

13 MR. HAZZARD: Very good.

14 CROSS EXAMINATION

15 BY MR. HAZZARD:

16 Q. Judge, you've got a copy of the warrant that the  
17 . . .

18 THE COURT: Also, Mr. McCollum was asking questions  
19 on behalf of Ms. Ladorrean Collington.

20 A. You've got a copy of the warrant that the Prosecu-  
21 tor handed you for 1519 Grainger Road, Building G and  
22 Unit 8. Is that correct?

23 A. Yes, sir.

24 Q. Okay. Now, I would direct your attention to the  
25 paragraph that Mr. McCollum just discussed with you. Do

## MAGISTRATE BUTLER ON CROSS

1 you see that paragraph, sir?

2 A. Yes, sir.

3 Q. Now, in reviewing that paragraph -- have you had a  
4 chance to review that paragraph in its entirety?

5 A. I have had a chance to kind of read over it a lit-  
6 tle bit.

7 Q. Now, this paragraph is one that is obviously conclu-  
8 sary in nature. Can we agree on that?

9 A. . .

10 SOLICITOR: I would object to that as calling for a  
11 legal opinion.

12 THE COURT: What the Solicitor means is that that  
13 is a decision I would need to make.

14 BY MR. HAZZARD:

15 Q. Judge Butler, there is no where in that paragraph  
16 where it indicates who this witness is that is providing  
17 this information regarding 1519 Grainger Road, Building  
18 G, Unit 8 to the police?

19 A. No, it's not.

20 Q. Okay. Now, this was eight forty-five A.M., and it  
21 says it was sworn to on the 15th day of April, is that  
22 correct?

23 A. That's right.

24 Q. The year being 2008?

25 A. Yes.

## MAGISTRATE BUTLER ON CROSS

1 Q. To your recollection, was this the first warrant  
2 that Rusty Crocker or any other police officer had  
3 brought to you in this particular case, that being the  
4 death of Allen Smith?

5 A. No, it wasn't. There were several others that were  
6 brought earlier by Officer Collins. He had brought those  
7 to the office.

8 Q. Okay. On the same day or the previous day?

9 A. I don't recollect, sir. I believe some were on the  
10 same day and some were on the previous day. I can't re-  
11 member just when it was, without looking at it.

12 Q. Now, with regards to the same paragraph, is it your  
13 practice when the paragraph does not give you information  
14 whereby you can make an independent determination of the  
15 reliability or credibility or believability of the wit-  
16 ness the paragraph refers to -- is it your practice to  
17 request or require the police to subsequently amend the  
18 paragraph?

19 A. . .

20 Q. In other words, like in this case here, a witness  
21 told them some information . .

22 A. Right.

23 Q. . . but it doesn't let you know who the witness is,  
24 so you don't get a chance to determine if that witness  
25 was believable or not?

## MAGISTRATE BUTLER ON CROSS

1 A. Right.

2 Q. Okay. Now, in those situations where you're brought  
3 this type of information like in the affidavit, what is  
4 your practice in instructing the police as to what you  
5 deem to be appropriate?

6 A. It's based on what -- on any information given to me  
7 earlier -- based on information provided to the Court  
8 earlier . . .

9 Q. Uh hm.

10 A. . . for the other search warrants which were ob-  
11 tained, the Court would consider that affidavit and the  
12 other information to determine if the warrant should be  
13 issued.

14 Q. Okay. You said Detective Collins had talked with  
15 you earlier?

16 A. Right.

17 Q. In getting other warrants?

18 A. Getting the other warrants.

19 Q. So exactly what information did Detective Collins  
20 provide you that supplements the affidavit?

21 A. He did not actually give me any information concern-  
22 ing this affidavit. It was in connection with other  
23 search warrants which had been done before this one, but  
24 I used information that was given prior to the issuing  
25 of this search warrant.

## MAGISTRATE BUTLER ON CROSS

1 Q. Okay.

2 A. The Court determined from that information that was  
3 given along with this affidavit that the search warrant  
4 should be given.

5 Q. So he did not give you any information regarding the  
6 witness mentioned in the affidavit?

7 A. No.

8 Q. Thank you. No further questions.

9 THE COURT: If I could, let me ask a couple of  
10 questions.

11 Understanding this was on April 15, 2008, and we're  
12 here on June 2nd of 2011; and I appreciate that.

13 There were hundreds if not thousands of search war-  
14 rants and arrest warrants that you have issued in the  
15 interim.

16 I am more interested in your standard practice when  
17 the police come to you. When in the body of the affida-  
18 vit they say a witness and they don't name the person --  
19 a witness provided this information and that is what we  
20 are using to give to the Court as a basis for this search  
21 warrant, what is the practice when they don't name the  
22 witness?

23 Do you ask some questions about that or how did that  
24 person come about that information? What do you normally  
25 do?

## MAGISTRATE BUTLER ON CROSS

1 A. Yes, sir, that's what I do before I go into it fur-  
2 ther.

3 I ask them about the case, the purpose of it, what  
4 they are looking for. I ask them all of the information  
5 before -- as to the witness I don't necessarily ask them  
6 the name of the witness if they say they have a witness  
7 that saw something.

8 I ask what they are looking for in the matter and  
9 how it came together.

10 THE COURT: I understand when Detective Crocker came  
11 to you for this particular search warrant for Building  
12 G, Unit 8, at 1519 Grainger Road, you asked him some  
13 questions and took the information that was in the affi-  
14 davit and you used the information you had gained from  
15 other officers apparently before Officer Crocker -- from  
16 other officers who had come to you with information about  
17 the case.

18 You put all that information together and you made  
19 your decision. Is that correct?

20 A. Correct.

21 THE COURT: Further questions, Solicitor?

22 SOLICITOR: Just a couple.

23 CROSS EXAMINATION

24 BY SOLICITOR:

25 Q. Judge Butler, is this something that comes into play

## MAGISTRATE ON REDIRECT

1 from time to time, that you will have information that  
2 has been provided by an informant?

3 A. Right.

4 Q. And is it not true that you look not only at the  
5 reliability of the informant but the specificity of the  
6 information that has been given?

7 A. Yes, I do.

8 Q. And the information that you were given; i.e., the  
9 various addresses in this case was very specific, was  
10 it not?

11 A. Yes.

12 Q. In fact, in the affidavit it tells you that this wit-  
13 ness was able to go to a particular location and point  
14 out that location?

15 A. Yes.

16 Q. Not just a location but a very specific location, is  
17 that right?

18 A. Yes, he did. This witness pointed out certain as-  
19 pects in this case and certain locations.

20 Q. And so while you may not know the name of the wit-  
21 ness, you know that the witness did provide very specific  
22 information about the location?

23 A. That's true.

24 Q. The information that you got from Detective Crocker,  
25 that was information that you used in addition to the

## MAGISTRATE BUTLER ON REDIRECT

1 information that was provided to you by Officer Collins?

2 A. That's correct.

3 Q. So the body of information that you had was not just  
4 coming from Detective Crocker, correct?

5 A. Correct. That's right.

6 Q. And you had a base of information about how this case  
7 had been from the very beginning?

8 A. Yes. As I mentioned earlier, there again in the be-  
9 ginning -- from the beginning I was informed by the offi-  
10 cers when I was reviewing the search warrants that came  
11 in before I made any determination on any further search  
12 warrants.

13 Q. And in your job you may get a search warrant brought  
14 to you where perhaps another Judge has signed a separ-  
15 ate search warrant in that case. Is that correct?

16 A. Sometimes we do get that.

17 Q. But in this case you did all the search warrants?

18 A. I did every one of them.

19 Q. Thank you. I don't have any further questions.

20 THE COURT: Anything on those questions asked, Mr.  
21 McCollum?

22 MR. MCCOLLUM: Yes, sir, just briefly, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. MCCOLLUM:

25 Q. But the witness in this particular case, do you know

## MAGISTRATE BUTLER ON RECROSS

1 if it was a man or woman?

2 A. I'm trying to remember did they tell me. I'm not  
3 sure if I was told if it was a man or woman.

4 Q. It could have been a man, could have been a woman.  
5 Right?

6 A. Could have been either one.

7 Q. All right, and you don't know the age of the person,  
8 right?

9 A. No, I don't.

10 Q. Do you know the race of the person?

11 A. I'm sorry, I don't.

12 Q. You don't know where the person is from, right?

13 A. No.

14 Q. You don't know if that person knew the people they  
15 were giving information about?

16 A. The information I got was that they knew the person.  
17 That's the only thing I remember.

18 Q. But you didn't know the sex or age or the race, or  
19 where the person was from, or the whereabouts of the per-  
20 son?

21 A. They may have mentioned it to me, but I don't remem-  
22 ber.

23 Q. Thank you, Your Honor.

24 THE COURT: Yes, sir, Mr. Hazzard.

25 RECROSS EXAMINATION

## MAGISTRATE BUTLER ON RECOSS

1 BY MR. HAZZARD:

2 Q. Judge Butler, Ms. Herrmann asked you about informa-  
3 tion you had received previously . .

4 A. Uh hm.

5 Q. . . in regard to this case. Let's go back to the  
6 first information you received.

7 A. Okay.

8 Q. What did the police tell you?

9 A. When I looked at the warrants I can't remember  
10 exactly what they told me, other than they were looking  
11 -- they had a murder and they were looking for some evi-  
12 dence or individuals to that.

13 Q. Uh hm.

14 A. Any details I cannot tell you.

15 Q. So basically they came to you and they said somebody  
16 is dead, and we have been talking to some folks, and that  
17 based on talking with some folks we want to get some war-  
18 rants. Is that a fair characterization of what you were  
19 told?

20 A. After going to the areas of information that are  
21 presented to me in order to issue any warrants, things I  
22 or the Court would take a look at, but I don't do it --  
23 it's more than just talking to get a warrant.

24 Q. Do you have any recollection of what information  
25 they would have provided to you?

## MAGISTRATE BUTLER ON RECROSS

1 A. Not without looking at the return at this time. It  
2 has been a while.

3 Q. Well, you are talking about the very first warrant,  
4 so you're talking about information provided but there  
5 is no return at this point, correct?

6 A. Right.

7 Q. So with regard to the very first warrant, what in-  
8 formation or what supplementary information were you pro-  
9 vided, starting with the first warrant, if you recall?

10 A. I can only tell you what we look for in those types  
11 of cases, not what was provided to me.

12 They are always looking for concerned items, any evi-  
13 dence of hair, or they may want to do DNA, but they have  
14 the first concern.

15 Q. Uh hm.

16 A. And also we are provided with the information that  
17 we take a look at before we issue a search warrant. That  
18 may be some additional information such as if they've got  
19 any leads to anyone else and they may come back to me  
20 again for that purpose.

21 Q. Okay, and I appreciate what the police may be look-  
22 ing for, but my question was more along the lines of what  
23 information were you provided by them?

24 A. I cannot remember that at this point. I was looking  
25 at information that was in front of me.

## MAGISTRATE BUTLER ON RECROSS

1 Q. Thank you, no further questions.

2 THE COURT: Anything further or may he be excused?

3 MR. McCOLLUM: The only thing, Your Honor, is that  
4 there were three warrants that . . .

5 THE COURT: He's exactly right, Solicitor.

6 Let's proceed on with that.

7 SOLICITOR: Your Honor, the warrant we just discussed  
8 was for Apartment G 8, 1519 Grainger Road, State's Exhi-  
9 bit 2.

10 We also would have Exhibit 3, for Apartment G5, 1519  
11 Grainger Road; Exhibit 4, a warrant for 1007 Palmetto  
12 Road, Exhibit 4; and State's Exhibit 5, a warrant for 907  
13 Whittemore Street.

14 The affidavit for each of those warrants is the same  
15 and I would be happy to go into each of those if Your  
16 Honor would think it necessary.

17 THE COURT: I would appreciate your marking those  
18 as State's Exhibits, starting with the one that was just  
19 talked about, for the G 8 unit at 1519 Grainger Road.

20 (Search warrant so marked as State's Exhibit 2)

21 SOLICITOR: I also have Exhibits 3, 4 and 5, the  
22 first of which is for Apartment 5, 1519 Grainger Road, and  
23 for 1007 Palmetto Road and 907 Whittemore Street, Your  
24 Honor.

25 THE COURT: All right, Solicitor. They are so marked.

1 I appreciate that, but since he didn't have those and you  
2 were asking Judge Butler specific questions about those  
3 warrants, I believe we needed to identify them in case  
4 of further review.

5 Hand those up, please. The one for G 8, 1519 Grainger  
6 Road, what's that?

7 SOLICITOR: State's Exhibit 2.

8 THE COURT: And then the warrant for Building G,  
9 Unit 5, 1519 Grainger Road, what's that?

10 SOLICITOR: State's 3.

11 THE COURT: Is there a State's 5?

12 SOLICITOR: State's 4 is for 1007 Palmetto Road.

13 THE COURT: I don't have a copy of that, Solicitor.  
14 Would you pass that up?

15 State's 1 is the State's Response to the Defendants'  
16 Motion to suppress.

17 For Building G, Unit 8, 1519 Grainger Road is  
18 State's 2. As I understand it, Building G, Unit 5, 1519  
19 Grainger Road is 3.

20 One thousand seven Palmetto Street is State's 4, and  
21 what is State's 5, Madam Court Reporter?

22 REPORTER: It's 907 Whittemore Street, Your Honor.

23 THE COURT: All right, 907 Whittemore Street, State's  
24 5.

25 All right, Solicitor.

1 REDIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Magistrate Butler, have you had an opportunity to  
4 see these search warrants which have been marked State's  
5 Exhibit 3, State's Exhibit 4 and State's Exhibit 5?

6 A. Just briefly.

7 Q. Would you take a look at those?

8 A. Okay.

9 (Brief pause in proceeding)

10 WITNESS: I'm ready.

11 Q. State's Exhibit 3 is for 1519 Grainger Road, Apart-  
12 ment G 5?

13 A. Yes, maam.

14 Q. And would you tell the Court, please, at what time  
15 that search warrant was signed?

16 A. At 8:45 A.M.

17 Q. And the information that is contained in the affi-  
18 davit portion of that search warrant, is that information  
19 that was provided to you with regard with State's Exhibit  
20 2, which is the 1519 Grainger Road, Apartment G 8, which  
21 we have just discussed?

22 A. Yes, it is.

23 Q. And so the information received from Detective Crocker,  
24 would that be the same information with regard to this  
25 particular apartment as well?

## MAGISTRATE BUTLER ON REDIRECT

1 A. Yes, it is. It looks so.

2 Q. And included in the affidavit is information about  
3 the various specific locations being pointed out to the  
4 police and provided to them, is that correct?

5 A. Yes.

6 Q. And also in that affidavit is information saying that  
7 numerous interviews have been conducted, is that correct?

8 A. Yes, it is.

9 Q. And would it be your practice to ask the officers  
10 about those particular interviews?

11 A. I usually do. I let them go on to discuss the inter-  
12 view in the information I gain in order to determine whe-  
13 ther I'm going to give them the warrant or not.

14 Q. And did you believe you did that in this case?

15 A. I certainly do.

16 Q. And did you conclude before you signed the search  
17 warrant that you believed there was probable cause for  
18 that search warrant?

19 A. Again, I do not sign warrants and particular search  
20 warrants until I am really convinced there is probable  
21 cause for it.

22 Q. Magistrate Butler, you take your job pretty seriously,  
23 don't you?

24 A. I certainly do.

25 Q. And is it important to you before you sign a search

## MAGISTRATE BUTLER ON REDIRECT

1 warrant to know that there is probable cause for the war-  
2 rant, is that correct?

3 A. Yes, I don't sign search warrants unless there is  
4 probable cause for that.

5 And once you read this affidavit, if you had questions  
6 about the reliability of that witness or questions about  
7 the reliability of that information that was provided in  
8 the affidavit, do you ask questions about that?

9 A. I certainly do.

10 Q. And so you satisfy yourself that that information  
11 rises to the level of probable cause?

12 A. Yes.

13 Q. And do you do that in your general practice?

14 A. Yes, I do.

15 Q. And did you do that in this particular case?

16 A. I certainly did.

17 Q. And calling your attention to State's Exhibit Number  
18 4, that search warrant for 1007 Palmetto Street, is  
19 the affidavit in that case the same as the affidavit in  
20 the previous search warrant?

21 A. Yes, it is.

22 Q. And so that information -- you were relying on the  
23 same information for that particular search warrant as  
24 well, is that right?

25 A. Yes, I was.

## MAGISTRATE BUTLER ON REDIRECT

1 Q. And I would ask you to take a look at State's Exhi-  
2 bit 5, which is the search warrant for 907 Whittemore  
3 Street. Is that information in that affidavit the same  
4 as in the others?

5 A. Yes, it is.

6 Q. And you have previously said that you do not recall  
7 the specifics of your conversation with Detective Crocker,  
8 is that correct?

9 A. Only for a few words, things that -- the basics just  
10 basically. I don't recall the specifics of the informa-  
11 tion that we discussed.

12 Q. But you do recall that there was information that  
13 was discussed in addition to what is contained here in  
14 the affidavit?

15 A. From my knowledge, we talked about some things but I  
16 just can't remember what they were at this point. We did  
17 discuss some things.

18 Q. And if you had some concerns about the information  
19 that was provided to you, that would be information you  
20 would ask him about?

21 A. Right.

22 Q. And if you are not satisfied with that information,  
23 what happens?

24 A. I do not sign the warrant.

25 Q. And in each one of these warrants, have you looked

## MAGISTRATE BUTLER ON REDIRECT.

1 at the totality of the circumstances and the information  
2 you had been provided to determine whether or not there  
3 was probable cause for the warrant?

4 A. Yes, I did.

5 Q. And was there a return on each of these search war-  
6 rants?

7 A. Yes, I assume there was.

8 Q. How about check and see if there were returns on  
9 them?

10 A. Yes, there are returns for each one of them.

11 Q. And taking into consideration the totality of the  
12 circumstances, and the specificity of the information pro-  
13 vided, you feel that there was probable cause for the is-  
14 suance of these search warrants?

15 A. I do.

16 Q. And from the information you received, you were satis-  
17 fied as to that?

18 A. From the information and the discussions that we  
19 had, I do, yes.

20 Q. Thank you.

21 THE COURT: All right, Mr. McCollum. Any further  
22 Cross Examination?

23 MR. MCCOLLUM: Yes, sir. May it please the Court?

24 THE COURT: Yes, sir.

25 RECROSS EXAMINATION

## MAGISTRATE BUTLER ON RECROSS

1 BY MR. McCOLLUM:

2 Q. Judge Butler, you have been a sitting Judge for how  
3 many years now?

4 A. About ten.

5 Q. About ten? Okay, and you've seen a lot in ten years  
6 time, right?

7 A. Yes, sir, I have.

8 Q. No question about that, right?

9 A. No.

10 Q. And the police have come to you on a number of oc-  
11 casions to get search warrants?

12 A. Yes, they have.

13 Q. And they've come to you on a number of cases to get  
14 arrest warrants, right?

15 A. Right.

16 Q. About how many arrest warrants would you say you  
17 sign in a month?

18 A. I guess between twenty-five to thirty, thirty-five  
19 warrants a month.

20 Q. Okay, so that would be three hundred and something  
21 a year?

22 A. You said arrest warrants, right?

23 Q. Yes, three hundred and something arrest warrants,  
24 right?

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. So over a ten year period, you've done over three  
2 thousand arrest warrants, right?

3 A. Somewhere close to that I guess, yes, sir.

4 Q. I understand you can't be exact, but has there been  
5 an occasion when this officer came to you to get an ar-  
6 rest warrant and you didn't sign the warrant?

7 A. Yes, there has, when there has not been enough evi-  
8 dence to determine probable cause I have not.

9 Q. And how many search warrants would you say that you  
10 sign in a month, in a normal month, and I know that it  
11 varies?

12 A. It does. We can go for a month without signing any  
13 and we can go for a month with ten or twelve a month.

14 Q. And so you sign fifty or sixty a year -- search war-  
15 rants?

16 A. Something like that.

17 Q. And are there lots of occasions when you have not  
18 signed search warrants for the police when they have re-  
19 quested them?

20 A. Maybe one or two over the years, particularly after  
21 they learn how I establish what they're looking for.

22 There may have been one or two over the years that  
23 I have not signed.

24 Q. So you have <sup>given</sup> many more than you have denied?

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. Okay. Now, in terms of probable cause, if you could  
2 tell me your understanding -- when you say you look for  
3 probable cause, what are you looking for?

4 What are you looking for to establish probable cause?

5 A. I'm looking at the incident that occurred, what evi-  
6 dence they have as to that incident, and who they have  
7 linked to that.

8 I'm looking at what information they have in pursuit  
9 of this, and what information they are looking for, as  
10 well as any additional information for pursuing this.

11 They present the case to me fully. I listen to what  
12 they say fully before I decision.

13 Q. Besides a determination of what they are looking for,  
14 what are you specifically looking for in determining whe-  
15 ther or not the police can use the warrant to enter into  
16 somebody's house?

17 What are you looking for?

18 A. Any witnesses to the matter, any leads that lead up  
19 to that information, or any additional information. I  
20 look at all of that to determine it.

21 Q. And I want to go back a little bit and ask you a  
22 little more about these exhibits you have in front of you.

23 A. Yes, sir.

24 Q. These are State's Exhibits 2, 3, 4 and 5.

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. And these are all search warrants you signed in the  
2 same case?

3 A. Yes, sir, right.

4 Q. So Exhibits 2, 3, 4 and 5 were all signed for Detec-  
5 tive Crocker?

6 A. Let me see. Yes, he's the affiant on all of them.

7 Q. And those affidavits are all identical, right?

8 A. Identical in nature, yes, sir.

9 Q. All right.

10 A. The description of what they're looking for.

11 Q. And you said that you had additional information or  
12 facts not included in the affidavit, right?

13 A. Right.

14 Q. As a basis for the search warrants?

15 A. Right.

16 Q. And you can't specifically point to any additional  
17 facts at this time?

18 A. . .

19 Q. Other than information that is written in the search  
20 warrant?

21 A. Right.

22 Q. Specifically what you were relying on in this case  
23 is what is written in the search warrants?

24 A. Yes, it is.

25 Q. No question about that?

## MAGISTRATE BUTLER ON RECROSS

1 A. No.

2 Q. Now, because of this particular search warrant --  
3 you know when you issue a search warrant they go to --  
4 not necessarily their house but to their friend's house  
5 or something like that? Their relative's house?

6 A. If the information is sufficient for probable cause  
7 to do so, yes, sir.

8 Q. Okay.

9 A. Again, that's what we're looking at, as far as prob-  
10 able cause, and whether it exists in the information that  
11 is provided. We listen to all that.

12 That's what we use to determine whether to allow  
13 them to do that or not.

14 Q. But you would not know in issuing search warrants  
15 if it's for somebody's friend, would you?

16 A. If the information is provided that they need to go  
17 there.

18 Q. So you would be looking at specific information as  
19 provided rather than, say, private information . .

20 A. Right.

21 Q. . . or personal information?

22 A. Right.

23 Q. And when you look at the affidavits on these parti-  
24 cular search warrants, that type of information just  
25 isn't there?

## MAGISTRATE BUTLER ON RE CROSS

1 A. Well, there is information that's in there that was  
2 brought by the witness that they had on the individuals  
3 that were involved, from what I saw, which allowed me to  
4 do that.

5 Q. But you didn't have any idea who those witnesses  
6 were, right?

7 A. No, I didn't.

8 Q. You don't know if they were men or women, right?

9 A. Right.

10 Q. You didn't know what race they were, right?

11 A. Right.

12 Q. Didn't know how old they were, right?

13 A. Right.

14 Q. Didn't know if they had criminal records or not,  
15 right?

16 A. I can't remember whether a criminal record was men-  
17 tioned or not. At this point, I just can't remember.  
18 It could have been.

19 Q. And so I would think at that point really you were  
20 relying on the police officers?

21 A. On information that was given to me by the police,  
22 yes.

23 Q. So it's safe to say that really as far as the witness  
24 who provided the information, sitting there as you made  
25 your decision, you didn't know anything about the witness?

## MAGISTRATE BUTLER ON RECROSS

1 A. No, I knew nothing about the witness.

2 Q. Thank you, sir.

3 THE COURT: Previously I believe you indicated that  
4 the only thing that you knew about the witness was that  
5 the witness knew the victim.

6 A. Yes, sir, that was information that was given to me  
7 by the officer.

8 THE COURT: And that is not contained in the affi-  
9 davits?

10 A. No, sir, I don't see it in there.

11 THE COURT: That was information that you discussed  
12 with the officer about the particular case?

13 A. Yes, sir.

14 THE COURT: Outside of the information that is con-  
15 tained in the search warrants?

16 A. Yes, sir.

17 THE COURT: Thank you very much. Solicitor?

18 SOLICITOR: I believe that Your Honor asked the  
19 question I was going to ask, and I don't have anything  
20 further.

21 THE COURT: Mr. McCollum?

22 MR. MCCOLLUM: No further questions.

23 THE COURT: Is there anything the State wants to  
24 present as to any of these search warrants?

25 SOLICITOR: No, Your Honor.

1 THE COURT: Mr. McCollum?

2 MR. MCCOLLUM: No, sir.

3 THE COURT: Mr. Hazzard?

4 MR. HAZZARD: Beg your pardon?

5 THE COURT: I'm speaking of -- I'm occupying another  
6 Judge's time. Is there anything else that you need to ask  
7 Judge Butler regarding the search warrants?

8 MR. HAZZARD: Yes, sir.

9 THE COURT: The State has introduced State's 2, 3, 4  
10 and 5 into evidence. The State has already talked about  
11 all five of them -- all four of them, so what questions  
12 do you have?

13 MR. HAZZARD: No, sir, . . . (few words inaudible)

14 THE COURT: So we can let Judge Butler go back to  
15 his duties?

16 MR. HAZZARD: Just very briefly.

17 RECROSS EXAMINATION

18 BY MR. HAZZARD:

19 Q. Judge Butler, I would direct your attention to I be-  
20 lieve Exhibit Number 4, for 1007 Palmetto Street.

21 A. Okay.

22 Q. Looking at that, it has a time notation of five ten  
23 in the content of it. Do you have any idea whether that  
24 is five ten A.M. or P.M.?

25 A. If you look at the original search warrant it is on  
there as five ten A.M.

## JUDGE BUTLER ON RECROSS

1 Q. Okay. Now, was this the first one that was brought  
2 to you, to your knowledge, or was there one prior to this?

3 A. I'd have to look back and see. I can't remember off  
4 the top of my head.

5 Q. Okay.

6 A. I think that was the first one that -- it was the  
7 first one, Mr. Hazzard.

8 Q. Okay, and what it indicates in the reason portion  
9 of the affidavit is the investigating officers have pro-  
10 cessed the crime scene and conducted numerous interviews.  
11 (reading from affidavit on State's Exhibit 4);

12 A. That's correct.

13 Q. So as of five ten A.M. what the police told you was  
14 that Mr. Floyd and Mr. Gause and a Mr. James Laport had  
15 entered the residence of the deceased and caused his death,  
16 right?

17 A. Right, uh hm.

18 Q. All right. Now, let me ask you something involving  
19 the returns. You looked at those very carefully, is  
20 that correct?

21 A. Uh hm.

22 Q. And in each of these cases the return was some sev-  
23 eral days later, correct?

24 A. Yes. That's not unusual.

25 Q. I understand. So when we are talking about them

## MAGISTRATE BUTLER ON RECROSS

1 coming to your home at five ten A.M. and then eight fif-  
2 teen A.M. and then at eight twenty-five A.M., for a ser-  
3 ies of warrants, you had not received a return on the  
4 first warrant when they come there asking for some more.  
5 Is that correct?

6 A. That's correct.

7 Q. Okay. No further questions. Well, one more ques-  
8 tion.

9 With regard to Number 4, for 1007 Palmetto Street,  
10 it says Rusty Crocker is the affiant. Did anyone other  
11 than Rusty Crocker provide you with any information re-  
12 garding Mr. James Laport as being an individual who en-  
13 gaged in this offense?

14 A. I can't remember anyone else at the time.

15 Q. Thank you very much.

16 SOLICITOR: Your Honor, I have nothing further of  
17 the witness.

18 THE COURT: Mr. McCollum?

19 MR. MCCOLLUM: Nothing further.

20 THE COURT: Judge Butler, I appreciate your coopera-  
21 tion with us in this matter, and I am sorry we had to take  
22 up so much of your time.

23 Thank you very much, sir.

24 (Witness excused by the Court)

25 THE COURT: All right. Anything further from the

1 State?

2 SOLICITOR: Yes, sir. Based on the information re-  
3 ceived at the previous hearing . .

4 THE COURT: Is this in regard to the warrants, and  
5 I am asking if there is any further testimony.

6 SOLICITOR: No, sir, Your Honor.

7 THE COURT: All right, Mr. McCollum, as to that is-  
8 sue, I will be glad for you to make your argument. It's  
9 your Motion. I'll start off with you.

10 MR. MCCOLLUM: Your Honor, just very briefly, we be-  
11 lieve under State versus McKnight that as to State's Ex-  
12 hibits 2, 3, 4 and 5, search warrants for 1519 Grainger  
13 Road, Apartments G 8, E 5, for 1007 Palmetto Road, and  
14 907 Whittemore Street, clearly there has been no showing  
15 of probable cause for issuance of those warrants.

16 Again, by the terms of the affidavit, the Detective  
17 Rusty Crocker did not add anything to what was in the affi-  
18 davits. Over and over, Judge Butler testified he could  
19 not recall anything other than what was in the affidavits.

20 Clearly, it is our position that there is no proba-  
21 ble cause for the issuance of those warrants, and it is  
22 further our position that Your Honor should suppress any  
23 evidence that was seized pursuant thereto.

24 Thank you.

25 THE COURT: Mr. Hazzard?

1 MR. HAZZARD: Very briefly, Your Honor, I would just  
2 point out that, as I understand it, Judge Butler testified  
3 about his normal course of business regarding search war-  
4 rants, and I appreciate that, but he has provided to us  
5 here today absolutely no information as to having been  
6 given by the police anything regarding their witness from  
7 which he could arrive at the decision he made.

8 He told us merely that the police told him they had  
9 a witness, and he made no further inquiry regarding why  
10 they relied on that witness, on any criminal history, or  
11 the veracity of that witness, much less any information  
12 about the witness such as identity, race or age.

13 There was no information from which he could make an  
14 independent determination of his own as to that witness.

15 THE COURT: I think what was said was that he told  
16 him the witness knew all these individuals, and on the  
17 basis of information given by the witness to the police  
18 -- detailed information about specifically identifying  
19 the suspects -- those things are in the record. Is that  
20 correct?

21 MR. HAZZARD: Yes, sir, Your Honor.

22 THE COURT: Very good.

23 MR. HAZZARD: On the basis of the information he was  
24 provided, anyone can go to a Magistrate and obtain a war-  
25 rant to search by just saying they were provided some

1 information by a witness, without providing means for the  
2 Magistrate to make his decision.

3 THE COURT: Thank you. Anything else?

4 (No audible response)

5 THE COURT: Solicitor?

6 SOLICITOR: Thank you, Your Honor. I have two or  
7 three separate arguments with regard to this issue.

8 First, as to the matter of Judge Butler and Rusty  
9 Crocker and probable cause for the search warrant to be  
10 issued, the affidavit contained in the search warrant pro-  
11 vides basic information. It tells the Court they inter-  
12 viewed a number of witnesses who had information about  
13 specific locations.

14 And so what we have here is an affidavit that may  
15 not be a perfect affidavit, and we have an officer who  
16 has come in to testify that he doesn't recall precisely  
17 what information he knew, but he does know that he did  
18 receive additional information.

19 Judge Butler testified today he does not recall spe-  
20 cifically what information he was given three years ago.  
21 He doesn't know specific information about that witness but  
22 from the totality of the information that he had he could  
23 make his determination that there was in fact probable  
24 cause. He said this was information that he had been pro-  
25 vided by Detective Collins as well as by Detective

1 Crocker.

2 The search warrants are in the record and contain  
3 the information thereon, the affidavit, and contains the  
4 return. It has the signature of the Judge on it.

5 As to the issue of reliability, as the Court knows,  
6 you cannot get a whole lot more specific than having a  
7 witness who knows the Defendants, know the particular lo-  
8 cations, and I think it's important to note that the wit-  
9 ness providing this information was not just providing  
10 information as to where the Codefendants but the witness  
11 is providing information about where their mothers lived,  
12 where their aunts lived.

13 This is clearly someone who was intimately involved  
14 in order to provide this kind of information on these peo-  
15 ple. That specificity of information is very important.

16 The Judge testified there have been cases throughout  
17 the years where he has not found probable cause. That was  
18 not the case here. He felt that he sufficient informa-  
19 tion.

20 Now, regarding the issue of standing, let me save  
21 that actually for last.

22 If the Court should find that there was not probable  
23 cause for the warrants, the warrants were subsequently  
24 given to different detectives who were working on the  
25 case and the search warrants were executed.

1 Returns were provided as to each of the search war-  
2 rants. Certainly those officers who served those search  
3 warrants believed that they were acting properly in serv-  
4 ing the search warrants.

5 They served the search warrants, which had an affi-  
6 davit and had a Judge's signature, and they filed a return  
7 on each and every one of them.

8 There was nothing on the face of the search warrants  
9 themselves that would lead them to believe they were not  
10 acting in good faith when they went to serve the search  
11 warrants.

12 There was sufficient testimony presented in that re-  
13 gard, and I believe I submitted case law as well.

14 Finally, Your Honor, as to standing, I won't belabor  
15 the Court on this, but the statute is clear. It provides  
16 a check list. Here is what we regard as the requirements  
17 you have to meet. Here is what we require you to do.

18 It requires that you have a Judge's signature. It  
19 requires that you provide an affidavit, requires you to  
20 provide a return. There is a requirement as to form, as  
21 to input. If those are not met, there is no search war-  
22 rant.

23 If you comply with the form, then you are good to  
24 move on. If you don't comply with those, then you've got  
25 a problem.

1           Anyone can challenge a search warrant where any of  
2 those particular elements are missing. In the McKnight  
3 case, that is what happened. There is no affidavit, and  
4 in the cases that follow McKnight, no affidavit. There  
5 is no return, no signature on the search warrant.

6           So in none of those cases that follow McKnight do we  
7 find a situation dealing with probable cause, because the  
8 probable cause is a constitutional issue. Being a consti-  
9 tutional issue, it requires standing. It requires an ex-  
10 pectation of privacy in that particular location.

11           Neither of these Defendants had an expectation of  
12 privacy in the locations that have been the subject of  
13 these search warrants. These were not places where they  
14 lived. These locations were not even places where, you  
15 know, they resided on a continuous basis or on any basis  
16 at all.

17           For example, the building at Grainger Road, 1519  
18 Grainger Road, that was the home of Tiffany James who is  
19 now a (inaudible).

20           Neither one of these people had any expectation of  
21 privacy in her residence.

22           Judge, I think I have provided a number of cases on  
23 that particular issue.

24           THE COURT: If you would very briefly go through  
25 each of those returns, 2, 3, 4 and 5, and make your argument

1 as to each one of those returns as to what you say is the  
2 lack of expectation of privacy for that particular one.

3 SOLICITOR: Sure. As to 1519 Grainger Road, Apart-  
4 ment G Eight, that is the residence of Tiffany James, who  
5 is a cooperating Codefendant in this case, and there was  
6 evidence collected from that residence.

7 With regard to 1519 Grainger Road, E Five, I believe  
8 that is the residence of Gregory Floyd, who is also a co-  
9 operating Codefendant. That is State's Number 3.

10 With regard to 1007 Palmetto Street, which should be  
11 State's 4, that is the residence of Nile James, also a co-  
12 operating Codefendant, his mother, and, finally, 907  
13 Whittemore Street, that is the residence of Quentin Gause's  
14 friend or sister.

15 So these individuals have no standing to challenge  
16 a search on those particular residences.

17 THE COURT: All right, very good.

18 Anything else, Mr. McCollum?

19 MR. MCCOLLUM: No, Your Honor.

20 THE COURT: Mr. Hazzard?

21 MR. HAZZARD: No, sir.

22 THE COURT: Very good. We'll a short break.

23 (Whereupon, the Court stood in recess from 10:24 A.M.  
24 until 10:51 A.M., when the Court reconvened.)

25 THE COURT: In the matters of the Motions by the

1 Defendants Ladorrean Collington and Quentin Gause to sup-  
2 press the evidence that resulted from the search warrants  
3 we bifurcated this hearing.

4 There were some previous exhibits that were intro-  
5 duced in the prior matter, so to be specific I'm talking  
6 about State's 2, 3, 4 and 5. State's 2 is the search war-  
7 rant for Building G, Unit 8, at 1519 Grainger Road.  
8 State's 3 is the search warrant for Building E, Unit 5,  
9 1519 Grainger Road.

10 State's Exhibit 4 is one for 1007 Palmetto Street and  
11 State's 5 is 907 Whittemore Street.

12 Those are the four search warrants to which the De-  
13 fendants have objected, and regarding their motion to  
14 suppress the evidence found in the locations stated with  
15 regard to those four search warrants, the motions to sup-  
16 press is denied for the following grounds and reasons.

17 One, the Court finds that the Defendants have no  
18 right or standing to challenge these search warrants.  
19 They had no expectation of privacy at any of these res-  
20 idences.

21 Even if that were the case, if they did have stand-  
22 ing to challenge, you must look at the actions of the is-  
23 suing magistrate in this matter.

24 Certainly the search warrants may only be issued upon  
25 a finding of probable cause. Search warrants may be issued

1 -- the South Carolina General Assembly has enacted the  
2 requirement that a search warrant may be issued only upon  
3 affidavit sworn to before a magistrate establishing the  
4 grounds for the warrant.

5 In this we have a totality of circumstances test for  
6 the determination of probable cause. The task of the is-  
7 suing magistrate is simply to make a practical and com-  
8 mon sense decision given all the circumstances set forth  
9 in the affidavit, including the veracity of and the basis  
10 of the knowledge of the person supplying information and  
11 that there is a fair probability that evidence of a crime  
12 or a particular person may be found in a particular place.

13 I find, using the statement of the law that affidav-  
14 its are not meticulously drawn or are normally drafted by  
15 a non-lawyer in a case of criminal investigation, that it  
16 should therefore be viewed with common sense and in a  
17 realistic fashion.

18 I find that the Magistrate had a substantial basis  
19 for believing that probable cause existed. The term of  
20 probable cause does not import absolute certainty.

21 Rather, in determining whether a search warrant  
22 should be issued, magistrates are concerned with probabil-  
23 ities and not with certainties.

24 Searches based on warrants should be given some def-  
25 erence to the extent that the Court finds that it meets

1 a realistic standard of probable cause, and I do so find  
2 in this particular matter.

3 Testimony was viewed by the issuing Magistrate,  
4 Judge Butler, to supplement the written affidavits in  
5 this matter. He stated that it was his practice to do  
6 so and that he did so in this particular matter; that he  
7 did ask the officers for further information before issu-  
8 ing the warrants, even though he cannot recall specific  
9 information now, over three years later after the issu-  
10 ance of these particular warrants.

11 As the search warrants were issued, starting with the  
12 first one and continuing with the second one, the Judge  
13 had a continuing measure of information which was built  
14 upon by other information supplied to him.

15 In general, Judge Butler stated that some of the in-  
16 formation as to State's 2 and 3 were -- and those are the  
17 warrants that were at G8 and E5 of 1519 Grainger Road --  
18 based on some additional information gleaned from a wit-  
19 ness in addition to the previous information he had; that  
20 he would have asked questions about the witness and the  
21 facts of the case.

22 Regarding State's Exhibit 3, it is apparent from its  
23 face first and from the words of Judge Butler that the  
24 witness had intimate information about the Defendant and  
25 the location. Not only the specific locations the officers

1 were taken to but in addition that these would not --  
2 would not have been the normal locations of Defendants as  
3 they were not their residences.

4 The Judge specifically recalled he was told that the  
5 witness knew the Defendants so this is evidence that the  
6 Judge followed his standard practice of questioning the  
7 officers about witnesses who may supply information to  
8 get the warrants, although this information is not con-  
9 tained in the written affidavits or information contained  
10 in the search warrants.

11 Finally, I do find that the Magistrate had learned  
12 circumstances about the case and that he had probable  
13 cause for issuing these particular search warrants.

14 The Court relies on a number of cases, so many that  
15 I'm not going to read all of them. I will cite some of  
16 them into the record.

17 State versus (inaudible) found at 519 Southeast Sec-  
18 ond 347; State versus Freeman found at 503 Southeast Sec-  
19 ond 437; State versus Worthy, found at 624 Southeast Sec-  
20 ond 789; State versus Martin, found at 556 Southeast Sec-  
21 ond 706; State versus Davis, found at 580 Southeast Sec-  
22 ond 778; State versus Bogey, found at 600 Southeast Second  
23 112; and State versus Fletcher, found at 609 Southeast Sec-  
24 ond 162.

25 Finally, the Court would also add an additional stated

1 ground in these matters that the officers who executed  
2 the search warrants acted in good faith in the execution  
3 of these search warrants.

4 The motions to suppress the evidence seized as a re-  
5 sult of the search warrants is denied.

6 All right, Mr. McCollum, any further motions from  
7 the Defense?

8 MR. McCOLLUM: Yes, Your Honor. Your Honor, at this  
9 time I would like to move to -- based on the written  
10 motion I filed earlier, the Motion to Quash -- I would  
11 ask Your Honor to hear that.

12 THE COURT: I'll be glad to hear your arguments.

13 MR. McCOLLUM: Your Honor, the Indictments which Your  
14 Honor has state that -- the language of the statute. I  
15 don't think there is any specific allegation in any of  
16 the indictments regarding something that was factually done  
17 done.

18 In other words, to be specific here, we've got Indict-  
19 ments -- the Indictments against Ms. Collington are 2011  
20 GS 26 1276, accessory before the fact of murder; 2010 GS  
21 26 1225, accessory before the fact of a felony, that being  
22 kidnapping; 2010 GS 26 1627, accessory before the fact of  
23 a felony, that being armed robbery; 2010 GS 26 1626, acces-  
24 sory before the fact of a felony, that being burglary  
25 in the first degree.

1 THE COURT: All right, referring to those specific indict-  
2 ments, tell me what is wrong with those.

3 MR. McCOLLUM: Your Honor, just very briefly I will  
4 read these into the record so it is clear.

5 THE COURT: You have copies of them?

6 MR. McCOLLUM: I have copies.

7 THE COURT: That's good. I just wanted to make sure  
8 of that.

9 MR. McCOLLUM: Yes, sir, Your Honor. Indictment  
10 2011.1276 against Ladorrean Collington alleges that the  
11 Defendant -- Indictment 2011 1276, an indictment against  
12 Ladorrean Collington for accessory before the fact of  
13 murder, alleges that the Defendant Collington did in Horry  
14 County on or about April 14, 2008, advise or agree with,  
15 or urge or hire in some way, counsel or encourage, the  
16 principal felon or felons to commit the felony of murder,  
17 but was not present when the crime was committed.

18 There are the elements of accessory before the fact  
19 of murder but it doesn't specifically state that she did  
20 anything other than the language of the statute.

21 THE COURT: Okay.

22 MR. McCOLLUM: And with the Court's permission, I  
23 think all of these are the same. Do you want me to -- I  
24 would like to argue them all at the same time.

25 THE COURT: Very good.

1 MR. McCOLLUM: If that pleases the Court.

2 THE COURT: Go ahead.

3 MR. McCOLLUM: The second indictment, Your Honor,  
4 2010 1225, the State against Ladorrean Collington for ac-  
5 cessory before the fact of a felony, that being the kid-  
6 napping, and there again it specifies that Ladorrean  
7 Collington did in Horry County on or about April 14, ad-  
8 vise or agree with, urge or hire or in some way counsel  
9 or encourage the principal felon or felons to commit the  
10 felony of kidnapping, and was not present when the crime  
11 was committed.

12 The next indictment, Your Honor, is 2010 GS 26 1627,  
13 the State against Ladorrean Collington for accessory be-  
14 fore the fact of a felony, that being armed robbery --  
15 again, that Ladorrean Collington did in Horry County on  
16 or about April 14, 2008, advise or agree with, urge or  
17 hire or in some way counsel or encourage the principal  
18 felony to commit the felony of armed robbery, but was not  
19 present when the crime was committed.

20 Finally, Your Honor, 2010 GS 26 1626, the State ver-  
21 sus Ladorrean Collington for accessory before the fact  
22 of a felony, being burglary in the first degree, that  
23 Ladorrean Collington did in Horry County on or about April  
24 14r, 2008, advise or agree with, or urge or hire or in  
25 some way counsel or encourage the principal felon to commit

1 of burglary first, but was not present when the crime  
2 was committed, and in violation of the statute.

3 Your Honor, it is the Defendant's position and the  
4 basis of the motion that to break the law that one has to  
5 do something. In other words; there has to be a factual  
6 allegation. While I understand there is case law on in-  
7 dictments, but the cases that I've looked at, which are  
8 cited here, and I'm only looking at a few -- State versus  
9 Grampus, which is a South Carolina cite, 288 South Carolina  
10 395, a 1986 South Carolina Supreme Court case; State ver-  
11 sus McCloud, 354 South Carolina 40, a 2003 Court of Ap-  
12 peals decision -- that's M c capital C L O U D; and then  
13 Bailey versus State which I have an Opinion Number here.  
14 It is a recent case from May 9, 2011, and I've got Opinion  
15 Number 26 975, South Carolina Supreme Court.

16 Specifically, Your Honor, looking at Grampus, it was  
17 a felony DUI case where there was no allegation of what  
18 the defendant did/<sup>or didn't do</sup> to violate the law which caused the in-  
19 jury of the alleged victim.

20 The Court raised the point to talk about it, to talk  
21 about the indictment, although the appellant did not argue  
22 the sufficiency of the indictment on its face which is  
23 what we're doing here today.

24 We know that an indictment must state with particu-  
25 larity the act permitted by law or duly imposed by the

1 law which will which will be relied on by the State to  
2 support in Grampus the theory for the felony DUI charge.

3 In the case of State versus McCloud, which is a South  
4 Carolina Court of Appeals case, if Your Honor looks at  
5 basically the first paragraph of the case, it talks about  
6 the indictment in the case of criminal domestic violence  
7 slash aggravated, and the body of the indictment says as  
8 follows, quote, that this individual, Douglas McCloud,  
9 did in Fairfield County on or about June 16, 2000, commit  
10 an act of violence against Karmisha (inaudible), but then  
11 it goes further to say, by striking her in the face with  
12 a closed fist, hitting her in the head, pulled her hair  
13 and scratched her neck, contrary to the statute.

14 Additionally, Your Honor, in Bailey versus State,  
15 in that particular case -- it is a little bit off point  
16 because there was a child abuse and the question was whe-  
17 ther the child was injured as a result of an affirmative  
18 act of abuse or neglect, and there were some questions by  
19 the jury as to the variance.

20 But in that case, it talks about Castillo or Castia,  
21 and in there they had the language of this case on the in-  
22 dictment, and this is down in the body of the case, Your  
23 Honor -- they talk about the child was struck with a  
24 deadly weapon, comma, to wit, colon, the defendant's hands  
25 while striking the child's head against a deadly weapon,

1 to wit, a wall.

2 That case is a little bit off there because the  
3 jury convicted based on what they thought was neglect as  
4 opposed to physically doing that.

5 Now, it says the defense believed that despite the  
6 fact that indictments are generally characterized as suf-  
7 ficient if they state the time and place and the elements  
8 of the offense, so that the defendant knows what to an-  
9 swer.

10 It is the defense position that to simply print out  
11 the statute with no type of factual allegations whatso-  
12 ever does not accuse the defendant on trial essentially  
13 of anything. That is not a sufficient indictment, and we  
14 would just submit that you have to say that she did some-  
15 thing; that she met with somebody, known or unknown, and  
16 did have some conversation somewhere, or her to affirma-  
17 tively do something, in order to be properly indicted.

18 That is as well as I could state it, Your Honor, in  
19 terms of what we are asking the Court to consider.

20 We think these indictments are deficient because in  
21 fact all they do is recite the statute or the elements,  
22 and it is the defense's position that for the State to  
23 try individuals for these types of crimes there has to be  
24 alleged somewhere, and in this case there has not been.

25 Thank you, sir.

1 THE COURT: Solicitor?

2 SOLICITOR: Thank you, Your Honor. I have provided  
3 to Defense Counsel and to the Court a copy of my Response  
4 to his Motion to Quash the Indictments.

5 I have cited a number of cases to the attorneys and  
6 to the Court.

7 I would just say to the Court that the purpose of an  
8 indictment obviously is to put the defendant on notice as  
9 to what he or she is being charged with and what the ele-  
10 ments of that crime are, so that they are not taken by  
11 surprise.

12 Mr. McCollum cited the McCloud case. I like that  
13 case. The McCloud case says the indictment is adequate  
14 if the offense is stated with a sufficiency to enable the  
15 Court to know what judgment to pronounce, the defendant  
16 to know what he is called upon to answer.

17 It goes on to say that you have to look at all of  
18 the surrounding circumstances and they have to be weighed  
19 for an accurate determination of whether a defendant was  
20 or was not prejudiced can be reached.

21 It goes on to state that you look at what existed  
22 pre-trial in order to determine whether a given defendant  
23 has been prejudiced or taken by surprise about the charges  
24 against him or her.

25 This is a three year old case. This Defendant

1 Collington was indicted originally for murder, kidnapping,  
2 armed robbery, and the indictments -- she was subsequently  
3 re-indicted for accessory after the fact, so I think she  
4 is well aware of what the substance of the indictments  
5 are, what the basis of the indictments are.

6 The Judson case that I have cited says that after  
7 the requirements are met, the statute only requires that  
8 there only be sufficiently alleged the jurisdiction of  
9 the Court and that the defendant is formally accused in  
10 the county in which he is charged with a violation of the  
11 law.

12 The Means case, which I handed up as well, says that  
13 it is required that the crime substantially track the  
14 language of the common law or the statute, which is pre-  
15 cisely what we have here.

16 We have an indictment that tracks the language of  
17 the statute and puts the Defendant on notice. I  
18 know that Mr. McCollum would like to have some language  
19 behind it as he said, and I'm sure he would. However,  
20 if we put a to-wit in our ethical, as the Court well knows,  
21 we are bound by the particular facts which are alleged.

22 To-wit is not required, and we don't generally put  
23 that in our indictments. We didn't put it in these.

24 I think the cases I have handed up support our posi-  
25 tion with regard to her being placed on notice and she

1 is well aware of what it is she is charged with.

2 Thank you.

3 THE COURT: Mr. Hazzard, on behalf of Quentin Gause,  
4 do you join in the Motion to quash the indictments?

5 MR. HAZZARD: I would join in this particular Motion,  
6 Your Honor, in behalf of Mr. Gause. I would like to make  
7 sure all of the indictments are included.

8 THE COURT: All right, it is 2011 1274 for armed rob-  
9 bery, 2011 1275 for kidnapping, 2008 3133 for murder. Is  
10 that correct?

11 MR. HAZZARD: There is also 2008 3135, Your Honor.

12 THE COURT: That is 2008 3135 for burglary first that  
13 was true billed on August 21, 2008.

14 MR. HAZZARD: I believe that on 08 3134 the State  
15 does not intend to go forward with that.

16 SOLICITOR: We are not going forward on that.

17 THE COURT: All right.

18 SOLICITOR: That's correct.

19 THE COURT: All right, go ahead, Mr. Hazzard.

20 MR. HAZZARD: Yes, sir. Looking at Indictments 2011  
21 1274 for armed robbery, 2011 1275 for kidnapping, . . .  
22

23 THE COURT: I'm sorry. For kidnapping and armed  
24 robbery?  
25

MR. HAZZARD: Yes, sir.

1 THE COURT: All right, I've got action of the Grand  
2 Jury -- true billed on March 31, 2011, on both of them.  
3 Looking at -- and it has the -- in the body of it,  
4 it says the Court of General Sessions, March 2011. Okay,  
5 I'm showing -- I'm sorry. Where is it that you're talking  
6 about? Where is 2008?

7 MR. HAZZARD: (Portion inaudible on tape) It says  
8 on there, in a Court of General Sessions in May of 2008.

9 SOLICITOR: Your Honor, there were four original in-  
10 dictments, for burglary first, armed robbery, kidnapping  
11 and murder.

12 THE COURT: I appreciate that. He's talking about the  
13 two that's 2011 1275 and 2011 1274 that have in the cap-  
14 tion where you have the action of the Grand Jury.

15 It has action of the Grand Jury, true billed, and  
16 signature of the Foreperson of the Grand Jury dated March  
17 31, 2011.

18 It has in the caption there, Court of General Sessions  
19 and the March 2011 term. I'm not -- what he is referring  
20 to is where it has State of South Carolina, County of  
21 Horry, and it says at a Court of General Sessions convened  
22 on, and on both of them it says August 21, 2008.

23 So I believe there is a discrepancy between what is  
24 contained where the actual decision of the Grand Jury to  
25 true bill the indictments and what is contained on the

1 other side.

2 That's what he's talking about.

3 SOLICITOR: Your Honor, I would argue that is a scribe-  
4 ner's error.

5 THE COURT: What is your position, Mr. Hazzard?

6 MR. HAZZARD: The indictments specifically say that  
7 the Grand Jury took this matter up on August 21, 2008,  
8 but it was not acted upon or returned as a true bill un-  
9 til 2011.

10 THE COURT: What information do you have that the  
11 -- that this was given to a Grand Jury in 2008 and wasn't  
12 acted upon by them until 2011?

13 I mean, there is no question but that the Grand Jury  
14 in 2011 -- on March 31, 2011 returned a true bill, so what  
15 information do you have other than what is apparently a  
16 typographical or scrivener's error to indicate that the  
17 matter was presented to the Grand Jury in 2008 and not in  
18 2011?

19 MR. HAZZARD: Your Honor, what I'm talking about is  
20 that we have another signature -- a signature of the Cir-  
21 cuit Solicitor on it and in fact a totally different date  
22 on there from the other indictments, specifically 2008 3133  
23 which was addressed by the Grand Jury on August 21st of  
24 2008.

25 Obviously this was . . .

1           THE COURT: And signed by a Foreperson who is obvi-  
2           ously different than the person who signed in 2011, and  
3           the back of the indictments on that, also where you have  
4           the signature of the Foreperson, it obviously was a dif-  
5           ferent Foreperson.

6           Based on the signatures and the dates it was August  
7           21, 2008, and it states, Court of General Sessions, Aug-  
8           ust 2008 term, which is not on the ones from 2011.

9           Again, that is leading to the fact that it is a topo-  
10          graphical or scrivener's error to have left the date of  
11          August 21, 2008, when these indictments were redrawn, and  
12          the ones that still stand as against Mr. Gause for murder  
13          and burglary first have that date, August 21, 2008.

14          So, again, I'm asking what specific information can  
15          you give me that indicate that these indictments that  
16          were true billed by the Horry County Grand Jury on March  
17          31, 2011, for armed robbery and kidnapping, were actually  
18          presented in 2008 and not in 2011? What facts can you pre-  
19          sent to me?

20          MR. HAZZARD: Well, other than the face of the . .

21          THE COURT: Certainly you could subpoena the records  
22          of the Clerk of Court. You can subpoena the information  
23          and hand to the Court some information that would indicate  
24          something other than supposition or mere speculation that  
25          this occurred.

1 MR. HAZZARD: Your Honor, it isn't speculation or sup-  
2 position when I am reading these documents that says . .

3 THE COURT: No, I'm asking you for evidence or facts  
4 that support your position.

5 MR. HAZZARD: (reading from indictment) That's what  
6 I'm reading on the face of the document.

7 THE COURT: Do you have any cases that would support  
8 your position? That would support your proposition that  
9 this is this type of -- that this is fatally defective?

10 Some case by our Supreme Court or Court of Appeals,  
11 or any jurisdiction of any State of the United States  
12 that says that it is fatally defective?

13 MR. HAZZARD: No, Your Honor. I don't have any case  
14 law. (Portion inaudible on tape)

15 THE COURT: You have given me no facts to support  
16 this. It is again your argument or your supposition  
17 but you give me no facts, no evidence, that this actually  
18 occurred.

19 Again, do you have any case law in any jurisdiction  
20 in any of these United States that would say that what  
21 you have presented to me is fatally defective?

22 MR. HAZZARD: Only the statements made in this re-  
23 cord concerning the documents that would establish that  
24 they did not act on the authority of the Grand Jury, and  
25 that it is fatally defective on its face.

1           If the Court finds that it was scrivener's error then  
2           that is the Court's choice, and I would object to it  
3           based on the documents as appear on the face. That in and  
4           of itself, what the document says on its face, we would  
5           submit is improper.

6           THE COURT: All right, Solicitor.

7           SOLICITOR: Well, my thought on that again would be  
8           that is certainly scrivener's error, Your Honor; that it  
9           is the purpose of the indictment to put the Defendant on  
10          notice of what he is being charged with and the elements  
11          of that, to make sure he is not surprised by the charges  
12          lodged against him at the time he goes to trial.

13          It is the State's position that is merely a scriver-  
14          ner's error.

15          THE COURT: All right. In examining the original  
16          Indictments issued against Mr. Gause back in 2008, or all  
17          of them, including the ones that were redone in 2011, it  
18          is clear they were presented to the Grand Jury on August  
19          21, 2008, and they were true billed by action of the Grand  
20          Jury pursuant to the Foreperson's original signature on  
21          these true-billed indictments in August of 2008.

22          The Indictments that are at issue, 2011 1274 and 1275  
23          -- the matters clearly indicate by the signature of the  
24          Foreperson of the Grand Jury in March of 2011, and he is  
25          the Foreperson based on the Court's own knowledge, that he

1 is the Foreperson for the Grand Jury, was so on March 31,  
2 2011, when the Grand Jury true-billed these Indictments  
3 as against the Defendant for armed robbery and kidnapp-  
4 ing.

5 It is apparent that it is clearly a scrivener's error  
6 in these matters. They are not fatally defective.

7 The Court, based upon its own research, has found no  
8 such case in any jurisdiction of the United States of  
9 America which would support that proposition.

10 Anything further as to these Indictments against Mr.  
11 Gause, Mr. Hazzard?

12 MR. HAZZARD: I won't repeat any of the arguments I  
13 have made, but I would simply point out for the record  
14 that with regard to these indictments they do not specify  
15 any particular action taken by the Defendant, and we would  
16 join in Mr. McCollum's Motion that they be suppressed.

17 THE COURT: Anything else, Solicitor?

18 SOLICITOR: Nothing on that, except for my Motion.

19 THE COURT: All right. Mr. McCollum?

20 MR. MCCOLLUM: No, Your Honor.

21 THE COURT: Very good. All right.

22 (Brief pause in the proceeding)

23 THE COURT: The Supreme Court and the Court of Ap-  
24 peals in South Carolina have said that indictments shall  
25 be deemed sufficient and good in law, in addition to the

1       allegations as to time and place as required by law, if  
2       they charge the crime substantially in the language of  
3       the common law or of the statute prohibiting the crime so  
4       that the nature of the offense charged may be easily under-  
5       stood; that if the offense be a statutory offense, the  
6       offense be alleged contrary to the statute and in such  
7       cases made and provided.

8               Thus to pass legal muster, it must charge the crime  
9       substantially in the language of the statute prohibiting  
10      the crime or such that the nature of the offense charged  
11      may be easily understood.

12             Whether the indictment could be made more definite  
13      or certain is irrelevant. The State is not required to  
14      prove its evidence in the indictment.

15             I find in this particular matter that neither Defen-  
16      dant was prejudiced by any lack of information as alleged.  
17      I find that the indictments are more than sufficient to  
18      place the Defendant or Defendants on notice of the crimes  
19      with which they are charged and for which they can defend,  
20      if they so choose.

21             The motions to quash the indictments are denied.

22             Mr. Hazzard, I would have the Clerk make you a copy  
23      of the burglary first indictment. Thank you, sir.

24             Further motions, Mr. McCollum?

25             MR. MCCOLLUM: I would have a motion to exclude

1 -- I would ask Your Honor to hear a motion to exclude evi-  
2 dence of prior difficulties between Ladorrean Collington  
3 and the alleged victim.

4 Before I do that, Your Honor, it's my understanding  
5 -- this may be a little bit premature, and it may not be  
6 necessary, but it is my belief that there is some evidence  
7 out there that Ms. Collington is alleged to have gone  
8 over to the Allen's house -- they live across from each  
9 other and they had a relationship as far as having a child  
10 together -- and she had taken up I think a little baton  
11 or bat or something and had hit his car, beat on the car or  
12 something to that effect. I may be wrong there.

13 I don't know if the State is planning to introduce  
14 this kind of prior difficulty or not and this motion may  
15 not be necessary, but if they are then we would move to  
16 suppress previous or prior difficulties between Defendant  
17 Collington and the victim.

18 At this point, we would object to that and would like  
19 to be heard on it.

20 THE COURT: I would say that -- correct me if I'm  
21 wrong, Solicitor, but is it your position that there were  
22 prior actions between the Defendant and the victim?

23 SOLICITOR: Yes, sir, Your Honor.

24 THE COURT: And do you intend to present any in the  
25 presentation of the case?

1 SOLICITOR: Yes, sir.

2 THE COURT: All right. I'll be glad to hear from  
3 you on that, Mr. McCollum.

4 MR. MCCOLLUM: Your Honor, we don't have that partic-  
5 ulate witness here. Is it possible the State could sum-  
6 marize we could anticipate being used against the Defen-  
7 dant? In other words, is what I have stated essentially  
8 correct?

9 THE COURT: Solicitor, is there some brief summary  
10 that you could give as to what may have occurred?

11 SOLICITOR: Yes, sir, Your Honor. There were a num-  
12 ber of threats made by the Defendant Collington directly  
13 to the victim, to the victim through a third party, and  
14 Anthony Grant, and by a note that was left at the victim's  
15 residence.

16 She did also break out a window at the victim's resi-  
17 dence and evidence would be introduced on all of those  
18 instances in my case in chief.

19 These incidents happened within a very short time, a  
20 couple of days, prior to the time the victim was killed.

21 It is my position that that information would come  
22 in under 404 B. Also 401 and 403, in conjunction with  
23 404 B, and also pursuant to a res gestae theory.

24 I have handed up to the Court a Response to the Mo-  
25 tion of the Defendant and cited a number of cases . .

1 THE COURT: Well, let me hear Mr. McCollum's argu-  
2 ment. Yes, sir, Mr. McCollum.

3 MR. McCOLLUM: Just very briefly, the Defendant,  
4 Ladorrean Collington, has filed an objection or a Motion  
5 to exclude evidence of prior difficulties or a Motion to  
6 exclude evidence of just what the Solicitor described.

7 That is, alleged difficulties or threats between her  
8 and the deceased. We also filed a Motion about threats  
9 either to Anthony Grant or made through him regarding the  
10 victim.

11 Your Honor, I would ask that -- I have a couple of  
12 cases cited here, and I would make the Court aware; that  
13 until the testimony is presented that the Court reserve  
14 Ruling on this.

15 THE COURT: In general -- that's all I could give  
16 you right now is a general rule because I haven't heard  
17 any questions nor the answers.

18 I can't issue a ruling on that, and you would have  
19 to obviously object to it at that time, but again, gener-  
20 ally, certainly in this prior conflict between the parties  
21 it is proper to establish the context of a crime and to  
22 establish the presentation of the particular matter so  
23 that a full explanation of the situation is given to a  
24 jury. I can't take it in a vacuum that on certain days  
25 this thing happened and Lord only knows why it happened --

1 it just happened out of the blue. Who knows why?  
2 If there is information that is reasonably tied to and  
3 would give context to that particular matter, in general  
4 that is allowed under the rules.

5 Whether or not any particular statements are improper  
6 I don't know. If you object to them I would make a rul-  
7 ing at that point in time.

8 Certainly in general it is a good principal of law  
9 that is relied on in the State of South Carolina. Do you  
10 disagree?

11 MR. McCOLLUM: Yes, sir, Your Honor.

12 THE COURT: You disagree that as a general rule of  
13 law in the State of South Carolina that to give context to  
14 a crime prior difficulties can be testified to? You don't  
15 think that is a general principal of law in this State?  
16 That this is proper evidence?

17 MR. McCOLLUM: Your Honor, I think you've narrowed  
18 it down. I would lean more toward agreement, but I do  
19 think that in general certainly prior difficulties are  
20 admissible by a defendant to show a basis for feeling  
21 threatened and to justify the action.

22 In other words, in a self-defense context certainly  
23 I think defendant has to . . .

24 THE COURT: You're telling me that you client speci-  
25 fically threatened the well-being of the victim within a

1 few days of the victim being killed -- that's not allowed?  
2 Is that what you're telling me?

3 MR. McCOLLUM: It depends on the circumstances. It  
4 depends on the degree of prejudice, and it depends on, you  
5 know, whether it is related or relevant. If the Defendant  
6 has a physical relationship with someone and they have a  
7 child together and then they get mad at that person, I  
8 don't know that is automatically admissible.

9 If the State's theory is that somebody concocted a  
10 plan and recruited others to go and rob someone, I don't  
11 know that automatically ties in the Defendant or is tied  
12 together.

13 I don't think I need to belabor this at this point,  
14 and I have to file Motions . . .

15 THE COURT: I appreciate that, but I cannot rule on  
16 that Motion at this point in time. I appreciate your  
17 bringing it to my attention but when I hear the questions  
18 and answers you can make a proper objection.

19 I can't rule on it at this time, but just for your  
20 guidance it is certainly the Court's position that in  
21 general prior difficulties, prior threats, prior actions,  
22 are certainly -- is certainly evidence that could be rele-  
23 vant and admissible in the trial of a person charged with  
24 a crime such as your client is charged.

25 What those particular things are, I don't know, but

1 it is certainly a good principal of law. If you take a  
2 position that it is not a general principal of law in our  
3 State, then obviously we fundamentally disagree.

4 MR. McCOLLUM: With all respect, Your Honor, it  
5 would not be the first time that . . .

6 THE COURT: I understand. Just so we'll be clear,  
7 you are really telling me that if there is evidence of a  
8 prior difficulty that is related to the crime, and the  
9 Court goes through the analysis and finds it is related to  
10 the crime, is in context to the crime, gives a factual  
11 understanding of the crime to the jury, that that is just  
12 not proper in our State?

13 MR. McCOLLUM: Your Honor, I think you are -- there  
14 was mention of *res gestae*, and there is also an issue as  
15 to introducing evidence of the character of the accused.  
16 That is basically what this will all evolve into, is that  
17 the State cannot introduce evidence that the Defendant is  
18 a person of bad character absent proper evidence by Defen-  
19 dant that they are of good character.

20 In terms of *res gestae*, certainly the appellate  
21 courts of this State have ruled that a thing that would  
22 not be admissible can be admitted when it is part of the  
23 *res gestae*.

24 As I understand *res gestae*, *res gestae* is in the imme-  
25 diacy or in the relevance of the act, or whether it is so

1 interwoven with what the accused is charged with doing it  
2 does not make any sense to take that . .

3 THE COURT: Well, there has to be established a time  
4 line before -- I mean, there is no time limit, but it has  
5 to be interwoven.

6 MR. McCOLLUM: I'm just saying that any prior diffi-  
7 culty between Ms. Collington and the deceased is not auto-  
8 matically admissible.

9 THE COURT: I certainly agree with that. Just  
10 became something happened does not automatically mean it  
11 is admissible.

12 I will hear the testimony -- the questions and the  
13 answers and rule upon any objections.

14 SOLICITOR: Let me let the Court know this. The in-  
15 cidents we are talking about in this case happened within  
16 a one week period of when this homicide occurred.

17 It is so intertwined that I don't see how I can make an  
18 opening argument without mention of this, and I want the  
19 Court to be aware of that I will be referring to that.

20 THE COURT: I appreciate that and I understand. I  
21 am sure the Defense will understand as well. I will re-  
22 serve ruling on this particular matter.

23 (Portion of discussion not audible on tape. End  
24 of tape one.)

25 THE COURT: We will take that up at the time the

1 Medical Examiner testifies, but as to crime scene  
2 photos do you know which ones that you all have an objec-  
3 tions to?

4 SOLICITOR: I would ask after the motion hearing to-  
5 day that they take a look at the photographs I intend to  
6 introduce to see which ones they might have objections  
7 to.

8 THE COURT: All right. That will be great.

9 If you would obviously identify to him whatever ones  
10 you might be using through the Medical Examiner.

11 All right. You can take time to do that and review  
12 the photos.

13 MR. McCOLLUM: We'll do that.

14 THE COURT: Mr. Hazzard?

15 MR. HAZZARD: Yes, sir.

16 THE COURT: Very good. Anything else that you are  
17 aware of? Anything, Mr. McCollum?

18 Are there further motions, Mr. Hazzard, on behalf of  
19 Mr. Gause? First, Mr. McCollum?

20 MR. McCOLLUM: I have none.

21 THE COURT: Mr. Hazzard?

22 MR. HAZZARD: I have a Motion to sever the trials,  
23 Your Honor.

24 THE COURT: I'll be glad to hear you on that.

25 (Statement of Mr. Hazzard not audible on tape)

1 THE COURT: Thank you, sir. All right, Mr.  
2 McCollum. Do you have a position?

3 MR. MCCOLLUM: Your Honor, I would join that motion.  
4 I don't have anything to add.

5 THE COURT: Solicitor, I'll hear from you.

6 SOLICITOR: Yes, sir, Your Honor.

7 I would just say that the testimony of the individ-  
8 uals with the exception of two would be from the exact  
9 same witnesses. I think that the jury will have  
10 the ability to differentiate between the Defendants.

11 I certainly don't think it is necessary to have two  
12 separate juries impaneled, and it would be more judicious  
13 to try these together.

14 Thank you. The witnesses would be the same, the  
15 testimony would be the same.

16 THE COURT: Thank you. The Defendants before the  
17 Court are not due separate trials as a matter of right.  
18 What the Court needs to look at is whether I would speci-  
19 fically find reason, as the case law indicates, that there  
20 is a serious risk that a joint trial would compromise a  
21 specific right of a codefendant or prevent a jury from  
22 making a reliable judgment about a defendant's guilt.  
23 I do not find such a risk in this particular case.

24 I find that a single jury is proper. I find that  
25 the arguments presented by Mr. Gause do not impact his

1 ability to get a fair and just trial by a single jury.  
2 The State does not in its case in chief intend to present  
3 a statement of Ms. Collington.

4 The fact that there might be some mutually antago-  
5 nistic defenses that might be presented in itself is not  
6 a reason.

7 I do not find, based upon an examination of this case,  
8 that the rights of either Defendant are substantially im-  
9 paired or harmed in any way by being tried together before  
10 a jury, a single jury.

11 Therefore, that Motion to sever is denied.

12 THE COURT: Further motions, Mr. Hazzard?

13 MR. HAZZARD: No, sir, nothing further.

14 THE COURT: Very good.

15 MR. McCOLLUM: Your Honor, the Solicitor has asked  
16 that I bring up--Your Honor, there were a number of arrest  
17 warrants for the Defendant, Ms. Collington, and we have  
18 been told there were indictments and reindictments. We  
19 have discussed whether or not they would be served upon  
20 the Defendant, physically served upon her.

21 I would state that we have received copies of those  
22 indictments, and as far as the Defendant Collington is concerne  
23 there is no issue regarding the service of the indictments.  
24 We have the indictments provided to us.

25 There is not any kind of issue in terms of jurisdiction

1 based upon lack of service upon the Defendant.

2 THE COURT: Do you have any issue in that regard in  
3 behalf of Mr. Gause, Mr. Hazzard?

4 (Answer of Mr. Hazzard not audible on tape)

5 THE COURT: Anything further, Solicitor?

6 SOLICITOR: No, sir, Your Honor. I think that Mr.  
7 McCollum and Mr. Hazzard are going to work with me to  
8 see if we can agree to try to get some of the exhibits  
9 pre-marked and that sort of thing if we can do that, and  
10 perhaps reach some stipulations as well.

11 We will try to bring that to the Court's attention  
12 as soon as possible.

13 THE COURT: Thank you.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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2 CERTIFICATE

3 I, HARRIET P. BENNETT, certified Court Reporter for  
4 South Carolina Court Administration, do hereby certify  
5 that the foregoing Transcript was prepared from the re-  
6 cords of Linda McCall to the best of my ability, having  
7 been heard in the Court of General Sessions for Horry  
8 County, South Carolina, on June 2, 2011.

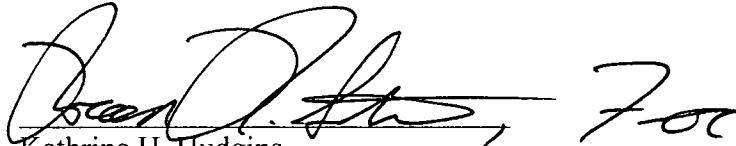
9 FURTHER, I certify that I am neither of kin nor of  
10 counsel to any party to this matter, nor do I have any  
11 interest in the same.

12 January 30, 2012  
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## 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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 11th, 2012

A handwritten signature in black ink, appearing to read "Kathrine H. Hudgins, For". The signature is written in a cursive, flowing style.

Kathrine H. Hudgins  
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