

STATE OF SOUTH CAROLINA

VOLUME II OF II

In The Court of Appeals

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APPEAL FROM MARION COUNTY

NOV 13 2015

Donald B. Hocker, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEMONIE LASHAWN JONES,

APPELLANT

APPELLATE CASE NO. 2015-000522

RECORD ON APPEAL

DAVID ALEXANDER
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

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

EDGAR L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
MSC-Q, Room 1101
180 N. Irby Street
Florence, SC 29501-3431
(843) 665-3091

Attorneys for Respondent

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1 the jury room for just a few minutes. Again, don't start
2 talking about this case among yourselves.

3 (WHEREUPON, the jury exited the courtroom at 12:20 p.m.)

4 MR. MCEACHIN: And, Your Honor, I would also ask that
5 Corporal Reed be relieved from his subpoena.

6 THE COURT: Sure. You're free to go, sir.

7 THE WITNESS: All right.

8 THE COURT: Okay. Any motions from the -- from the
9 defense?

10 MR. ANDERSON: Your Honor, first of all, I would renew my
11 objection that I did not get to what I would consider a
12 thorough examination of Lieutenant Flowers, that I was not
13 able to ask him certain questions that he asked to my client.
14 Not looking for an answer on what my client said, just asking
15 him what questions did he ask my client.

16 I also renew my objection that I did not get to ask Agent
17 -- or excuse me -- Officer McCaskill what did my client say.

18 Your Honor, we would also ask for a directed verdict at
19 this time based on the fact that the State has not proven its
20 case.

21 THE COURT: Okay. All right. Thank you, Mr. Anderson.
22 And response from the State?

23 MR. MCEACHIN: Yes, sir, Your Honor. I think the Court
24 has thoroughly explained its basis and reasoning for not
25 allowing Mr. Anderson's request as far as going into any

1 statements in this case.

2 I would further state for the record, especially with
3 regard to Lieutenant McCaskill, if it had been a situation
4 where the defendant didn't respond at all, then they'd be
5 objecting that we're testifying with regard to the defendant's
6 right to not incriminate himself. So I believe the Court's
7 ruling on that is spot on.

8 With regard to sufficiency of the evidence, Your Honor,
9 we have eyewitnesses who saw an individual with a red hat --
10 toboggan, dark clothes, literally seconds after the shooting
11 running from the victim's yard. We then have constant pursuit
12 from 9:56 a.m. to 10:09 a.m. when the suspect was apprehended.
13 We have a statement from an inmate that was at the Marion
14 County Detention Center that told the jury that he admitted to
15 him that he did the killing.

16 Your Honor, I certainly think there's sufficient evidence
17 in this case. The defendant was covered in gunshot residue,
18 and I certainly think it should go to the jury.

19 As far as the marijuana is concerned, Your Honor, I
20 believe the State could certainly argue the inference based on
21 the way it was packaged that it was packaged with possession
22 with intent to distribute. It's been admitted with the -- to
23 the Court as well as the report in the case. I believe that
24 both charges, the State has met it's burden as far as
25 surpassing the directed verdict.

1 THE COURT: Okay. Thank you very much. I started last
2 night just making a list of what I believe -- and this is
3 primarily circumstantial case. And of course, as both of you
4 or all of you fine lawyers know, that in ruling on a motion
5 for directed verdict, I have to consider the direct evidence
6 and the substantial circumstantial evidence in the light most
7 favorable to the State to determine whether or not to send
8 this case to the jury.

9 And I believe that there is adequate substantial
10 circumstantial evidence to -- to send this case to the jury.
11 Consequently, your motion for directed verdict is respectfully
12 denied.

13 Let me go through the colloquy with your client
14 concerning his right to testify or not, even though I know
15 what probably he's going to do. So if you'll -- if you have
16 not explained what I need to do at this time, I'll give you an
17 opportunity to while I am pulling it up.

18 MR. ANDERSON: Your Honor, actually, if it pleases the
19 Court, I have told him what I thought he should do. However,
20 he still has some questions in his mind.

21 THE COURT: Right. And -- and what we'll do is I'm going
22 to go ahead and give him the instruction, and if you're still
23 kind of a little undecided what to do, it probably would be a
24 good time to break for lunch and he can have that opportunity
25 to talk with his lawyers further. I don't know if these folks

1 in the back are any family members, but he can talk with them
2 too. So let me -- let me get this pulled up.

3 (WHEREUPON, there was a pause in the proceedings, after
4 which the proceedings resumed as follows.)

5 THE COURT: Madam Clerk, would you swear the defendant
6 in, please?

7 THE CLERK: Place your left hand on the Bible and raise
8 your right hand. Do you solemnly swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth, so help you
10 God?

11 THE DEFENDANT: Yes, ma'am.

12 THE CLERK: Thank you.

13 MR. ANDERSON: Your Honor, you want us to remain up here
14 or go back to the table?

15 THE COURT: That's fine right there. Mr. Jones, at this
16 time, I'm going to explain to you certain of your rights. If
17 you do not understand anything I say, please let me know. If
18 you want me to explain anything in more detail, please let me
19 know that as well. Do you understand, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: We have now reached the stage of the trial
22 where you may present your defense. You have the right to
23 claim the protections given to you by the Fifth Amendment to
24 the Constitution of the United States.

25 This amendment states in part no person shall be

1 compelled in any criminal case to be a witness against
2 himself. This means that you cannot be required to testify in
3 this case. You have the right to testify on your own behalf.
4 However, no one can make you testify. This is a personal
5 right and one that -- no one can waive this right except you,
6 sir. If you decide to testify, you'll be subject to the same
7 rules that govern other witnesses, and you may be examined and
8 cross-examined on any relevant issue in this case.

9 In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable by
11 imprisonment for more than one year, and this Court determines
12 that the probative value of admitting this evidence outweighs
13 its prejudicial effect to you, the solicitor would be able to
14 introduce your record to attack your credibility.

15 If you decide to testify, this decision on your part must
16 be freely, voluntarily, and intelligently made with knowledge
17 of the protections given to you by the Fifth Amendment and the
18 consequences of your decision to testify. If you decide not
19 to testify, I will instruct the jurors that they cannot give
20 the fact that you did not testify any consideration
21 whatsoever, and that there is to be absolutely no prejudice to
22 you because you did not testify.

23 It is left entirely up to you whether or not you testify.
24 You have the right to discuss this with your attorneys, family
25 members, friends, anyone else, but the final decision would be

1 left entirely up to you. Have you understood everything that
2 I have explained to you, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what I have
5 explained to you?

6 THE DEFENDANT: Not really.

7 THE COURT: Okay. Have you made a decision whether or
8 not you're going to testify or do you need additional time to
9 talk with your lawyers, family members, and to make that
10 decision?

11 THE DEFENDANT: I would like to talk to my family.

12 THE COURT: Okay. All right. Okay. What we will do --
13 we will go ahead and break for lunch and -- and the -- that'll
14 give you an opportunity to talk with your lawyers and your
15 family members, and then once we come back from lunch, then
16 you can inform the Court of your decision. Okay, sir?

17 THE DEFENDANT: All right.

18 THE COURT: Thank you very much. Okay. I've got about
19 12:30. Let's -- let's go about an hour and 15 minutes and
20 start back about a quarter to -- quarter to two. I've got --
21 we'll make copies. I've got a draft charge that I want to
22 give the lawyers so you can be looking over that during your
23 -- your lunch break, and then we can discuss whatever we need
24 to after that.

25 Okay? We'll be in recess until quarter to two. Let me

1 bring the jury back out and let them break as well.

2 (WHEREUPON, there was a break in the proceedings for the
3 solicitor and the Court to handle a bench warrant in an
4 unrelated matter.)

5 THE COURT: All right. Bring the jury out, please.

6 (WHEREUPON, the jury entered the courtroom at 12:30 p.m.)

7 THE COURT: All right. Let the record reflect the jury
8 in back in.

9 Madam Forelady and ladies and gentlemen of the jury,
10 we're going to go ahead and break for lunch at this time for
11 about an hour and 15 minutes. Hopefully, that's enough time
12 for you to do what you need to do during the lunch break. So
13 a quarter to two, if you'll be back in the jury room, and we
14 will proceed.

15 Keep your badge on so if somebody sees you they'll know
16 who you are and they won't discuss anything about this case.
17 Again, don't discuss it among yourselves or anybody that you
18 come into contact with. And we'll see you back at a quarter
19 to two. Have a good lunch.

20 (WHEREUPON, the jury exited the courtroom at 12:31 p.m.)

21 THE COURT: All right. We'll be in recess until a
22 quarter to two. If the lawyers would hang around just a
23 minute so you can get a copy of the charge to look at.

24 (WHEREUPON, there was a break in the proceedings from
25 12:32 p.m. until 2:14 p.m., after which the proceedings

1 resumed as follows.)

2 THE COURT: Okay. Back on the record and -- Mr.
3 Anderson, Mr. Floyd, has the defendant made a decision
4 concerning his decision to testify?

5 MR. FLOYD: He has, Your Honor.

6 THE COURT: Okay. And what is his decision?

7 MR. FLOYD: He's going to testify.

8 THE COURT: Okay. All right. Would you please stand?
9 (WHEREUPON, the defendant complied.)

10 THE COURT: Remember, you're still under oath. The
11 lawyers tell me that you intend to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Have you had full opportunity to talk
14 with your lawyers, family, friends, whomever concerning this
15 issue of you testifying?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you fully understand all of the
18 implications involved in testifying?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. All right. All right. Let the record
21 reflect that the Court finds that the defendant has freely,
22 voluntarily, and intelligently elected to testify on his
23 behalf in this case. Thank you very much, sir. You can sit
24 down.

25 (WHEREUPON, the defendant complied.)

1 THE COURT: All right.

2 MR. ANDERSON: Your Honor, can I have the Court's
3 indulgence just for one moment?

4 THE COURT: Sure.

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings continued as follows.)

7 MR. FLOYD: Your Honor, can I have a brief moment to
8 discuss --

9 THE COURT: Sure.

10 MR. FLOYD: -- with Mr. Jones a little more.

11 THE COURT: Okay. Do you need to go to, like, another
12 room so --

13 MR. FLOYD: Yes, sir. If I could just take him right
14 outside the courtroom?

15 THE COURT: Sure. That's fine. That's fine. Everybody
16 be at ease for just a few moments.

17 MR. ANDERSON: Your Honor, may Mr. McEachin and I
18 approach?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held off the record,
21 after which the proceedings resumed as follows.)

22 THE COURT: Okay. We're back on the record. Mr. Floyd,
23 you've had an opportunity to further discuss with your client
24 concerning this issue of testifying?

25 MR. FLOYD: I have, Your Honor.

1 THE COURT: Okay. Do we need to put anything on the
2 record?

3 MR. ANDERSON: Yes, Your Honor. May it please the Court.
4 When Mr. Floyd and I had a brief statement just a few minutes
5 ago before they left the courtroom to talk out in the hallway
6 and I instructed Mr. Floyd -- I said I think we need to tell
7 Kemonie that if he testifies, that may undo any prior
8 objection we made as far as the tapes not being played.

9 THE COURT: Right.

10 MR. ANDERSON: Us not being allowed to question the two
11 lieutenants, Officer -- or Lieutenant Smith and Lieutenant
12 Flowers. And that if he testifies and we play them, that that
13 may undo any objection that we previously preserved. He and
14 Mr. Floyd talked about it, and he still wants to --

15 THE COURT: Okay.

16 MR. ANDERSON: -- go ahead and testify.

17 THE COURT: All right. Would you like the opportunity,
18 Mr. Anderson or Mr. Floyd, to have your client testify on this
19 issue so you can cover with him and make sure his
20 understanding of what is involved with his testifying
21 concerning what -- you know, what he may be giving up
22 concerning previous objections, that sort of thing? I'd be
23 glad for y'all to do that.

24 MR. FLOYD: Yes, Your Honor.

25 THE COURT: Okay. I discussed that with Mr. Anderson and

26

1 the solicitor when you were out with your client. All right.
2 Mr. Jones, come on up to the witness stand. You're already --
3 you're under oath.

4 KEMONIE JONES, being first duly sworn,
5 testified as follows:

6 PROFFERED DIRECT EXAMINATION

7 BY MR. FLOYD:

8 Q: Mr. Jones, you were in court when Mr. Anderson made
9 certain objections on your behalf that dealt with not being
10 allowed to ask questions of the officer who testified about
11 your statement?

12 A: Yes, sir.

13 Q: Okay. And you understand that if you take the stand that
14 even though if that were an appealable ground before, you
15 might lose that grounds as an appeal if you testify in this
16 case. Do you understand that?

17 A: Yes, sir.

18 Q: Okay. And you've discussed that with me; right?

19 A: Yes, sir.

20 Q: Okay. And you're sure you understand that completely?

21 A: Yes, sir.

22 Q: Okay. And you and I have talked about it yesterday and
23 just a few minutes ago; is that right?

24 A: Yes, sir.

25 Q: Okay. All right.

1 MR. FLOYD: Thank you very much.

2 THE COURT: All right. Thank you. Mr. Jones, you can
3 step down.

4 MR. MCEACHIN: And, Your Honor?

5 THE COURT: Yes, sir.

6 MR. MCEACHIN: For purposes of when Mr. Jones does take
7 the stand before the jury, I would ask that he be re-sworn so
8 the jury can see that.

9 THE COURT: Oh, certainly. When he testifies, yes, sir.

10 MR. MCEACHIN: Thank you, Your Honor.

11 THE COURT: Yes, sir. Okay. All right. Anything else
12 before we bring the jury out?

13 MR. ANDERSON: No, sir, Your Honor.

14 THE COURT: Okay. All right. Very good. Mr. Evans,
15 bring the jury out, please, sir.

16 (WHEREUPON, the jury entered the courtroom at 2:23 p.m.)

17 THE COURT: All right. Let the record reflect the jury
18 is back in. Is the defense ready to proceed?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Okay. You may proceed.

21 MR. FLOYD: Thank you, Your Honor. Your Honor, we would
22 call Kemonie Jones.

23 THE COURT: Okay. Come around, Mr. Jones, right here to
24 be sworn in, please.

25 THE CLERK: Place your left hand on the Bible and raise

1 your right hand. Do you solemnly swear or affirm the evidence
2 you are about to give in the trial of this case shall be the
3 truth, the whole truth, and nothing but the truth, so help you
4 God?

5 THE DEFENDANT: Yes, ma'am.

6 THE CLERK: Thank you. Take a seat in the stand, please.

7 KEMONIE JONES, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FLOYD:

11 Q: Kemonie, how old are you?

12 A: I'm currently 20 years old.

13 Q: You're 20 years old?

14 A: Yes, sir.

15 Q: Okay. And where do you live?

16 A: I live at in Marion, South Carolina.

17 Q: Okay. Have you lived in Marion County your whole life?

18 A: No, sir.

19 Q: How long have you lived here?

20 A: I was born and raised in Marion, but my mother is in the
21 military; so we've been moving around a lot.

22 Q: Okay. And you moved back to Marion when?

23 A: I think sometime in the middle of 2012. I'm not sure
24 which actual month it was.

25 Q: Okay. And you've been back here since the middle of

KEMONIE JONES - DIRECT BY MR FLOYD

1 2012?

2 A: Yes, sir.

3 Q: Or thereabouts?

4 A: Yes, sir.

5 Q: Okay. I want to ask you if you recall the events of the
6 night of February the 15th of 2013?

7 A: Yes, sir.

8 Q: Okay. Do you remember where you were that night?

9 A: First, I started off in Strawberry Projects in Marion.
10 I'm not sure -- I think that's what it's called, but that's
11 what they call them around there, the Strawberry Street
12 Projects.

13 Q: Okay. And were you visiting someone there?

14 A: I was going to a birthday party, and we was supposed to
15 go to the club, Club Fusion. So we started at Strawberry and
16 went there and came back. I stayed the night there.

17 Q: Okay. So you stayed the night where?

18 A: I stayed the night at a young girl's house named Janeeka
19 [phonetic]. I'm not sure of her last name, but I stayed the
20 night at her house.

21 Q: Okay. Now, you stayed there the whole night?

22 A: Yes, sir.

23 Q: Is that correct?

24 A: Yes, sir.

25 Q: Okay.

1 A: Well, after the club, yes.

2 Q: Okay. After the club, you spent the night there?

3 A: Yes, sir.

4 Q: Okay. So what time did you get up the next morning,
5 which would have been February the 16th?

6 A: Maybe around nine. Nine-ish. I'm not sure.

7 Q: Nine a.m.?

8 A: Yes, sir.

9 Q: Okay. And what did you do after you got up?

10 A: Well, the first thing I did was walk outside. I went
11 through the path going towards Bluff Road. I was going to go
12 to my friend's house. So I walked through the path. There's
13 a little bridge there. I walked over that and went through
14 the path. There was another path. Went through the path and
15 then I was on Bluff Road. I went to the front of that
16 projects and knocked on Mario's door.

17 Q: Okay. And that was the friend you were going to see?

18 A: Yes, sir.

19 Q: Okay. But prior to you leaving the young lady's
20 apartment --

21 A: Right.

22 Q: -- that morning, did you take a bath or did you take a
23 shower?

24 A: No, sir. I didn't take either. I still had the same
25 clothes on.

KEMONIE JONES - DIRECT BY MR FLOYD

1 Q: Okay. From the night before?

2 A: Yes, sir.

3 Q: Okay. Did you eat any breakfast there or anything?

4 A: I didn't even eat.

5 Q: Okay. All right. Did you pick anything up at that

6 apartment while you were there?

7 A: Not that morning, but sometime around that night I picked

8 up a bullet shell casing.

9 Q: Okay. Do you know what kind of shell casing it was?

10 A: A .40 caliber.

11 Q: Okay. Where was it?

12 A: It was on the back doorstep on the floor -- on the

13 ground. Somewhere on the ground at the back door near the

14 back doorsteps.

15 Q: Okay. So you picked that shell casing up and you put it

16 in your pocket?

17 A: Yes, sir. I looked at it a couple times and put it in my

18 pocket.

19 Q: Okay. All right. And so the following morning, you left

20 her house about nine o'clock?

21 A: Yes, sir.

22 Q: Is that right? Okay. What was the name of your friend

23 again?

24 A: Mario.

25 Q: Okay. And you -- when you left, you had intentions to

1 visit him?

2 A: Yes, sir.

3 Q: Okay. And what happened when you got to his house?

4 A: I knocked on the door. He wasn't -- he didn't come to
5 the door. I'm not sure if he was there or not, but he just
6 didn't answer the door.

7 Q: Okay. Now, the route that you walked -- and I assume you
8 walked?

9 A: Yes, sir.

10 Q: Is that correct?

11 A: Yes, sir. I just walked.

12 Q: You walked to his house?

13 A: Yes, sir.

14 Q: Okay. The route that you took, did it take you by any
15 stores or anything?

16 A: Yes, sir. It took me -- I had to pass at least one --
17 two -- three -- four stores.

18 Q: Okay. What kind of stores were they?

19 A: The first store I passed was Scotchman. That's the first
20 store you hit when you're walking down the boulevard.

21 Q: Okay. And what kind of store is that?

22 A: It's a gas station.

23 Q: Okay. A convenience store?

24 A: Yeah. Convenience store.

25 Q: Okay. All right. So that was the first store you

KEMONIE JONES - DIRECT BY MR FLOYD

1 passed?

2 A: Yes, sir.

3 Q: Okay. Where else did you pass?

4 A: The second store I had to pass was Earl's Store. It's a

5 little, small business store, family -- I guess that family

6 own it. It's just a small store, no gas station connected.

7 And it's a path right there beside that store.

8 Q: Did you go in that store?

9 A: No, sir. I didn't go in the store.

10 Q: Okay. Did you talk to anybody near there or anything?

11 A: No, sir. I didn't talk to anyone.

12 Q: Okay. And so you walked by there?

13 A: Yes, sir.

14 Q: What did you do after that?

15 A: I walked through the path beside the store. There's a

16 path or used to be a path right beside the store that you

17 could walk through. I walked through that path and that took

18 -- that put me on another road, which there's another store

19 there, which is the Tobacco House I believe it's called.

20 Q: Okay. Did you go inside that store?

21 A: No, sir. I didn't go in that one either.

22 Q: What road is that on?

23 A: I'm not sure.

24 Q: You don't know the name of the road?

25 A: No, sir. I don't know.

1 Q: Okay. All right. And so after you passed that store,
2 where did you go?

3 A: I turned on the road, and this projects I believe -- I --
4 they call it Cherrytown, so that's what I call it, Cherrytown
5 Projects. As I was walking down that -- that road, it's
6 coming to a stop sign where you can make a right, a left or
7 you can keep straight. On the corner right here to my left,
8 there's another store. That's the Swampfox Store. I turned
9 on that road.

10 Q: Okay. Do you know the name of that road?

11 A: That's Jones Avenue.

12 Q: That's Jones Avenue?

13 A: Yes, sir.

14 Q: Okay. All right. Did you go in the Swampfox Store?

15 A: No, sir. I was going to, but I just kept on.

16 Q: But you walked right in front of it?

17 A: Yes, sir. I walked right in front of it.

18 Q: Is that also a convenience store?

19 A: Yes, sir, it is.

20 Q: Okay. All right. Tell me what happened after you walked
21 past that store? What did you do?

22 A: Well, before I even got to the store, while I'm still on
23 Bluff Road, I had got a phone call from a guy named BJ. He
24 was wanting to buy --

25 MR. MCEACHIN: Objection, Your Honor. Hearsay.

KEMONIE JONES - DIRECT BY MR FLOYD

1 THE COURT: Don't repeat what this person who called you
2 said. Okay?

3 BY MR. FLOYD:

4 A: Well, I had got a phone call.

5 Q: I understand. Okay. After you got that phone call, what
6 did you do?

7 A: Well, that's when I walked down the boulevard past the
8 Scotchman store and went beside Mr. Earl's store and took that
9 path, went down the road to Cherrytown, and made my left right
10 there by Swampfox on Jones Avenue.

11 Q: Okay.

12 A: And I just walked down Jones Avenue to meet the person.

13 Q: Okay. Did you meet that person?

14 A: Yes, I did.

15 Q: Okay. Why did you meet him?

16 A: I met him because I was going to -- he wanted some
17 marijuana.

18 Q: You were going to sell it to him?

19 A: Yes, I was.

20 Q: Okay. Did you have marijuana?

21 A: Yes, sir, I did.

22 Q: Okay. What was this person's name?

23 A: His name was BJ.

24 Q: Okay. How did he get in touch with you?

25 A: Through the phone. He called my cell phone.

1 Q: So you had a cell phone?

2 A: Yes, I did.

3 Q: All right. Did you actually make a sale to him?

4 A: No, sir. I never got a chance to actually make the sale.

5 Q: Okay. Why didn't you make the sale?

6 A: Because I saw an officer coming down the road. He rolled

7 his window down and said hey. I thought he saw me trying to

8 give it to him.

9 Q: Okay. And what did you do?

10 A: I ran.

11 Q: Okay. And where did you run? What direction did you run

12 in? You were on Jones Avenue?

13 A: I'd say the best way to explain that is if you were him,

14 I took the best route I felt like the best way he couldn't get

15 me. So I'm not sure which direction I went.

16 Q: Okay. All right. You ran in the opposite direction?

17 A: The opposite direction, yes, sir.

18 Q: Did you eventually get apprehended?

19 A: Yes, sir, I did.

20 Q: Okay. Do you remember who apprehended you?

21 A: No, sir. I'm not sure. I'm not sure what his name was,

22 but I know what he looked like.

23 Q: Okay. When he apprehended you, what did he do?

24 A: Well, the first thing he asked me was do I have any sharp

25 objects or anything in my pockets. I told him no. Then

KEMONIE JONES - DIRECT BY MR FLOYD

1 someone else asked me do I have any drugs in my pocket, and I
2 told him yeah, I had drugs in my pocket.

3 Q: Did they search you?

4 A: Yes, sir, they did.

5 Q: Did they take what was in your pockets?

6 A: Yes, sir.

7 Q: They took the marijuana from your pocket?

8 A: Yes, sir, they did.

9 Q: You said you had placed the shell casing in your pocket
10 earlier?

11 A: Yes, sir.

12 Q: Did they take that?

13 A: Yes, sir, they did.

14 Q: Okay. Did they take everything out of your pockets?

15 A: They took everything.

16 Q: Okay. Did the officer ask you anything?

17 A: He asked me why I ran.

18 Q: What did you tell him?

19 A: I told him I was on probation and I thought he seen me
20 getting ready to sell some marijuana.

21 Q: What were you on probation for, Kemonie?

22 A: I was on probation for a burglary.

23 Q: Okay.

24 A: Second degree.

25 Q: When did you get convicted of that? Do you remember?

1 A: Sometime in -- no, sir, I don't remember. Maybe November
2 or -- it was in November. I know it was in November when I
3 got convicted.

4 Q: When you say November, you mean 2012?

5 A: It might have been 2012. It had to have been 2012.

6 Q: All right. After you were apprehended, I assume you were
7 placed in cuffs?

8 A: Yes, sir.

9 Q: Okay. What happened after you were placed in cuffs?

10 A: They put me in the car and drove me towards the scene.

11 Q: Okay. When you say towards the scene, what do you mean?

12 A: They drove me towards Mr. Witek's house.

13 Q: Okay. Did they say anything to you about why they were
14 taking you there?

15 A: No. I just heard it over the radio. One of them told
16 them to come over there, and we drove over there.

17 Q: Okay. What did they do when they got you there?

18 A: Nothing. He just stopped the car and talked to someone
19 for a few seconds, and then they told him to take me up to the
20 jail I believe. Yeah, the jail. No. He told him to take me
21 to the police station.

22 Q: And is that where you were taken?

23 A: Yes, sir.

24 Q: When you got to the police station, what happened?

25 A: I went and spoke to -- to speak to one of the detectives,

KEMONIE JONES - DIRECT BY MR FLOYD

1 and the detective wanted to speak with me. I went into his
2 office -- Lieutenant Flowers.

3 Q: Okay. You spoke to him?

4 A: Yes. I spoke to Lieutenant Flowers and Lieutenant Smith.

5 Q: Okay. So how many people were in the office?

6 A: Just two.

7 Q: Other than you?

8 A: Including me, it was three.

9 Q: Including you was three?

10 A: Yes, sir.

11 Q: Okay. All right. After you spoke to them, what
12 happened? Where did you go?

13 A: After the first time I spoke to them, I just went to the
14 jail.

15 Q: Okay. When you say the jail, what do you mean by that?

16 A: Marion County Detention Center.

17 Q: Okay. Who took you there? Do you remember?

18 A: I want to say Tyrone Reed might have taken me the first
19 time. I'm not sure. I can't remember.

20 Q: Was that -- was it -- was it the gentleman who testified
21 in court earlier?

22 A: I know he took me to the jail at least on one occasion,
23 but I can't remember if it was the first time or the second
24 time.

25 Q: Okay. All right. Okay. So you got to the detention

1 center. How long did you stay there?

2 A: I stayed I think the whole night. I think I stayed the
3 whole night. I'm not really sure. I believe I stayed the
4 whole night though.

5 Q: Okay.

6 THE COURT: You need to speak up a little bit, Mr. Jones,
7 please, sir.

8 THE WITNESS: Yes, sir.

9 BY MR. FLOYD:

10 A: I think I stayed the whole night. I'm not really sure.

11 Q: Okay. You can't remember?

12 A: No, sir.

13 Q: Okay. Were you brought back to the police department
14 again?

15 A: Yes, sir, I was.

16 Q: Okay. When did they bring you back? Do you remember?

17 A: The next morning. I remember it had to have been the 17th
18 because it snowed that day. It was a Sunday I believe. They
19 brought me back the next morning, but I'm not sure who took me
20 back.

21 Q: You can't remember who took you?

22 A: No, sir.

23 Q: When you got back the second time, what happened?

24 A: They asked me the same questions they asked me the first
25 time with a little twist.

KEMONIE JONES - DIRECT BY MR FLOYD

1 Q: Okay. So they interviewed you?

2 A: Yes, sir.

3 Q: Okay. You spoke to them?

4 A: Yes. I spoke to them.

5 Q: Okay. Kemonie, I want to show you a CD here that's been

6 marked as Defendant's Exhibit 1. Okay? And it's labeled

7 interview with Kemonie Jones.

8 A: Yes, sir.

9 Q: All right. Have you watched the interview?

10 A: Yes, I watched it.

11 Q: Okay. And also I want to show you what's been marked as

12 Defendant's Exhibit Number 2, and it says interview with

13 Kemonie Jones; is that correct?

14 A: Yes, sir.

15 Q: Okay. Did you watch that interview?

16 A: Yes, sir, I watched it.

17 Q: So you watched two separate interviews?

18 A: Yes, sir, I did.

19 Q: Okay. And you watched those interviews. Are they

20 accurate?

21 A: Yes, sir, they were.

22 Q: Okay. So what was shown on those interviews is what took

23 place?

24 A: Yes, sir.

25 Q: Is that correct?

1 A: Yes, sir.

2 Q: Okay. All right.

3 MR. FLOYD: Your Honor, at this time, I would like to
4 move Defendant's Exhibit Number 1 and Number 2 into evidence.

5 THE COURT: What says the State?

6 MR. MCEACHIN: Without objection, Your Honor.

7 THE COURT: All right. Without objection, it will be
8 admitted for the defendant, 1 and 2.

9 (WHEREUPON, Defendant's Exhibits Number 1 and Number 2,
10 formerly marked and admitted as Court's Exhibits Number 1
11 and Number 2, were admitted into evidence.)

12 MR. FLOYD: And, Your Honor, I would like to publish
13 these for the jury.

14 THE COURT: Okay. All right. And with the assistance of
15 the State's IT guy?

16 MR. FLOYD: Yes, sir.

17 THE COURT: All right. Everybody be at ease for just a
18 moment and we'll get that lined up.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 THE COURT: I assume the first one will be Number 1?

22 MR. GODBOLT: It is.

23 (WHEREUPON, Defendant's Exhibit Number 1 and Number 2
24 were played in open court for the jury, after which the
25 proceedings continued as follows. RECORDINGS NOT

KEMONIE JONES - DIRECT BY MR FLOYD

1 TRANSCRIBED HEREIN.)

2 BY MR. FLOYD:

3 Q: Kemonie, do you know Don Oliver?

4 A: Yes, sir.

5 Q: Okay. That was the gentleman that testified in here

6 earlier?

7 A: Yes, sir.

8 Q: Okay. He had on the SCDC --

9 A: Yes, sir.

10 Q: -- clothing; is that correct?

11 A: Yes, sir.

12 Q: Do you remember when he came in to the detention center?

13 A: Yes, sir, I do.

14 Q: Okay. You were in there then?

15 A: Yes, sir.

16 Q: Okay. And when was it when he came in there in relation

17 to when you went? Was it -- was he -- you were already booked

18 in before he came in?

19 A: I think I was, yes, sir.

20 Q: Okay. Do you remember how long you had been booked in?

21 A: I think I just got in there. I'm not sure. I think I

22 just got in there.

23 Q: I mean do you think it was a matter of day or weeks?

24 A: Well, I was already in the Marion County Detention

25 Center, but I didn't hit population until a couple days later.

1 They kept me up front.

2 Q: Okay.

3 A: They wouldn't let me go back there.

4 Q: I see. All right. But -- but you were already in there
5 when he came in --

6 A: Yes.

7 Q: -- as far as you know? Okay. Did you have any
8 conversations with him as far as committing any crimes?

9 A: I spoke to him, but I didn't tell him what he said I told
10 him.

11 Q: I understand. And why did you speak to him?

12 A: Well, when he first came in, the first place you've got
13 to go to is the desk where you put your box down. I just
14 walked up to the desk and said what you in here for. He told
15 me what he was in there for. I went on about my business.

16 Q: Okay. Now, when you say the desk, do you mean the
17 booking area?

18 A: The desk is where the officers sit at to monitor the
19 whole pod.

20 Q: Okay. So that's where you spoke to him?

21 A: Yes, sir.

22 Q: In front of the officers?

23 A: Yes, sir.

24 Q: Okay. How many officers were in there?

25 A: Two sitting behind the desk.

KEMONIE JONES - DIRECT BY MR FLOYD

1 Q: Okay. So you spoke to him in the presence of those
2 officers?

3 A: Yes, sir.

4 Q: Okay. But you didn't have any other conversation with
5 him that you remember?

6 A: No, sir. I mean I spoke to him maybe a few days later or
7 something, but not that day. No, sir.

8 Q: Okay. When you say you spoke to him, what does that
9 mean?

10 A: Just talk.

11 Q: I mean did you discuss any criminal activity?

12 A: No. I didn't -- I didn't discuss anything like that. It
13 wasn't that type of talk. It was just more like, you know, I
14 talked to this girl right here. You know this girl right
15 here? Just --

16 Q: I understand.

17 A: -- regular talk.

18 Q: Okay. All right.

19 MR. FLOYD: Would you bear with me one moment, Your
20 Honor?

21 THE COURT: Sure.

22 MR. FLOYD: Your Honor, that's all I have. Thank you.

23 THE COURT: Okay. All right. Cross-examination from the
24 State?

25 MR. MCEACHIN: Thank you, Your Honor.

1 THE COURT: You may want to wait until this siren --

2 MR. MCEACHIN: I'll wait for the siren.

3 CROSS-EXAMINATION

4 BY MR. MCEACHIN:

5 Q: Mr. Jones, you said one of the reasons you were running
6 was because you were on probation; is that correct?

7 A: Yes, sir.

8 Q: Then you told Mr. Floyd you were on probation for
9 burglary; is that correct?

10 A: Yes, sir.

11 Q: That's not the only thing you were on probation for, is
12 it?

13 A: No, sir.

14 Q: It's not, is it?

15 A: I don't think so.

16 Q: As a matter of fact, you had three distinct burglary
17 charges and a breaking and entering motor vehicle; isn't that
18 correct?

19 A: Yes, sir.

20 Q: And that's why you were on probation?

21 A: That is.

22 Q: And that was in November of 2012?

23 A: Yes, sir.

24 Q: All right. And you said you moved to Marion about the
25 middle of 2012?

KEMONIE JONES - CROSS BY MR. MCEACHIN

1 A: Maybe middle, yes, sir.

2 Q: So from the middle of 2012 until February of 2013, you
3 managed to pick up three burglary charges, a breaking and
4 entering, and then you also got arrested on a murder charge;
5 is that correct?

6 A: Yes, sir.

7 Q: Now, I want to talk to you briefly about your statements
8 that we just listened to and that the jury just saw. I want
9 to talk to you about some of the inconsistencies in those
10 statements. Okay? You testified here in court today, as well
11 as on these two different statements, about what occurred that
12 day, hadn't you?

13 A: Yes, sir.

14 Q: And you told the jury that you had been going down -- you
15 had passed by the Swampfox; is that right?

16 A: Yes, sir.

17 Q: Is that when you first saw Mr. Witek?

18 A: I never saw Mr. Witek.

19 Q: Okay. You didn't see him in the Swampfox buying lottery
20 tickets?

21 A: No.

22 Q: You never saw him that day?

23 A: No.

24 Q: You said you walked by the Swampfox and here's where it
25 becomes a little hazy. You told the jury that you conducted a

1 transaction with BJ and then that's why you took off running
2 from law enforcement; is that correct?

3 A: That's why?

4 Q: That's right.

5 A: Yes, sir.

6 Q: Okay. In one of your statements, you said -- it's
7 actually the first statement that was played for the jury.
8 You said you were by yourself, the transaction hadn't
9 occurred, but the law enforcement officer came up, and that's
10 why you started running, didn't you?

11 A: I believe I did. I'm not sure.

12 THE COURT: You need to speak up, Mr. Jones, please.

13 BY MR. MCEACHIN:

14 A: I believe I did. I'm not sure.

15 Q: And then in the second one we just heard, you said that
16 the reason you started running was because of shots fired and
17 it didn't have anything to do with law enforcement, didn't
18 you?

19 A: No, sir.

20 Q: You didn't?

21 A: No. I --

22 Q: Would you like to replay it for the jury?

23 A: No. I thought you was asking me something else. But
24 yes, sir.

25 Q: That's what you said?

KEMONIE JONES - CROSS BY MR. MCEACHIN

1 A: Yes, sir.

2 Q: That's three different statements we've heard, isn't it?

3 A: Yes.

4 Q: Let's talk about this shell casing that you told the jury
5 that you picked up at Strawberry Court, and that was also on
6 the -- on the recording here we just listened to, isn't it?

7 A: Yes, sir.

8 Q: That's not what you told Mr. McCaskill -- Officer
9 McCaskill when he arrested you about the shell casing, was it?

10 A: What did I tell him?

11 Q: Isn't it true you told him when he pulled it out of your
12 pants you said, "These aren't my pants. They belong to
13 somebody else?"

14 A: I never told him that.

15 Q: You sure about that?

16 A: Yes, sir.

17 Q: If Officer McCaskill came back on that stand and he said
18 that, that wouldn't be true?

19 A: That's his opinion, but I never tell -- told him that.

20 Q: Where do you think he got his opinion from?

21 A: I don't know, sir.

22 Q: It wasn't from you?

23 A: It wasn't from me.

24 Q: Okay. You indicated that you spoke with Don Oliver.

25 Isn't it true that you told Don Oliver they ain't got no gun

1 and they ain't got no evidence?

2 A: I never had that type of conversation with Mr. Don.

3 Q: With Mr. Don? Why you call him Mr. Don?

4 A: Just call him Mr. Don.

5 Q: Just call him Mr. Don? You never told him if they ain't
6 got no gun, they ain't got no evidence?

7 A: I never told him that.

8 Q: How about I put this on my mom, I bust the whole clip at
9 him? You didn't tell him that either?

10 A: I never told him that.

11 Q: He's just making this up?

12 A: Yes, sir.

13 Q: You didn't tell him you gave the gun back to JJ and ran
14 so they could catch me instead of catching JJ with a gun?

15 A: No, sir.

16 Q: And I presume you also didn't tell him I did it, like it
17 ain't nothing to kill somebody? It ain't how you think it is.
18 People telling you you can't sleep at --

19 MR. FLOYD: Your Honor, I object.

20 THE COURT: Yeah.

21 MR. FLOYD: He's referring to facts not in evidence.

22 THE COURT: Yeah. Right. I sustain the objection. You
23 can ask a question, but you can't read off something.

24 MR. MCEACHIN: Certainly, Your Honor. I was simply
25 asking if he made the statement.

KEMONIE JONES - CROSS BY MR. MCEACHIN

1 BY MR. MCEACHIN:

2 Q: You didn't have any sort of conversation with Don Oliver
3 about any of your crimes?

4 A: No, sir.

5 Q: He made it all up?

6 A: Yes, sir.

7 Q: Every fact that he testified about today, he made it up?

8 A: Everything.

9 Q: All right. He couldn't have gotten it from somewhere
10 else?

11 A: I don't know. Maybe.

12 Q: Maybe? You were there that day.

13 A: At the --

14 Q: He couldn't have got it from somewhere else?

15 A: What? Where?

16 Q: We're talking about Mr. Oliver and the statements you
17 made to him.

18 A: I never made any of those statements to him.

19 Q: So the only thing that happened was when he came up, he
20 talked about what he was in there for, but you didn't offer up
21 what you were in there for?

22 A: I mean he might have asked me what -- he might have asked
23 me what I'm in there for, but I wasn't talking to anyone about
24 what I was in there for.

25 Q: You didn't talk to him about it?

1 A: No, sir.

2 Q: You just testified on direct examination that once you
3 were -- were arrested, they drove you by the scene; is that
4 correct?

5 A: Yes, sir.

6 Q: How long were you there for?

7 A: Not that long, maybe a minute.

8 Q: And that was the Witeks' house?

9 A: Yes, sir, it was.

10 Q: Did you tell Officer McCaskill something about that .40
11 caliber shell casing?

12 A: No, sir. I don't believe I did.

13 Q: You didn't say anything to him? And you just freely --
14 even though you acknowledge you were on probation, you freely
15 admit that you were dealing drugs that day?

16 A: I thought he saw me.

17 Q: Is that a yes or a no?

18 A: Yes, sir.

19 MR. MCEACHIN: I beg the Court's indulgence for just a
20 moment.

21 THE COURT: Sure.

22 BY MR. MCEACHIN:

23 Q: Mr. Jones, I need you to step down here for a minute,
24 please.

25 (WHEREUPON, the defendant complied.)

KEMONIE JONES - CROSS BY MR. MCEACHIN

1 Q: I'm going to use this paper clip right here. I want you
2 to show this jury exactly how you picked up that shell casing
3 on Strawberry Court and what you did with it.

4 A: Well, actually, when I -- I was sitting in the house and
5 the owner of the house came in there and said something
6 outside. So I walked outside. She pointed where it was at,
7 and I picked it up, looked at it, said, oh, just -- just a
8 shell. They had a shooting the other night. I put it in my
9 pocket.

10 Q: Okay. You can grab a seat back up there.

11 (WHEREUPON, the defendant complied.)

12 Q: Do you mind if I see that paper clip?

13 A: Sure.

14 Q: So now somebody came out and told you there's a shell
15 casing on the ground. Does that happen frequently?

16 A: No.

17 Q: Somebody tells you there's a shell casing on the ground
18 and you go outside and pick it up?

19 A: No, it doesn't, but I'm pretty -- I'm guessing if you
20 want to keep your house, you wouldn't want anything like that
21 laying on the ground.

22 Q: And -- and you had made the comment earlier about
23 paraphernalia lying around. What kind of paraphernalia are
24 you talking about?

25 A: That's what I meant when I said paraphernalia. I just

1 didn't have the proper speech or proper word for it.

2 Q: Shell casing?

3 A: Shell casing, yeah.

4 Q: Okay. I apologize for interrupting you. You were
5 talking for the shell casing?

6 A: Yes, sir.

7 Q: Paraphernalia?

8 A: Yes, sir.

9 Q: Do you pick up shell casings often?

10 A: No, sir. I've picked them up before, but not often. No,
11 sir.

12 Q: Okay. Have you ever been on Upland Avenue, Mr. Jones?

13 A: I'm pretty sure I went through there with the police.
14 Yes, sir.

15 Q: Okay. You went through there with the police. You ever
16 run through Upland Avenue?

17 A: No, not to my knowledge.

18 Q: Can you tell the jury why you were running that day when
19 you weren't being chased by the police?

20 A: I was scared. I was being chased by the police.

21 Q: I'm talking about before you were being chased by the
22 police. Can you tell them why you were running that day?

23 A: I don't know. I guess I was lying on -- somewhat on
24 that, but I wasn't running before.

25 MR. MCEACHIN: No further questions.

1 THE COURT: Anything on redirect, Mr. Floyd?

2 MR. FLOYD: Nothing further, Your Honor.

3 THE COURT: Okay. Thank you for your testimony. You can
4 step down, sir.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Anything further from the defense?

7 MR. FLOYD: Nothing further, Your Honor.

8 THE COURT: Okay.

9 MR. FLOYD: The defense rests.

10 THE COURT: Okay. Any rebuttal case from the State?

11 MR. MCEACHIN: I don't believe so, Your Honor, but beg
12 the Court's indulgence.

13 THE COURT: Sure.

14 MR. MCEACHIN: Nothing in rebuttal, Your Honor.

15 THE COURT: Okay. All right. Thank you very much.

16 Madam Forelady and ladies and gentlemen of the jury, that
17 concludes the evidentiary record in this case. What we will
18 have left in the case is closing arguments from both sides and
19 the Court's final charge.

20 What I'm going to need to do is ask that you go back to
21 your jury room, and I need to discuss with the lawyers --
22 formulate a little plan as far as when we're going to do that,
23 if we're going to it this afternoon or possibly break early
24 and come back in the morning. So if you'll go back to the
25 jury room for just a few minutes, and we'll make a decision on

1 how we want to proceed with the -- with the case and get you
2 back out.

3 Okay? And again, I remind you don't begin discussions
4 about this case among yourselves.

5 (WHEREUPON, the jury exited the courtroom at 3:11 p.m.)

6 THE COURT: Okay. Let's take about a ten-minute recess.
7 If the lawyers would come back in chambers, please.

8 (WHEREUPON, there was a break in the proceedings from
9 3:12 p.m. until 3:40 p.m., after which the proceedings
10 resumed as follows.)

11 THE COURT: We're back on the record, and we are going to
12 proceed forward today with argument and charge, and give it to
13 the jury. Both sides have had an opportunity to -- to review
14 the proposed charge, and other than the one request from the
15 defense that I'll address in just a moment, other than that,
16 the State is okay with the charge?

17 MR. MCEACHIN: Yes, sir, Your Honor.

18 THE COURT: Okay. And the defense?

19 MR. ANDERSON: Yes, sir, Your Honor, with the --

20 THE COURT: Right. Okay. And I want y'all to understand
21 just because you indicated to me that you're okay with the
22 charge, if after I charge you want to take exception or
23 objection to anything that I charge, you certainly are not
24 prejudiced in any way.

25 The defense has made a request for a mere presence, and I

1 think that would be more applicable to the defendant being at
2 the actual crime scene, not -- not in -- not in the general
3 vicinity. He would have to actually be -- be a situation
4 where there was evidence that he was at -- apart from the
5 State's position of where he was, mere presence applies to the
6 crime scene and not to the general area.

7 So your request is certainly noted for the record, Mr.
8 Anderson.

9 MR. ANDERSON: Your Honor, I would also like to renew my
10 previous motions, as well as my previous objections.

11 THE COURT: Certainly. You're protected on the record.
12 And the verdict form, both sides have had an opportunity to
13 review that? It's pretty straightforward.

14 MR. MCEACHIN: Yes, sir, Your Honor.

15 THE COURT: Are you okay with that?

16 MR. ANDERSON: Yes, sir.

17 THE COURT: Okay.

18 (WHEREUPON, there was a pause in the proceedings for the
19 Court and law clerk to confer, after which the
20 proceedings resumed as follows.)

21 THE COURT: Okay. Are you guys ready for closing
22 arguments?

23 MR. MCEACHIN: Yes, sir, Your Honor.

24 THE COURT: Okay. All right. Very good. All right.
25 Mr. Evans, bring the jury out, please.

1 MR. MCEACHIN: Your Honor, quickly, I would just state
2 that the State waives opening on the law.

3 THE COURT: Okay. Okay.

4 MR. ANDERSON: I promise you the word law won't come out
5 of my mouth, Judge.

6 THE COURT: Okay.

7 THE BAILIFF: Do you want them out?

8 THE COURT: Yes. Bring them out, please.

9 (WHEREUPON, the jury entered the courtroom at 3:42 p.m.)

10 THE COURT: Okay. Let the record reflect the jury is
11 back in.

12 Madam Forelady and ladies and gentlemen of the jury, we
13 are going to proceed forward this afternoon with the closing
14 arguments and the Court's final instruction on the law to you.
15 Once all that is done, then you'll be directed to begin your
16 deliberations.

17 So I want you to -- and again, as I told you yesterday,
18 I've been very impressed with all of you insofar as the
19 attention that you have given this case. Y'all have been very
20 attentive throughout, and that's what you're supposed to do
21 and I appreciate it very much. I'm going to also ask that you
22 continue that same line and continue to give your strict
23 attention to the lawyers, who have worked extremely hard in
24 this case, when they make their closing arguments.

25 Okay? So with that said, is the defense ready?

1 MR. ANDERSON: Yes, sir, Your Honor.

2 THE COURT: Okay.

3 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

4 MR. ANDERSON: In my opening, I told you that an elderly
5 gentleman, 68-years-old, was dead, and that the State wanted
6 someone to pay. An elderly gentleman was dead, and the State
7 needed to have someone to pay. An elderly gentleman was dead,
8 and the State must have somebody to pay. I told you it was
9 not Kemonie. I also told you that this was a case about
10 rushing to judgment, this was a case about making assumptions,
11 and this was a case about leaping to conclusions.

12 If I told you that this was a bulls-eye, you'd say no,
13 it's not. It's a blank piece of paper.

14 (WHEREUPON, counsel threw his keys on the floor on top of
15 a large sheet of paper and then drew a circle around his
16 keys.)

17 MR. ANDERSON: And then I threw my keys on it, and I
18 said, see, I hit the bulls-eye. I told you I'd hit the bulls-
19 eye. I will tell you in my opinion that's what the State has
20 done. They took one thing and just ran with it. They took an
21 assumption, they took a rush to judgment, they took a
22 conclusion, and ran with it.

23 This case is also a little bit about Don Oliver, and I'll
24 go ahead and get Don out of the way. I've got four children.
25 My oldest daughter is 19, I have twins who are 17, a boy and a

1 girl, and I have a younger son that's 15.

2 Now, years ago, my oldest daughter was probably four or
3 five, and I was talking to her and she said, Papa, what you
4 doing? I said, baby, I'm working on a case. She says, what
5 kind of case is it? I said, well, honey, it's a guy who's
6 charged with something and, you know, the State -- the
7 prosecutors are saying that he did this and, you know, I don't
8 think he did, and he's got a little bit of a record in the
9 past, some of it maybe sort of bad. But, you know -- but I
10 don't think he did it.

11 She looked right at me and she went, Papa, people don't
12 change. I said, a four-year-old kid, what's she know? What
13 do you mean people don't change?

14 What does Don Oliver do? He points and presents guns at
15 people. What does Don Oliver do? He beats up women. What's
16 Don Oliver do? He robs people. A scorpion is a scorpion is a
17 scorpion. A snitch is a snitch is a snitch. Testimony that
18 is bought and paid for is not proof.

19 If you believe Don Oliver, my client supposedly worked
20 out some deal with JJ. My client supposedly gets the gun,
21 gets dressed. I would assume has to walk down Jones Avenue
22 and then cross over on Cherry and then come down Upland while
23 he's got the gun and while he's dressed approximately 9:52 --
24 9:53 in the morning, broad daylight, and then walk over there
25 and rob him.

1 Now, of course, remember, if you believe Don Oliver's
2 story, my client said give me money, the older fellow won't do
3 it. He tells him again give me the money. Older fellow just
4 smiles at him and swings the axe at him. Now, at that point
5 in time, JJ, who we don't where he was or where he was inside
6 and what he was doing, comes running to the rescue and throws
7 a clip to my client. Kemonie catches that clip, puts it in a
8 gun, chambers a round, and then manages to get off a bunch of
9 shots.

10 Now, not like Russ Sloan says happened, you know, bang,
11 bang, pause, bang, bang. Not like other witnesses have said
12 happened, bang, bang -- bang, bang. But no, no, no, busted
13 the whole clip in him, put the whole thing in him according to
14 Don Oliver.

15 Now, of course, I said, Don, what makes you the go-to
16 guy? What makes you the go-to man to confess? What makes you
17 -- if I committed a murder, what makes you the go-to guy that
18 I need to talk to? He had no answer for that.

19 Don, one person tells you one thing bad, and suddenly you
20 run to the police. What about other bad things have you heard
21 about? I've never heard anything else bad. In your whole
22 life? Someone who has been convicted of three felonies,
23 you've never heard another thing bad that you felt the need to
24 tell the police? No, I haven't.

25 Well, I don't believe that. Testimony bought and paid

1 for is not proof.

2 I wish that the lead investigator in this case would have
3 taken the stand, but he didn't. Now, I think the judge will
4 tell you the burden of proof is not on me, and the burden of
5 proof is certainly not on Kemonie. The burden of proof is on
6 the State.

7 Now, if the lead investigator had taken the stand, I
8 would have asked him questions. Lieutenant Smith, as part of
9 your training and part of the technique is inter-department
10 cooperation, that you all work together, that you all share
11 information; is that correct? That's right.

12 Lieutenant Smith, sometimes agencies help one another; is
13 that right? That's right.

14 I'd like to direct your attention to this investigation.
15 You were on call that day? Yes.

16 You were the lead investigator? You got a call out to
17 the scene? You were briefed by other officers? You were told
18 that the crime scene is at You were told
19 that shots were fired? You were told that other officers
20 responded to the scene? You were told that officers with the
21 Marion Police Department and Marion County Sheriff's Office
22 caught someone running? Caught someone that matched that
23 description? Someone who was running?

24 And then you thought, hey, this has got to be the guy. I
25 mean he was running. Clothes match. Must be him. But you

1 never found the gun with Kemonie, did you? You never found a
2 gun anywhere near Kemonie? As a matter of fact, you never
3 found any gun? You looked for the gun? Other officers looked
4 for the gun? SLED looked for the gun? Marion Police
5 Department looked for the gun? Marion County Sheriff's Office
6 looked for the gun? Never found the gun?

7 Now, I would direct your attention to two supplemental
8 reports that you wrote. One was on 2/18/13 that described the
9 details of 2/16/13, and then one was later written on 2/18/13
10 that described the details of 2/18/13. You went and talked to
11 Gaykin [phonetic] McCullum, didn't you?

12 MR. MCEACHIN: Objection at this point, Your Honor.
13 Arguing facts not into evidence.

14 THE COURT: Well, Lieutenant Smith did not testify.

15 MR. ANDERSON: No, sir.

16 THE COURT: His supplemental report was not in evidence.

17 MR. ANDERSON: Lieutenant Flowers testified that they
18 went and spoke.

19 THE COURT: Okay. All right. Well, I'll allow it for a
20 little while longer. Go ahead.

21 MR. ANDERSON: You went and talked to Ms. McCullum? You
22 asked her questions? You also were with Lieutenant Flowers
23 when you talked with the gentleman next door, the one that
24 said a young black male came up to him and talked to him the
25 morning that this happened?

1 Now you didn't get a statement from the gentleman next
2 door? You didn't show him a photo line-up? You didn't ask
3 him if -- hey, does this look like the guy you saw? You
4 didn't ask him -- hey, did you see a red toboggan? You didn't
5 ask him -- hey, did you see a gun? You certainly didn't get
6 him to look at any evidence that you may have found?

7 Later, you interviewed, with Flowers, Don Oliver. Did
8 you ever try and corroborate Flowers' -- excuse me -- Don
9 Oliver's testimony? Did they ever talk to someone at the
10 Marion County Police Department? Excuse me -- the detention
11 center? Did they ever say, hey, I'd like to see the camera
12 that shows the front desk and see if these two individuals
13 talked? Did Kemonie Jones ever tell anybody else a story?
14 Let's find out what pod he was in and let's talk to the other
15 individuals in there and see if he confessed to someone else.

16 Why don't we go to JJ's house? You know, according to
17 Don Oliver, Kemonie told him I gave the gun to JJ. Let's get
18 a search warrant and go to JJ's house. Let's get a search
19 warrant and look for a gun. Let's get a search warrant and
20 look and see if there's any ammunition there.

21 Or we could go talk to Najee Cunningham because
22 supposedly when I get out of jail -- or when Don Oliver gets
23 out of jail, he wants me to go talk to either Najee Cunningham
24 or he wants me to go talk with Tony Foxworth to see if they
25 took the gun to the uncle. Or we could go talk to the uncle

1 because supposedly that's where -- if I get a gun, that's
2 where I'm supposed to take it. That's where Don Oliver is
3 supposed to take it.

4 How about verify Don's story? Because if you verify
5 Don's story, was there a fight between Cedrick and JJ? Was
6 there a fight between the two of them? I don't know. I don't
7 know.

8 I would like to know why things weren't done. The
9 evidence that was found the next day, why was that evidence
10 found by someone that was related to Ms. Witek? Why was that
11 found the next day by someone who is not in law enforcement?

12 Because they threw it somewhere and they drew a circle
13 around it. That's why. You hit the bulls-eye every time if
14 you do that.

15 The shoe print that I asked the SLED agent about -- is
16 that a shoe print? Yes. You got four pictures of it? Yes.
17 Any idea whose shoe print that is? Nope.

18 Now, Kemonie, when he was arrested, did you get the shoes
19 off of him? Yep. Size 10, black Nikes. Did you compare the
20 two? Nope. You have something up at SLED that you can do
21 that? Yeah, we got a division, but it wasn't done. Why
22 wasn't it done?

23 The burden of proof is not on Kemonie; the burden of
24 proof is on the State. And I'll submit to you that the reason
25 we have the greatest legal system in this world is because

1 things are to be done a certain way.

2 What else did law enforcement do? Well, the bullet that
3 they found the next morning, the one that the relative found,
4 they didn't send that to SLED. They didn't send the shell
5 casing to SLED. Why weren't those things done? I don't know.

6 Kemonie gave them two taped statements. Two. In my
7 opinion, very calm, very cooperative, very collected. He told
8 them what he did that day. He spent the night here. I went
9 here. I went down this path. I went past this store. I went
10 past this store. How hard would it be?

11 Hey, I'm Lieutenant Such-and-Such. Have you got any
12 video cameras here at Earl's Grocery? Can I see what happened
13 on the morning of 2/16? Hey, Swampfox, you got a video
14 camera? Can I see what happened on the morning of 2/16? Hey,
15 Scotchman, you got a video camera? Can I see what happened on
16 the morning of 2/16? Hey, any of you clerks that y'all were
17 working, did you see a young man walk by here? He was wearing
18 black pants. He was wearing a gray coat.

19 How hard would that have been? How hard would it have
20 been to just go check for videotape? Go check for footage?
21 Go talk to a clerk? How hard would it have been to go door to
22 door on Jones? How hard would it have been to go door to door
23 on Upland? How hard would it have been to go door to door on
24 Cherry? Did you see anything? Did you hear anything? Who
25 was running? How tall were they? How short were they? How

1 big were they? How hard would that have been? How hard?

2 The burden of proof is not on Kemonie; the burden of
3 proof is on the State.

4 One of the last witnesses that I cross-examined, not the
5 last, but one of the last, was Officer Hucks. Officer Hucks,
6 did you find a gun? No. There are a lot of hiding places, a
7 lot of bushes, a lot of trees. Could an individual have
8 hidden? I don't know. I don't know.

9 Could the person that went and talked to the man next
10 door and asked to use the phone, the one that they went and
11 talked to, but they didn't get him to look at any kind of
12 photos or IDs or a photo laydown or -- what did he look like?
13 How was he dressed? That guy. Could that have been the guy?

14 You know, because Mr. Flowers when he was testifying -- I
15 think it was Mr. Flowers -- the one that lived at 309 said I
16 saw a guy and then he walked next door and then I went inside
17 and started watching TV, and then I came back and he was kind
18 of peeking around. Could one of those have been the guy? I
19 don't know. I don't know. But it wouldn't have been hard to
20 take a photo line-up to 307 [sic]. It wouldn't have been hard
21 at all.

22 A lot of things were not done in this case. I know why
23 he ran. He was on probation and he also had marijuana on him.
24 That's why he ran. He was going to make a sale or either was
25 in the process of making a sale. He don't deny that. If I

1 was on probation, I'd run.

2 I asked one of the officers: what's a buy bust? Well,
3 Mr. Anderson, that's when they buy marijuana and either sell
4 it to a CI or you sell it to an undercover cop, and then they
5 arrest you immediately. He got the phone call. He was on the
6 way to make a sale. Suddenly, there are five or six cop cars
7 riding around. I'm on probation. I'm going to make a drug
8 deal. Is that a reason to run? I would submit to you it is.

9 A lot of things in this case could have been done. A lot
10 of things in this case that should have been done. They
11 weren't.

12 One of the last things I asked you -- or I said in my
13 opening statement -- an older gentleman was shot and killed,
14 shot three times, six wounds, shot right there in his garage
15 while he was doing yard work. That is horrible. That's
16 terrible. There isn't any question about it. There's no
17 question whatsoever. No one should be shot and killed. No
18 one should be murdered.

19 But there is one thing that's as bad or worse, and that's
20 when someone who didn't do it gets convicted. That's worse
21 than someone getting killed.

22 I don't know what happened in this case. I wasn't there.
23 I know my client had a shell casing in his pants; so he had
24 GSR on him. I know the SLED agent said GSR would last
25 indefinitely on an inanimate object. I know my client had a

1 shell casing in his pants. I know my client put the shell
2 casing in his pants. I know he had marijuana right there by
3 it; so I know his hands came in contact with it.

4 I know he rode in the back of a patrol car. I don't know
5 if the officer who gave him the GSR washed his hands
6 beforehand or not. I don't know if my client's hands were on
7 a seat where a gun had been previously, a rifle, a shotgun. I
8 don't know. But I do know that SLED agent said GSR can last
9 an indefinite amount of time if it's on an inanimate object.
10 Now, human skin, four to six hours. On an inanimate object,
11 it can last indefinitely.

12 A lot of questions in this case, and I would just ask
13 that you think about those when you go back there. Thank you.

14 THE COURT: Thank you, Mr. Anderson. Solicitor, are you
15 ready?

16 MR. MCEACHIN: I am, Your Honor. May it please the
17 Court.

18 THE COURT: Certainly.

19 CLOSING ARGUMENT ON BEHALF OF THE STATE

20 MR. MCEACHIN: Madam Forelady and ladies and gentlemen of
21 the jury, when you sit and think of a place where you feel
22 most comfortable, and you sit and you think about the place
23 where you feel the most safe, and you sit and think about the
24 place where you can let your guard down, most people would
25 argue that's your home. That's what most people would say.

1 On the morning of February the 16th, 2013, Stan Witek woke
2 up at his home for the last time. He packed his wife's car.
3 He said good-bye to her for the last time. And he then went
4 out in his front yard at his home, 68 years old, and he began
5 working in his yard.

6 And that's when Kemonie Jones violated that sanctuary and
7 he came up and he shot him. And then as if it wasn't enough
8 to shoot those shots in the front yard, he chased him around
9 to his carport where he was trapped and he shot two more
10 times. As Stan Witek was running away from the danger, he was
11 murdered.

12 That's what happened to Stan Witek that morning. That's
13 what happened. He was shot in the back. He fell on the floor
14 of his carport. He took his last breaths there, and he died
15 at his home in that safe place.

16 Now, I told you at the beginning of this trial, and Mr.
17 Anderson even alluded to it, that the obligation of
18 determining whether or not an individual is guilty of a crime
19 rests on my shoulders because I represent the State of South
20 Carolina and the County of Marion. The obligation is on me to
21 prove to you twelve people that the defendant committed the
22 crimes with which he is charged and he did so by showing you
23 guilt beyond a reasonable doubt. That's my obligation.
24 That's my burden.

25 And the judge is going to talk to you about this

1 standard. What is reasonable doubt? He's not going to sit up
2 there and tell you the State has to prove their case beyond
3 any and all doubts. He's not going to do that.

4 What he is going to tell you is that after you hear all
5 of the evidence in this case, if you are firmly convinced that
6 the defendant committed the crimes with which he is charged,
7 you find him guilty. That's what the Court is going to tell
8 you. If you're firmly convinced after hearing all the
9 evidence from this witness stand and after you look at all of
10 these exhibits that have been admitted into evidence, if you
11 look at all that and you're firmly convinced, then you find
12 him guilty.

13 And I submit to you that the State has met its burden and
14 gone beyond it. So let's talk about the evidence in this
15 case.

16 The first person you heard from was Russ Sloan. You may
17 remember Mr. Sloan. It was late in the day and we only got
18 through two witnesses. We started late.

19 And Mr. Sloan was the neighbor. He was the X-factor.
20 Kemonie Jones wasn't planning on Russ Sloan looking out his
21 window and seeing him. This would be a whole 'nother ball
22 game, whole 'nother case, if Russ Sloan had not seen Kemonie
23 Jones. And why is that?

24 Because Russ Sloan was sitting in his den -- he lives
25 right across the street from the Witek residence -- when he

1 heard the gunshots. Pop, pop. Pop, pop. He gets up out of
2 his chair and walks around to the window, and there's the
3 defendant sprinting by. He calls 9-1-1. We heard the 9-1-1
4 tapes. You're welcome to listen to them again if you'd like.

5 What -- how did he describe him? Dark clothes, red
6 toboggan. All right. That's when this case begins.

7 Now, what you have to ask yourselves as jurors is does
8 anything corroborate that, and what I mean by corroborate is
9 when you hear a piece of evidence, does anything else make
10 that piece of evidence more believable or more reliable, maybe
11 something somebody else said or maybe a piece of physical
12 evidence. Well, did we ever find a red toboggan? Did we ever
13 find a red toboggan? Does anything match what Russ Sloan
14 said? I say toboggan. Face mask. Those are two words we use
15 interchangeably.

16 Yeah, it was found. Well, it must have been found a long
17 way off. About a hundred feet from where Stan Witek lay
18 dying. That's where it was found.

19 Any other evidence that corroborates what Russ Sloan
20 said? Yeah, if I can find it. We had some black pants and a
21 black jacket. They're over here. Dark clothing. What was
22 the defendant wearing? Dark clothing and a red toboggan.

23 All right. So we've got some corroborating evidence.
24 Does that make what Russ said more reliable? I'd argue to you
25 -- I would argue that it does.

1 What about anybody else? Did anybody else say anything
2 that corroborated Russ' statement? How about Thomas Hills,
3 who lives almost right behind where the victim was killed?
4 Yeah, I saw somebody. I saw him. What were they wearing?
5 Did you notice a red toboggan? No, I didn't notice that, but
6 he did notice -- and remember what he said. He said I did
7 notice somebody do this, and then what happened? His dog went
8 down and picked up the red toboggan. Was it there when you
9 saw him there before? Nope. It was there after I saw this.
10 Is that corroborating anything?

11 How about the police officer who passed him who testified
12 today? He testified that he saw the defendant in the same
13 yard where Thomas Hills saw him, and he saw the defendant with
14 a red toboggan in his hand.

15 That's what we call corroboration, ladies and gentlemen.
16 It's pieces of evidence that you can put together and see how
17 they fit together. It's pieces of evidence that make it
18 inherently more reliable, more believable. This case had a
19 lot of corroborating evidence.

20 You also heard, when we were talking with our three
21 officers, McNeil, McCaskill, and Hucks -- and one of the main
22 things I wanted to make sure you all remember about this whole
23 case that sometimes escapes people, from the time that 9-1-1
24 call came in at 9:56, in this case the defendant had been
25 arrested at 10:09. So what we're talking about is roughly 12

1 to 13 minutes of time that this whole thing transpired. That
2 was about half the time of Mr. Anderson's closing and probably
3 about half the time of my closing argument. This whole thing
4 from shooting to arrest was over and done with.

5 What happened in that short period of time? Russ Sloan
6 witnessed the defendant. Shortly thereafter, Thomas Hills saw
7 him here. Officer McCaskill saw him here. Officer Hucks
8 chased him here where he jumped over the fence. Officer
9 McCaskill kept him in there, kind of like a fish in a net.
10 McCaskill kept eyes on him down to here. Hucks jumped -- got
11 him -- actually, Hucks jumped into the fence, saw him over
12 here. Then McNeil saw him here and here. McCaskill saw him
13 here, here, and he was arrested here.

14 This was all in about ten minutes, folks. We're not
15 talking about a long manhunt. We're not talking about
16 something that took a substantial amount of time. We're
17 talking about something that occurred very briefly -- very
18 briefly.

19 We know the weapon that was used was a .380 based on the
20 testimony of Dan DeFreese. We know that the description of
21 the defendant never changed. From the minute that Sloan saw
22 him -- Mr. Sloan saw him until the minute of his arrest, the
23 description never changed. The clothing never changed. These
24 are corroborating facts.

25 Now, Mr. Anderson just spent some time talking to you

1 about the gunshot residue, and here's where it's important
2 that you remember what the defendant said on the stand, what
3 Kemonie Jones said up on the stand. I picked it up that night
4 and put it in my pocket. What pocket did he put it in? Is it
5 the one that Mr. Anderson showed you that's right here? No.

6 That's an important fact in this case. It was in the
7 cargo pocket. Why is that important? Because Mr. Jones said
8 he put it in his pocket. Did he say he ever pulled it back
9 out? No. Did he ever say he went into that pocket? No.
10 That's important because what Megan Fletcher told us is that
11 gunshot residue stays on your hand for four to six hours. Did
12 Mr. Jones, the defendant, have any gunshot residue on him? He
13 was covered in it.

14 And I asked Mr. Jones -- I said, you know, Mr. Jones, if
15 you've got -- excuse me -- Ms. Fletcher. I said, you know, if
16 you've got a shell casing in your pocket, does that explain
17 all the gunshot residue that was found on the defendant? She
18 said no. Too much gunshot residue. A shell casing in your
19 pocket does not explain all the gunshot residue that was found
20 on the defendant. It does not. It doesn't explain it. She's
21 an expert witness -- an expert witness, and the judge is going
22 to talk to you about expert witnesses and lay witnesses.

23 Don Oliver. Mr. Anderson spent the better portion of his
24 first part of his closing talking about Don Oliver and why Don
25 Oliver can't be trusted. He can't be believed. Well, here's

1 the problem with that, ladies and gentlemen. Y'all saw Mr.
2 Oliver as well as I did. He had no desire to be here. He
3 wasn't excited about being here testifying for the State.

4 But I'm going to ask you to do the same thing with Mr.
5 Oliver's testimony that I asked you to do with everybody
6 else's. Is it corroborated? Is Don Oliver's statement
7 corroborated? Is there anything that Don Oliver could have
8 possibly said in that statement that would show reliability or
9 trustworthiness?

10 Two things come to mind, ladies and gentlemen. Two
11 things come to mind. Don Oliver told you the defendant said
12 that Mr. Witek swung an axe at him. The only person who knew
13 anything about that axe was the person who killed Stan Witek
14 and Stan Witek. Does that show reliability? Does that show
15 you that the defendant told Don Oliver what he did? It does.

16 The other piece of evidence is the defendant told him it
17 was a .380. So the question you may have is -- or the
18 question I would have is, well, how -- how in the world would
19 Don Oliver have found out about the axe or the .380 without
20 the defendant telling him about it? There's no way to. The
21 only way you find out about those two things is by talking to
22 the person that was there -- Kemonie Jones.

23 What else did -- what else did Don Oliver say? He said
24 that Kemonie Jones admitted to doing it.

25 Ladies and gentlemen, the defendant took the stand in

1 this case. What did you not hear from Kemonie Jones when he
2 took the stand? He never one time said I didn't shoot Stan
3 Witek. He never said that. He never got in this witness
4 stand and sat here and he never said I didn't shoot Stan
5 Witek.

6 If I were charged with murder and I was talking to you
7 twelve jurors, you can better believe the first thing I'm
8 going to tell you is that I didn't do it. You didn't hear
9 that from him. He didn't tell you that.

10 What did he tell you? Well, my last question to him, you
11 know, how about the running? Oh, I don't know. I must have
12 lied in the statement. Lied in the statement? Ladies and
13 gentlemen, in all my years of practicing, I don't believe I've
14 ever heard a witness say I lied. He admitted to you twelve
15 people that he lied in his statement to the police.

16 If he lied in a statement to the police, do you think
17 he'll lie to y'all? He's got -- he's looking at a murder
18 charge. Do you think he would lie to y'all? Credibility and
19 believability, the judge will tell you that's up to y'all to
20 decide, whether y'all believe someone or don't believe
21 someone. It's ultimately up to y'all to decide that issue.

22 And then finally, Tyrone Reed, who is seated right there
23 in the front row. Tyrone was my last witness. Tyrone said, I
24 didn't have anything to do with this case. The only thing I
25 did was transport the defendant. Well, did the defendant say

1 anything to you? Yep. What did he say? No gun, no case.
2 Did he say anything else to you? Yeah. I'm not going to
3 admit to anything because they don't have a gun. I'm not
4 admitting to anything because they don't have a gun.

5 It's important when you look at this evidence you look at
6 it as a whole. Mr. Anderson has made a point to try to ask
7 you folks to try law enforcement in this case. Don't try his
8 client. Try law enforcement. Law enforcement didn't do what
9 they were supposed to do. Law enforcement didn't do this.
10 Law enforcement didn't do that.

11 You know what law enforcement did? They responded to a
12 9-1-1 call and they arrested the person who committed the
13 crime within 15 minutes.

14 If I had the case they have, I guess I'd try to attack
15 law enforcement too, but that's what he's tried to do this
16 entire case is attack law enforcement. But the problem with
17 that is the evidence only shows us one thing, and that's that
18 Kemonie Jones killed Stan Witek.

19 And if you don't think that happened, you've got to
20 believe that six or seven coincidences occurred within this
21 ten-minute period of time. You've got to believe that there
22 was somebody else dressed exactly like the defendant in the
23 exact same area at the exact same time. You'd have to believe
24 that.

25 You'd have to believe that the defendant was covered in

1 GSR for some reason other than the fact that he had just shot
2 a gun. You'd have to believe that Kemonie Jones was running
3 by Russ Sloan's house for absolutely no reason. You'd have to
4 believe that Don Oliver could have known about the .380 shell
5 casings -- excuse me -- the .380 gun and the axe without
6 anybody telling him about it.

7 You'd have to believe all these things, which if you take
8 them together, it makes absolutely no sense. It makes
9 absolutely no sense if you take all those things together.

10 And that's one of the things that you as jurors have to
11 do in this case. You have to use your common sense. You have
12 to apply it. You have to go in there and say to yourselves,
13 well, all right, does this make sense or does this not make
14 sense?

15 You heard the statements of the defendant. You heard him
16 admit to all of you that he lied. Do you believe his single
17 statement over all the other witnesses that testified in this
18 case? All of the people who saw him? All of the people who
19 had eyes on him? The people who arrested him? The people who
20 tested the gunshot residue that was on him? The people who
21 tested the evidence in this case?

22 Do you believe the defendant, who admitted to lying, more
23 than you believe those people? Because you have to find
24 him not guilty.

25 One of the most telling pieces of evidence that I think

1 you need to consider when you get back there is if Kemonie
2 Jones didn't do this crime, if he had nothing to do with the
3 murder, why is it when he was in Thomas Hills' yard and he saw
4 law enforcement, he got rid of the hat and took off running?
5 If he knew nothing about the crime that happened one street
6 over, why did he throw the hat down?

7 That is critical because why would you throw it down for
8 any other reason? It's a hat. Why would you just get rid of
9 it? Because that's what linked him to the front of Stan
10 Witek's house. You wouldn't just throw a hat. And if you're
11 running from the cops because you have marijuana and you'll
12 throw a hat down, why in the world wouldn't you reach in your
13 pocket, get the marijuana, and throw it out?

14 Does that make any sense? He ran all over the
15 neighborhood. He could have thrown that marijuana anywhere.
16 He kept it in his pocket and that's the reason he told y'all
17 he was running from the law?

18 You can believe the majority of the witnesses. It is up
19 to you as the jury in this case to decide.

20 The description matched with every witness that came
21 before you that said they saw him. He had gunshot residue all
22 over him. He was running for no reason in front of Mr.
23 Sloan's house. That was before law enforcement even got
24 anywhere near him. He admitted to killing Stan Witek to Don
25 Oliver.

1 And, you know, Mr. Anderson said why would he do that?
2 What did -- do y'all remember what he called him? Mr. Don.
3 Why did you call him Mr. Don? I don't know. You think for a
4 minute he might have tried to impress Mr. Don, tell him what
5 he did? Maybe so.

6 Mr. Anderson wanted to talk -- told you the story about
7 his daughter telling you that people don't change. People
8 don't change. Mr. Don has done all these bad things.

9 How about the defendant? Three burglaries and a breaking
10 and entering motor vehicle within six months of moving to
11 Marion County, and then he picks up a murder charge. He tells
12 you not to believe Don Oliver because of his record, but oh,
13 yeah, you've got to believe the defendant. You've got to
14 believe the defendant.

15 One of the most interesting things that the defendant
16 testified about -- maybe he didn't realize what he was saying.
17 I don't know. But what did the defendant tell you? When they
18 -- when they took you -- when they took you from being
19 arrested, where did they take you? They took me to the scene.
20 How did he know where the scene was? He testified in his
21 statement he didn't find out anything about the murder until
22 he had gotten to the police department. How did he know that
23 Upland Avenue was the scene? Think about that.

24 Mr. Anderson told you at the beginning of this trial this
25 case was about a rush to judgment by law enforcement. This

1 case is not about a rush to judgment. It's about a rush from
2 judgment because the only person rushing anywhere on February
3 the 16th of 2013 was Kemonie Jones.

4 And you ask yourselves what was he rushing from? It's
5 from y'all's judgment because he knew when he got arrested for
6 the murder of Stan Witek that you folks were going to hear the
7 evidence and find him guilty. That's why he was rushing that
8 morning. There was no rush to judgment.

9 The evidence shows in this case that Kemonie Jones walked
10 up to Stan Witek as he was standing in his yard working in his
11 flowerbeds. He was shot at at least three times in the front
12 yard. And then chased him into his carport where they found
13 those other two -- where those other two shell casings were
14 found, and shot him twice more. That's what the evidence
15 shows, folks, and that's why Kemonie Jones is guilty.

16 THE COURT: All right. Thank you, Solicitor. Ladies and
17 gentlemen of the jury, we're going to take about a five-minute
18 break, ten minutes at the most, before we get into the final
19 charge. So I'm going to ask that you go back to your jury
20 room, and we'll get you back out shortly. Don't begin your
21 deliberations yet.

22 (WHEREUPON, the jury exited the courtroom at 4:25 p.m.)

23 THE COURT: All right. We'll take a short -- real short
24 break.

25 (WHEREUPON, there was a break in the proceedings from

1 4:26 p.m. until 4:34 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: Okay. Let's bring the jury out, please, sir.

4 (WHEREUPON, the jury entered the courtroom at 4:35 p.m.)

5 THE COURT: All right. Let the record reflect the jury
6 is back in.

7 CHARGE ON THE LAW

8 THE COURT: Madam Forelady and ladies and gentlemen of
9 the jury, I now will charge you the law applicable to this
10 case. You must consider this charge as a whole and not focus
11 on some portions to the exclusion of other portions.

12 The indictment charges the defendant with murder and with
13 the offense of possession of marijuana with intent to
14 distribute. I remind you that the fact that the defendant was
15 arrested, charged, and indicted in this case, is not evidence
16 in this case and cannot be considered by you as evidence of
17 guilt in this case, nor does it create any presumption or
18 inference of guilt. The indictment is simply the formal
19 written instrument which contains the charges made against the
20 defendant. It is the formal document by which this case is
21 brought into this court.

22 The indictment in this case alleges two different offenses
23 against the defendant. The charges are, one, murder, two,
24 possession of marijuana with intent to distribute.

25 Each count of the indictment charges a separate and

1 distinct offense. You must decide each count of the indictment
2 separately on the evidence and the law applicable -- applicable
3 to it uninfluenced by your decision as to any other count in
4 the indictment. The defendant may be convicted or acquitted on
5 any or all of the offenses charged. And you will be asked --
6 and I'll explain this to you at the conclusion of this charge.
7 You'll be asked to write a separate verdict of guilty or not
8 guilty for each count -- for each offense in the indictment.

9 Now, I will remind you, Madam Forelady and ladies and
10 gentlemen of this jury, that during this trial, you and I have
11 had certain duties to perform. As the trial judge, it has
12 been my responsibility to preside over the trial of this case,
13 and I also have had the duty to rule on the admissibility of
14 the evidence offered during this trial.

15 You are to consider only the competent evidence before
16 you. If there was any testimony ordered stricken from the
17 record in this case during this trial -- and I don't believe
18 that there was, but if there was, you must disregard that
19 testimony. You are to consider only the testimony which has
20 been presented from the witness stand, any exhibits which have
21 been made a part of the record in this case, and any
22 agreements or stipulations of counsel.

23 I have the additional duty to charge you the law
24 applicable to this case. As the presiding judge, I am the
25 sole judge of the law of this case, and, as I told you at the

1 outset, it is your duty as jurors to accept and apply the law
2 as I now state it to you. If you already have any idea as to
3 what the law is or what the law ought to be and it does not
4 agree with what I now tell you what the law is, you must
5 abandon your idea because you are sworn to accept the law and
6 apply the law exactly as I state it to you.

7 And as I told you at the outset, in every case tried in
8 this court before a jury, the jury, you the jurors, become the
9 sole and exclusive judges of the facts in the case. A trial
10 judge cannot intimate, state, comment on, or make any
11 statement to a trial jury about the facts in the case.

12 Since you, the jury, are the sole judge of the facts in
13 this case, you are not to infer from what I have said during
14 the progress of this trial in ruling upon the admissibility of
15 evidence, or otherwise, or anything that I say now during the
16 course of this final instruction to you, that I have any
17 opinion about the facts in this case. The law does not allow
18 me to have an opinion about the facts in this case. This is a
19 matter solely for you, the jury, to determine. As jurors, it
20 is your duty to determine the effect, value, weight, and truth
21 of the evidence presented during this trial.

22 Now, the defendant has pled not guilty to the two
23 offenses in the indictment, and that plea of not guilty puts
24 the burden on the State to prove the defendant guilty. A
25 person charged with committing a criminal offense in South

1 Carolina is never required to prove himself innocent.

2 I charge you that it is an important rule of the law that
3 the defendant in a criminal trial, no matter what the
4 seriousness of the charge may be, will always be presumed
5 innocent of the crime for which the indictment was issued
6 unless guilt has been proven by evidence satisfying you of
7 that guilt beyond a reasonable doubt. This presumption of
8 innocence does not end when you begin your deliberations, but
9 it accompanies the defendant throughout the trial unless you
10 reach a verdict of guilt based on evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 This presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the defendant
14 which remains with the defendant unless it has been stripped
15 from the defendant by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

17 This presumption of innocence is not mere legal theory.
18 It is not just a legal phrase. It is a substantial right to
19 which every defendant is entitled unless you, the jury, are
20 satisfied from the evidence of the defendant's guilt beyond a
21 reasonable doubt.

22 Once again, the State has the burden of proving the
23 defendant guilty beyond a reasonable doubt. Some of you may
24 have served as jurors in civil cases, where you were told that
25 it is only necessary to prove that a fact is more likely true

1 than not true, such as by the greater weight or the
2 preponderance of the evidence. In criminal cases, the State's
3 proof must be more powerful than that. It must be beyond a
4 reasonable doubt.

5 Proof beyond a reasonable doubt is proof that leaves you
6 firmly convinced of the defendant's guilt. Now, there are
7 very few things in this world that we know with absolute
8 certainty, and in criminal cases the law does not require
9 proof that overcomes every possible doubt.

10 If, based on your consideration of the evidence, you are
11 firmly convinced that the defendant is guilty of the crimes
12 charged, you must find the defendant guilty. If, on the other
13 hand, you think there is a real possibility that the defendant
14 is not guilty, you must give the defendant the benefit of the
15 doubt and find him not guilty.

16 Now, Madam Forelady and ladies and gentlemen of the jury,
17 there are two types of evidence which are generally presented
18 during a trial: direct evidence and circumstantial evidence.
19 Direct evidence directly proves the existence of a fact and
20 does not require deduction. Circumstantial evidence is proof
21 of a chain of facts and circumstances indicating the existence
22 of a fact.

23 Crimes may be proven by circumstantial evidence. The law
24 makes no distinction between the weight or value to be given
25 to either direct or circumstantial evidence. However, to the

1 extent the State relies on circumstantial evidence, all of the
2 circumstances must be consistent with each other, and when
3 taken together, point conclusively to the guilt of the accused
4 beyond a reasonable doubt. If these circumstances merely
5 portray the defendant's behavior as suspicious, the proof has
6 failed.

7 The State has the burden of proving the defendant guilty
8 beyond a reasonable doubt. This burden rests with the State
9 regardless of whether the State relies on direct evidence,
10 circumstantial evidence, or some combination of the two.

11 Necessarily, you must determine the credibility of
12 witnesses who have testified in this case. Credibility simply
13 means believability. It becomes your duty as jurors to
14 analyze and to evaluate the evidence and determine which
15 evidence convinces you of its truth.

16 In determining the believability of witnesses who have
17 testified in this case, you may believe one witness over
18 several witnesses or several witnesses over one witness. You
19 may believe a part of the testimony of a witness and reject
20 the remaining part of the testimony of that same witness. You
21 may believe the testimony of a witness in its entirety or
22 reject the testimony of a witness in its entirety. You may
23 consider whether any witness has exhibited to you any
24 interest, bias, prejudice or other motive in this case. You
25 may also consider the appearance and manner of a witness while

1 on the witness stand.

2 Now, as I explained to you yesterday concerning expert
3 witnesses, I'll give that explanation to you again with a
4 little bit more information. The rules of evidence ordinarily
5 do not permit witnesses to testify to opinions or conclusions.
6 An exception to this rule exists for witnesses we call "expert
7 witnesses". A witness who by education and experience has
8 become expert -- an expert in some art, science, profession or
9 calling may state an opinion as to relevant and material
10 matter in which the witness claims to be an expert, and may
11 also state the reasons for the opinion.

12 You should consider any expert opinion received in
13 evidence in this case and, like any other evidence, give it
14 the weight you think it deserves. If you decide that the
15 opinion of an expert is not based on sufficient education and
16 experience, or if you conclude that the reasons given in
17 support of the opinion are not sound, or that the opinion is
18 outweighed by other evidence, you may disregard the opinion
19 entirely.

20 An expert witness' testimony is to be given no greater
21 weight than that of other witnesses simply because the witness
22 is an expert. Further, you are not required to accept an
23 expert's opinion, even though it is not contradicted.

24 Now, a statement or statements alleged to have been made
25 by the defendant has been admitted into evidence in this case.

1 While the Court has determined that the statements are
2 admissible, I instruct you that you make the ultimate decision
3 of whether or not the defendant made the statement.

4 If the defendant did make the statement, you must
5 determine whether the statement was made by the defendant
6 voluntarily and of his own free will. This means that the
7 statement was not caused by pressure, force, fear, threats,
8 coercion, or intimidation, or by hope or a promise of leniency
9 or a reward of any kind. In determining whether the statement
10 was voluntary, you should consider both the characteristics of
11 the defendant and the details of the questioning.

12 Some of the factors that you must consider are: the age
13 of the defendant; the defendant's education or lack of
14 education; the defendant's mental ability or capacity; the
15 defendant's IQ or intelligence; the defendant's background and
16 environment; the place and length of detention; the nature of
17 the questioning; and the advice, or lack thereof, to the
18 defendant of his constitutional rights including, but not
19 limited to, the right to remain silent; that any statement
20 could be used against him in a court of law; the right to have
21 a lawyer present; that if he could not afford a lawyer, a
22 lawyer would be appointed to represent him without any cost;
23 and that he could stop making a statement at any time. You
24 must carefully consider all of the surrounding circumstances
25 before you give any weight to the alleged statement or

1 statements.

2 The State has the burden of proving beyond a reasonable
3 doubt that the alleged statement or statements were voluntary.
4 If you determine it was or they were, you may give the
5 statement or statements any further consideration that you
6 deem proper. You must decide what weight, if any, should be
7 given to the alleged statement or statements. If you
8 determine the alleged statement or statements was not the free
9 and voluntary statement of the defendant, you should not
10 consider the statement at all.

11 Now, Madam Forelady and ladies and gentlemen of the jury,
12 criminal intent is a necessary element of each crime that must
13 be proven by the State beyond a reasonable doubt. Criminal
14 intent is always a matter that must be determined by the jury
15 from the circumstances surrounding the situation.

16 Now, there is no way to prove intent to a mathematical
17 certainty. There is no way medical science can dissect a
18 person's brain to determine what he or she had in mind, so the
19 law states criminal intent may be inferred from the
20 circumstances shown to have existed, both before and after the
21 fact. This is how you, the jury, make a determination of
22 whether or not the element requiring an intent was present.

23 Criminal intent is a state of mind that operates jointly
24 with an act or omission in the commission of a crime.
25 Criminal intent is a mental state of conscious wrongdoing; so

1 it is up to you, the jury, to determine what the defendant
2 intended to do based on the circumstances shown to have
3 existed. I tell you that the State must prove criminal intent
4 beyond a reasonable doubt just as the State must prove every
5 element of each offense beyond a reasonable doubt, as I have
6 previously explained to you.

7 Once again, the defendant is charged with murder. The
8 State must prove beyond a reasonable doubt that the defendant
9 killed another person with malice aforethought.

10 Malice is hatred, ill-will or hostility towards another
11 person. It is the intentional doing of a wrongful act without
12 just cause or excuse and with an intent to inflict an injury
13 or under circumstances that the law will infer an evil intent.

14 Malice aforethought does not require that malice exists
15 for any particular time before the act is committed, but
16 malice must exist in the mind of the defendant just before and
17 at the time the act is committed. Therefore, there must be a
18 combination of the previous evil intent and the act.

19 Malice aforethought may be express or inferred. These
20 terms, "express" and "inferred", do not mean different kinds
21 of malice, but merely the manner in which malice may be shown
22 to exist. That is either by direct evidence or by inference
23 from the facts and circumstances which are proved.

24 Express malice is shown when a person speaks words which
25 express hatred or ill will for another or when the person

1 prepared beforehand to do the act which was later
2 accomplished; for example, lying in wait for a person or any
3 other acts of preparation going to show that the deed was
4 within the defendant's mind would be express malice.

5 Malice may be inferred from conduct showing a total
6 disregard for human life. Inferred malice may also arise when
7 the deed is done with a deadly weapon.

8 A deadly weapon is any article, instrument or substance
9 which is likely to cause death or great bodily harm. Whether
10 an instrument has been used as a deadly weapon depends on the
11 facts and circumstances of each case. A gun is a deadly
12 weapon.

13 The defendant is also charged with possession with intent
14 to distribute marijuana. The State must prove beyond a
15 reasonable doubt that the defendant possessed marijuana with
16 the intent to distribute it.

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

21 Actual possession means that the marijuana was in the
22 actual physical custody of the defendant. Constructive
23 possession, however, means that the defendant had dominion and
24 control, or the right to exercise dominion or control, over
25 either the marijuana itself or the property on which the

1 marijuana was found.

2 Mere presence at the scene where the drugs were found is
3 not enough to prove possession. The defendant's knowledge and
4 possession may be inferred when a substance is found on the
5 property under the defendant's control. However, this
6 inference is simply an evidentiary fact to be taken into
7 consideration by you, along with the other evidence in this
8 case, and to be given the weight you decide it should have.
9 Two or more persons may have joint possession of a drug.

10 The State must also prove beyond a reasonable doubt that
11 the defendant intended to distribute the marijuana.
12 Distribute means to deliver, other than by administering or
13 dispensing, a drug.

14 Intent may be shown by acts and conduct of the defendant
15 and other circumstances from which you may naturally and
16 reasonably infer intent.

17 In determining whether the defendant had the intent to
18 distribute the marijuana, you may also consider the
19 circumstances surrounding the defendant's alleged possession.
20 You may consider the amount of the substance alleged to have
21 been possessed, the manner in which it was allegedly
22 possessed, the place -- the place where it was allegedly
23 possessed, and other factors which you consider to be
24 important. You must find that the defendant did not intend to
25 have the marijuana solely for his own use.

1 Now, Madam Forelady and ladies and gentlemen of the jury,
2 you have four possible verdicts in this case, and in just one
3 moment I'm going to show you the verdict form. Either guilty
4 and not guilty as to the murder charge. Guilty or not guilty
5 as to the possession with intent to distribute marijuana.

6 Madam Forelady and ladies and gentlemen of the jury, your
7 verdict must be a unanimous among the twelve of you. And when
8 you have reached a verdict as to each charge, and that verdict
9 having -- being unanimous as to each charge, then you'll
10 inform the bailiff that you have reached a verdict as to each
11 charge.

12 Now, there is a verdict form. Hopefully -- Madam
13 Forelady, if you can't see it, I'm just going to ask that you
14 come up here. It's pretty self-explanatory.

15 It has the name of this case. It has the indictment
16 number right here. And as to the first charge, as to Count I
17 of the indictment, the indictment number was charging the
18 defendant with murder.

19 We, the jury, find the defendant -- either mark guilty or
20 not guilty, and likewise do the very same thing as to the
21 marijuana offense. The fact that guilty is written first over
22 not guilty is of no significance whatsoever. One just has to
23 go before the other, but there is no significance to that.

24 Once you have reached a unanimous verdict as to each
25 charge, then you will sign as foreperson and put today's date.

1 The indictment -- after the case is over with, you'll also
2 have to sign the indictment as well, but you won't do that
3 back in the jury room

4 Now, you're going to hear this from me one last time --
5 and you can have a seat back in the chair. Do not start your
6 deliberations yet. What we have to do is you've got to go to
7 the jury room for just a moment. I need to talk with the
8 lawyers to make sure that my final jury instructions were
9 correct and that I don't need to correct something or add
10 something to those instructions.

11 Once Mr. Evans brings you all of the exhibits in this
12 case -- and he's probably going to need some help. Once those
13 exhibits come into the jury room, that will be your cue to
14 start your deliberations. So don't start yet until that is
15 done.

16 So I ask that you go back to your jury room for just a
17 moment and, hopefully, we'll get the exhibits to you soon so
18 you can start your deliberations. Thank you very much.

19 (WHEREUPON, the jury exited the courtroom at 4:55 p.m.)

20 THE COURT: Does the State have any objections or
21 exceptions to the Court's final charge?

22 MR. MCEACHIN: No, sir, Your Honor.

23 THE COURT: And the defense?

24 MR. ANDERSON: No, sir, Your Honor.

25 THE COURT: Okay. Thank you very much. We'll go off the

1 record, and if the lawyers get with the court reporter and
2 make sure we've got all of the exhibits.

3 (WHEREUPON, the exhibits were checked and then sent back
4 to the jury.)

5 (WHEREUPON, jury deliberations began at 4:58 p.m.)

6 (WHEREUPON, there was a break in the proceedings from
7 4:59 p.m.)

8 (WHEREUPON, during the break, a note was sent to the jury
9 regarding dinner. The note was marked as Court's Exhibit
10 Number 5.)

11 (WHEREUPON, the proceedings resumed at 7:25 p.m.)

12 THE COURT: Okay. We've got a question or request rather
13 from the jury. It says: "Can you provide the report where the
14 gunshot residue, clothing and hand?"

15 I don't recall a report ever coming in. Naturally, there
16 was testimony, and she may have had a report that she referred
17 to, but I don't ever recall a report going in. Is that
18 correct, Solicitor?

19 MR. MCEACHIN: That's correct, Your Honor.

20 THE COURT: Okay. And, defense, is that correct?

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

22 MR. ANDERSON: That's correct, Your Honor.

23 MR. FLOYD: That is correct.

24 THE COURT: Okay. So I'm just going to bring them out
25 and tell them a report was not put into evidence; so we cannot

1 provide that.

2 MR. MCEACHIN: Your Honor, I think from the State's
3 standpoint, we prefer you have all the evidence that's been
4 submitted, as opposed to a -- what Your Honor suggested.

5 THE COURT: Okay. That's fine. Do you have any --

6 MR. ANDERSON: That's fine as well, Your Honor.

7 THE COURT: Okay. All right. Would you bring the jury
8 out, please?

9 (WHEREUPON, the jury entered the courtroom at 7:26 p.m.)

10 THE COURT: Okay. Let the record reflect the jury is
11 back in.

12 Madam Forelady, I have your -- your request. "Can you
13 provide the report for the gunshot residue, clothing and
14 hand?"

15 My response to that is all of the evidence for you to
16 consider is in your jury room, of course, along with your
17 recollection of the verbal testimony that's been offered in
18 this case.

19 Okay? Thank you very much. Go back to your jury room,
20 please.

21 (WHEREUPON, the jury exited the courtroom at 7:28 p.m.)

22 THE COURT: All right.

23 (WHEREUPON, the jury note was marked as Court's Exhibit
24 Number 6.)

25 (WHEREUPON, there was a break in the proceedings from

1 7:28 p.m. until 7:39 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: Let me -- due to the emotions in this case, I
4 certainly can understand that, but if anybody feels like they
5 cannot control their emotions once the verdict is published,
6 then I would ask that you leave the courtroom at this time.
7 Okay?

8 And I'm not saying that to be critical of anybody. I
9 just -- I understand the emotions, but I don't want any
10 emotions shown when the verdict is published. Okay?

11 All right. Mr. Evans, bring the jury out, please.

12 (WHEREUPON, the jury entered the courtroom at 7:40 p.m.)

13 THE COURT: Okay. Let the record reflect the jury is
14 back in and, Madam Forelady, it's my understanding that you
15 have reached a verdict. Is that correct?

16 THE FORELADY: That's correct, Your Honor.

17 THE COURT: Okay. And I don't want you to tell me what
18 the verdict is, but was the verdict unanimous on both charges?

19 THE FORELADY: Yes, Your Honor.

20 THE COURT: Okay. Would you hand the verdict form to Mr.
21 Evans, please?

22 (WHEREUPON, the forelady complied, after which the
23 verdict form was delivered to the Court.)

24 THE COURT: All right. Madam Clerk, would you publish?
25 Mr. Jones, would you please stand, sir?

1 (WHEREUPON, the defendant complies.)

2 VERDICT

3 THE CLERK: State of South Carolina, County of Marion, in
4 the Court of General Sessions, Twelfth Judicial Circuit.
5 Indictment Number 2013-GS-33-00406, State of South Carolina
6 versus Kemonie Lashawn Jones, defendant.

7 As to Count I of Indictment Number 2013-GS-33-406, which
8 charges the defendant with murder, we, the jury, find the
9 defendant guilty.

10 As to Count II of Indictment Number 2013-GS-33-406, which
11 charges the defendant with possession of marijuana with intent
12 to distribute, we, the jury, find the defendant guilty.

13 Signed, Stacia Melville, Foreperson. Dated February 26th,
14 2015, Marion, South Carolina.

15 Is this your verdict say you one, say you all?

16 THE FORELADY: Yes.

17 THE CLERK: Thank you.

18 THE COURT: Does the defense request individual polling
19 of the jury members?

20 MR. ANDERSON: No, sir.

21 THE COURT: Okay. All right. Madam Forelady and ladies
22 and gentlemen of the jury, let me take this opportunity to
23 thank you, not for your verdict, but for your jury service.
24 And -- and I'll mention once again that you were very, very
25 attentive throughout the -- y'all can sit down. You were very

1 attentive throughout the proceedings. I think you took this
2 responsibility very seriously and -- and the Court appreciates
3 that.

4 Any case that comes to a jury, especially a case like
5 this, is difficult. It's difficult on everybody. It's
6 difficult on the State, on the defense. It's difficult on the
7 Court, and it's very difficult on the members of the jury.

8 But I appreciate your jury service very much. This is
9 Thursday night; so quite naturally, we're not going to need
10 any further juries for tomorrow. We do have some business to
11 take up, some work to do, but it does not involve any member
12 -- or the need for a jury rather.

13 You are free to discuss this case if you like. Now, if
14 someone wants to talk to you about this case and you don't
15 want to talk to them, then you have every right to refuse
16 that. I'm not suggesting that what I'm fixing to say will
17 happen, but if they insist and it causes you some concern or
18 discomfort, then you need to immediately let the Court know
19 because we want to protect our jurors. And again, I'm not
20 suggesting that's going to happen at all, but if it does, I
21 want to make sure that the Court is behind you and wants to
22 take care of any concerns or any problems or issues that may
23 -- may come about.

24 It's late in the day. I know even though we offered you
25 supper, you're probably hungry, you're tired, you're ready to

1 get home, and -- and I am too. Of course, I can't go back to
2 Laurens tonight, but -- so have a good, restful evening. And
3 again, thank you very much for your jury service. You're free
4 to leave.

5 And you will be mailed -- I assume, Madam Clerk -- a
6 check for your service. Don't make big plans for that check
7 because it's not going to be a whole lot, unfortunately.

8 (WHEREUPON, the jury exits the courtroom at 7:44 p.m.)

9 THE COURT: Let's make sure we get her to sign the
10 indictment.

11 THE CLERK: Ms. Melville?

12 THE COURT: You'll need to sign the indictment as well.

13 (WHEREUPON, the forelady complied before leaving the
14 courtroom.)

15 THE COURT: Can I see the lawyers up here for just a
16 second?

17 (WHEREUPON, a bench conference is held off the record,
18 after which the proceedings resumed as follows.)

19 THE COURT: All right. We're going to delay sentencing
20 for in the morning. We're all tired. I know that there may
21 be folks on both sides that want to speak. I'm going to allow
22 anybody and everybody to speak, and I know certainly the
23 lawyers will want to speak as well.

24 So the sentencing will take a little while, and since
25 it's kind of late in the day and everybody is tired, so we're

1. going to delay it until 9:30 in the morning.

2 MR. MCEACHIN: Thank you, Your Honor.

3 THE COURT: All right. We'll be in recess until then.

4 Thank you.

5 MR. ANDERSON: Thank you, Your Honor.

6 THE COURT: Everybody have a good evening.

7 MR. FLOYD: You too.

8 (WHEREUPON, the proceedings adjourned for the day at 7:48
9 p.m.)

10 FEBRUARY 27, 2015

11 (WHEREUPON, the proceedings resumed at 9:44 a.m.)

12 THE COURT: Solicitor, are we going to do the sentencing
13 hearing first?

14 MR. MCEACHIN: Yes, Your Honor.

15 THE COURT: Okay. All right.

16 MR. MCEACHIN: Your Honor, the State would call Kemonie
17 Lashawn Jones, Indictment Number 2013-GS-33-406. That's an
18 indictment for murder and possession with intent to distribute
19 marijuana. This is before the Court on a sentencing, Your
20 Honor.

21 THE COURT: Okay.

22 THE CLERK: Do you solemnly swear or affirm to tell the
23 truth, the whole truth, and nothing but the truth, so help you
24 God?

25 THE DEFENDANT: Yes, ma'am.

1 THE CLERK: Thank you.

2 THE COURT: All right. Solicitor, I'll be glad to hear
3 from the State first concerning sentencing and any -- anyone
4 you would like to address the Court, I'll be glad to hear from
5 them, and then I'll turn things over to the defense.

6 MR. MCEACHIN: Thank you very much, Your Honor. And
7 prior to the State's presentation, I would ask that you hear
8 from Ms. Jackie Witek. She is the spouse of the victim in
9 this case, Your Honor. And also Ms. Janice Shamblin, and her
10 last name is spelled S-h-a-m-b-l-i-n. That is the victim's
11 sister. I'd ask that you hear from them, Your Honor, and then
12 I'll address the Court.

13 THE COURT: Okay. All right. Ladies, if y'all want to
14 come, you can just stand where the solicitor was, and I'll
15 need to have both of you sworn in.

16 THE CLERK: You can set your papers down, if you want to,
17 Mrs. Witek. Do you solemnly swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 MRS. WITEK: I do.

21 THE CLERK: Thank you. Do you solemnly swear or affirm
22 to tell the truth, the whole truth, and nothing but the truth,
23 so help you God?

24 MS. SHAMBLIN: Yes.

25 THE CLERK: Thank you.

1 THE COURT: I'll be glad to hear from you, ma'am. Yes,
2 ma'am. Just take your time. Take a deep breath. You'll be
3 fine.

4 MRS. WITEK: I'll be fine. I'll be fine.

5 MR. MCEACHIN: State your name for the record first.
6 Okay?

7 MRS. WITEK: My name is Jacqueline Witek. Your Honor,
8 people of the court, the jury that was here, I don't have to
9 tell you how saddened I am to be here telling you what a
10 wonderful person my husband was.

11 He enjoyed nature. He especially loved national parks,
12 hiking, and just history of the country. He was a veteran.
13 He served four years in the Air Force during Vietnam. He
14 served four more years in the Army living in a tent in Korea
15 building airstrips. So when I asked him to go camping with
16 me, of course, the answer was no. He'd seen enough of the
17 inside of tents for a long time.

18 He worked for the Department of Defense, and retired
19 after 34 years from Vandenberg Air Force Base. I was the one
20 who encouraged him to move to the east coast. He did not want
21 to leave California. He loved California, but our family was
22 in Massachusetts; so I wanted to move closer here. He said
23 okay, no snow, I'll move to the east coast as long as we're
24 near the beach.

25 We moved to Aiken at first, but we spent a lot of time

1 coming back and forth to the beach, and then we found Marion,
2 which we thought would be a nice, quaint, quiet town to settle
3 in. We bought a house in a neighborhood with wonderful
4 neighbors. My husband worked diligently in the yard to try to
5 keep up the standards of our neighborhood, and I can't thank
6 my neighbors enough for all they've done for me during this
7 time.

8 This whole thing has affected me mentally, physically,
9 and financially. I will have to sell my house because of all
10 this and the memories. Yesterday, you gave me closure so I
11 can go on with my life, but it will still -- I will have a
12 hole in my heart forever.

13 I'm feeling really sad, but I especially feel sad for
14 this young gentleman, Kemonie Jones. I'm sorry that he didn't
15 get the structure he needed through his life to make him a
16 good person. I'm sorry for you. I hope that where you go you
17 get to get to be with a chaplain and that you maybe find some
18 comfort in the Lord and that He will guide you where you need
19 to go.

20 Thank you, Your Honor.

21 THE COURT: Thank you, ma'am. Yes, ma'am, I'll be glad
22 to hear from you too.

23 MS. SHAMBLIN: My name is Janice Shamblin. That's S-h-a-
24 m-b-l-i-n. Stanley was my brother. I did not know if you
25 ever had to see a picture of him.

1 THE COURT: No, I did not. I'll be glad to look at it.

2 MS. SHAMBLIN: And when my brother passed in February of
3 2013, he was 68 and I was 65. Our parents were living in
4 Massachusetts. My dad was 92 and my mom was 88. And that was
5 the -- to bury their son was the hardest thing that, you know,
6 any parent wants to do.

7 I've been, you know, taking care of my mom and dad. I
8 live in Texas, but my brother and I went home every year to
9 take care of my parents. And Friday before Christmas last
10 year, I -- my dad died not knowing any closure, you know,
11 about his son. And I -- he -- my brother wasn't here, you
12 know, to bury his father.

13 And, you know, circumstances are what they are. We can't
14 change them, but, you know, it's just a really tragic thing
15 that's happened here and we're glad for closure and this. You
16 know, with him being a veteran, he's buried in the Veteran's
17 Memorial Cemetery in Agawam, Massachusetts, a little town near
18 where we live.

19 And he retired at 62 and died at 68. That's just sad.
20 That's really all I have to say. My brother was a wonderful,
21 very caring person.

22 THE COURT: Thank you, ma'am. And the Court is certainly
23 very sorry for the loss to both of you.

24 MR. MCEACHIN: Your Honor, in addition to Ms. Witek and
25 Ms. Shamblin that you just heard from, you can also see their

1 many, many members, both family and friends, that have come to
2 support them here today. Unfortunately, I was unable to get
3 an exhaustive list prior, but, Your Honor, you know, I would
4 just have you note that here in court today.

5 THE COURT: I've noticed that the entire week.

6 MR. MCEACHIN: Thank you, Your Honor. With regard to the
7 defendant, Your Honor, for the record, his date of birth is
8 August 15th, 1994. The defendant was 18 years of age at the
9 time the incident offense occurred.

10 Your Honor heard the testimony throughout the week. The
11 jury rendered a verdict of guilty as to both charges, the
12 murder charge and the PWID marijuana 1st charge.

13 Your Honor, the State would point out that this case is
14 somewhat unique in that this is not a club shooting, this is
15 not some sort of drive-by shooting or a drug deal gone bad or
16 some shooting or killing in the streets, Your Honor. This
17 murder occurred at a man's home. It was cold-blooded in
18 nature. He was shot in the front yard and then there's
19 evidence that also suggests, Your Honor, as he was running
20 trying to get away from the defendant, he was shot twice more
21 within his carport area trying to get back into his home.

22 I think that's important for the Court to note during
23 sentencing because, like I said, it's not one of those other
24 circumstances where, you know, circumstances are what they
25 are, and maybe something led or caused this to happen. There

1 is no basis. There is no catalyst for the cause of Mr.
2 Stanley Witek's death other than the evil intent of the
3 defendant.

4 The defendant had been in Marion County, pursuant to his
5 own testimony, for only a couple of months prior to picking up
6 burglary charges and breaking and entering motor vehicle
7 charges. He said that he had gotten to Marion sometime in the
8 middle of 2012. He picked those charges up in January --
9 excuse me -- in July of 2012, and ultimately pled guilty on
10 November of 2012 to three separate counts of burglary in the
11 second degree, one count of breaking and entering motor
12 vehicle, in which he had a ten-year sentence suspended to
13 probation.

14 Your Honor, it was a mere three months after he received
15 that probationary sentence that the incident offense occurred.
16 That was in November of 2012, and February of 2013 is when he
17 murdered Mr. Stanley Witek.

18 I think that's important to note for the Court that the
19 defendant has a history of going to people's homes and
20 violating their homes. The burglaries show that, as well as
21 what happened to Mr. Witek when he was working in his front
22 yard that day.

23 Your Honor, based on all the facts and circumstances in
24 this case, based on what you've heard from the victim, based
25 on the jury's verdict, the State would ask that the Court

1 sentence the defendant to life for the murder charge, and we
2 would leave it to the Court's discretion with regard to the
3 marijuana charge.

4 THE COURT: All right. Thank you very much, Solicitor.
5 All right. I'll be glad to hear from the defense. Mr. Floyd
6 or Mr. Anderson?

7 MR. ANDERSON: Your Honor, if it please the Court, Judge,
8 Kemonie is here before you. I think he's 20 now. Judge, in
9 the courtroom is his grandmother. She spoke with me earlier
10 today and advised me that Kemonie's mom is in the military.
11 Your Honor, I think when he was testifying, he indicated that
12 his mother was in the military and that he had moved around a
13 good bit.

14 Judge, she wanted to be here today. She's in Cuba right
15 now and could not get out of Cuba to -- could not get a flight
16 to come here today. Your Honor, I was advised by his
17 grandmother that she would like for me to ask you to consider
18 delaying sentencing until Monday so that his mother could be
19 here.

20 You and I had a brief conversation back in chambers with
21 the Solicitor's Office there as well. Your Honor, I
22 understand that you've got a full day in Greenwood holding
23 court on Monday; so logistically it's just not possible. But
24 I did tell his grandmother that I would certainly ask you.

25 Judge, I did not have a lot of dealings with Kemonie up

1 until maybe a week and a half ago. He and I spent some time
2 together. Your Honor, I don't -- I don't know what happened.
3 I don't understand what happened.

4 Every time I met with this young man, he is a lot like
5 you've seen him all this week, very quiet, very soft-spoken.
6 He has always been extremely polite and courteous with me.

7 Judge, Ms. Molly is in the office pretty much Monday
8 through Friday from 8:30 to five. To my knowledge, he has not
9 given her any type of trouble or hard time, calling her,
10 irritating her, bothering her, Your Honor, and that's really
11 about all I know about Kemonie. I think maybe Mr. Floyd could
12 tell you a little bit more and, Your Honor, possibly his
13 grandmother would like to speak. I'd ask you to listen to
14 her.

15 THE COURT: I'll be glad -- Mr. Floyd, do you --

16 MR. FLOYD: Yes, Your Honor. And I met with Kemonie a
17 number of times since he's been charged at the detention
18 center. He's been there, obviously, continuously since his
19 arrest.

20 Your Honor, we had, you know, a number of conversations,
21 mainly about his case, but he did go into some of his
22 background with me, and he told me, you know, that he lived
23 with his mother when he was younger and she was in the
24 military, and so he did move around a lot. I don't think his
25 father was involved in his life at all really.

1 He -- as he testified on the stand, Your Honor, he just
2 moved back to Marion here in the last several years and,
3 unfortunately, you know, has encountered trouble pretty much
4 since he got here.

5 Your Honor, as far as the facts of the case, obviously, I
6 mean the jury has rendered their decision, and I won't make
7 any further comments on that, but Kemonie -- every time that
8 I've met with him, Your Honor, every time that I've spoken to
9 him, once again, he's always been very respectful to me and a
10 very polite young man. He never once, you know, lashed out at
11 me, showed any anger towards me or anything of that nature.
12 He cooperated with me fully.

13 And it's just a tragic thing to see a young man in this
14 situation, Your Honor, and it's a tragic thing for the
15 community, you know, this event. And it's just terrible and
16 certainly, Your Honor, we would just ask if you could extend
17 as much mercy to Kemonie as you can. That's it.

18 THE COURT: Thank you, Mr. Floyd and Mr. Anderson. I'll
19 be glad to hear from the grandmother if she wants to address
20 the Court. She'll need to come up here and be sworn in.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right hand. Do you solemnly or affirm to tell the truth,
23 the whole truth, and nothing but the truth, so help you God?

24 MS. GIBBONS: I do.

25 THE CLERK: Thank you.

1 MR. ANDERSON: When you address the Court, make sure you
2 tell him your full name. Okay?

3 THE COURT: Yes, ma'am. Your name?

4 MS. GIBBONS: My name is Zola Emily Gibbons.

5 THE COURT: Okay.

6 MS. GIBBONS: I live in Marion.

7 THE COURT: Yes, ma'am. I'll be glad to hear from you.

8 MS. GIBBONS: Yes. And Kemonie is my grandson, and I had
9 him ever since he's, you know, been born. When his mama went
10 to college and everything, he was with me. And as she got out
11 and got settled, he was living with her.

12 To say that he did such a crime as this is still hard for
13 me to really believe. I trust the -- the judgment of the
14 jury, you know, that they -- whatever the prosecutor had to
15 present to them that caused this, you know, for him to be
16 found guilty.

17 I cannot take the pain away from the family, and I would
18 not try to make them --

19 THE COURT: Take your time.

20 MS. GIBBONS: And I don't want them to think that I'm
21 trying to take away because they need -- they need closure to
22 what happened to them. I'm a senior citizen too, and if I'm
23 in my yard, I wouldn't want to be -- have someone come up to
24 me or my husband and do the same thing.

25 I know they're going through pain. I can't say that I

1 know all the pain they're going through because I've lost
2 people too, but not in the manner that they did, and I know
3 it's got to be hurting, and they want closure. They want
4 somebody to pay for it.

5 And, Your Honor, I pray to God that even what you --
6 whatever you're sentencing him to that someday that they will
7 find who really did this crime. And like I say, I don't take
8 away from that family because I know they're hurting, but I
9 still love my grandson and he'll always be my grandson.

10 And for the life that he live and the way that he was
11 brought up, he was brought up in the church. We raised him in
12 church, and I will not take away anything. I don't blame God
13 for what happened, but sometimes our children -- they make bad
14 decisions. They follow the wrong crowd. But to say that he
15 made such a decision as to take someone else's life that he
16 cannot replace back is really hard for me to really believe in
17 -- believe that.

18 But I just pray for whatever reason that if it was so
19 that he can find the help that he need, but I really pray to
20 God that whoever did this hideous crime that they will be
21 caught and it will come out. And like I said, Your Honor, I
22 still love my grandson and we're going to always stand by him.
23 I know you didn't see a big crowd of us to show up during this
24 part of the time, but he's loved by all his family members.

25 And like I said, his mama -- she's stationed in Cuba.

1 The Red Cross got the message to her, and the only flight they
2 had out was leaving out today. But if she could, she would
3 have been here. And even his stepfather, he's part of his
4 life too, but he's in the military too, and they have him
5 stationed someplace else that he wasn't here today.

6 So whatever you do, Your Honor, like I said, I know God
7 is going to work everything out, and I just pray that you
8 just, you know, have mercy on him. And I know the family want
9 the justice done too, and so do I because I wouldn't want this
10 person to come around in our neighborhood either. I thank you
11 for your time, Your Honor.

12 THE COURT: Thank you, ma'am, very much. Mr. Anderson?
13 Mr. Floyd? Anything further from the defense?

14 MR. FLOYD: I don't have anything further, Your Honor.

15 MR. ANDERSON: Your Honor, my client would like to speak.

16 THE COURT: Sure. I'd be glad to hear from you, Mr.
17 Jones.

18 THE DEFENDANT: My name is Kemonie Lashawn Jones.
19 Throughout this whole trial, I've been trying to -- trying to
20 hold -- hold back all my emotions. I have a request, one
21 request, and it's only that whatever you are getting ready to
22 sentence me to, I ask that you do it today. I don't want to
23 be in here Monday and have to go back to that jail and be
24 sitting in a room knowing that I'm going to get some time for
25 something I did not do.

1 I wish -- I really wish I would have gave more
2 information on the case more and told them more about what I
3 did know versus trying to be one of the guys listening to the
4 inmates. Now, they'll find out. If you ain't do it, don't
5 worry about it. You ain't got nothing to do with it.

6 It was never my intentions to take the marijuana charge
7 to trial. I wanted to plead to that. I mean you probably
8 could have seen that, when I took my testimony, I did not deny
9 ever having marijuana in my pocket. I was guilty of that, but
10 I'm not guilty of killing anyone. I've never stuck a gun at
11 anyone. I've never pointed a gun at anyone ever in my life.

12 You may feel like I don't have any remorse, but to be
13 honest with you, I still can't believe the verdict. It hasn't
14 sunk in. I -- like I said, I just request that, although my
15 mom is in Cuba, I don't want to be sitting waiting like that.
16 I really don't. That's all I got to say.

17 THE COURT: Thank you, sir. Everybody be at ease for
18 just a few moments.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 THE COURT: Let me make just a couple of brief
22 observations, and I've already told the lawyers this. I
23 appreciate their excellent work in this case, their hard work
24 on both sides. When you have good lawyers, they always -- it
25 always makes it better for the Court, and I appreciate all

1 four of you.

2 In these kind of cases, everyone loses. There's no
3 winner here at all. Everyone loses, and it's a tragedy for
4 everybody.

5 It would be nice to have the power to bring Mr. Witek
6 back. I wish I could, but, of course, we can't.

7 Sometimes it's hard for me understand why an 18-year-old
8 would commit such a terrible crime. I mean 18 years old is
9 young. You're an adult, but you're still young. I can't
10 understand it, but it is what it is.

11 I do appreciate the fact that both Ms. Witek and the
12 grandmamma acknowledge that you need the Lord in your life.
13 You're going to be away for a long time and you're going to
14 need somebody to rely on. You're not going to be able to do
15 it yourself. So I appreciate those -- those comments.

16 And I also appreciate the support that -- on both sides,
17 and I realize the numbers have been vastly greater than on
18 this side, but there has been support for your particular
19 positions in this case, and I appreciate that as well.

20 VERDICT

21 THE COURT: The sentences will run concurrent. Mr.
22 Jones, on the murder indictment, 2013-GS-33-00406, the
23 sentence of the Court is you be committed to the State
24 Department of Corrections for 45 years.

25 That will run concurrent with five years on the

1 possession with intent to distribute marijuana indictment,
2 -00406. Good luck to you, sir.

3 MR. MCEACHIN: Thank you, Your Honor.

4 MR. ANDERSON: Your Honor, of course, did you check the
5 box to give him credit for the time that he has served?

6 THE COURT: 741 days credit.

7 MR. ANDERSON: Thank you, sir.

8 THE COURT: Okay. Good luck to everybody.

9 (WHEREUPON, the proceedings end at 10:10 a.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

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1 | State of South Carolina)

2) Certificate

3 | County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 603 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Marion County, South Carolina, on the 23rd through 27th days of February, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16

17 S/ Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 | May 7, 2015

22

23

24

25

605

WITNESSES

Robert C Smith Marion Police Department

DOCKET NO. 2013-GS-33-00406

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

AUGUST

TERM

2013

THE STATE

vs.

KEMONIE LASHAWN JONES

E. L Clements, III

ARREST WARRANT NUMBER

2013A3320100079

2013A3320100080

ACTION OF GRAND JURY

Indictment for

MURDER;

POSSESSION OF MARIJUANA WITH
INTENT TO DISTRIBUTE

Foreperson of Grand Jury

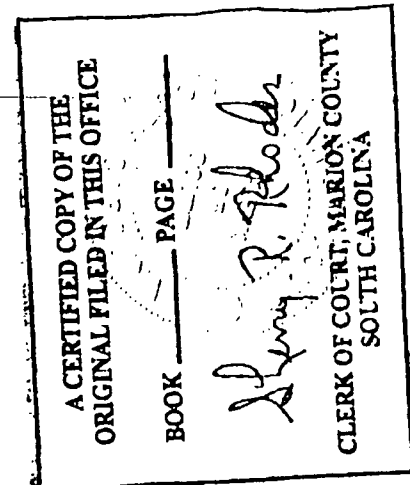
Date: AUGUST 1, 2013

VERDICT

Hawa Melville 2/26/15

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

INDICTMENT FOR

MURDER

POSSESSION OF MARIJUANA WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on AUGUST 1, 2013 the Grand Jurors of
MARION County present upon their oath:

COUNT ONE- MURDER

That KEMONIE LASHAWN JONES did in Marion County, on or about February 16, 2013, willfully, feloniously, and intentionally kill the victim, Stanley Charles Witek, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about February 16, 2013 in Marion County, in violation of Section 16-03-0010, 20 S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

That KEMONIE LASHAWN JONES did in Marion County on or about February 16, 2013, did knowingly and intentionally possess with intent to distribute a quantity of Marijuana, a controlled substance; such possession not having been authorized by law, in violation of section 44-53-370 of The Code of Laws of South Carolina(1976), as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

(30-LIFE)

IN THE COURT OF GENERAL SESSIONS 607

COUNTY OF Marion
STATE VS.
Kemonie Lashawn Jones

AKA:

Race: Black Sex: M Age: 20DOB: 0 SS#: :

Address:

City, State, Zip: Marion, SC 29571DL#: : SID#: :*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / MurderINDICTMENT/CASE#: 2013-GS-33-00406A/W#: 2013A3320100079Date of Offense: 2/16/2013S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: McEachin, Fizzle H75437
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 741 Days Credit☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

PTUP

 days/hours, Public Safety Officer

Obtain GED ☐ ORIGINAL FILED IN THIS OFFICE

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning PAGE

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ beginning

\$

Other:

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

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

Clerk of Court/ Deputy Clerk

Court Reporter: Kristal Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2167Sentence Date: 2/27/13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Marion

VS.

Kemonie Lashawn Jones

AKA:

Race: Black Sex: M Age: 20

Address:

City, State, Zip: Marion, SC 29571

DL#: SID#:

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

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

TO: Drugs / P.W.I.D. Marijuana - 1st offense

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES

McBachin, Fitzlee H

75437

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____ A CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE

Substance Abuse Counseling ☐ Random Drug/Alcohol testing ☐ PAGE
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2167

2/27/15

RECEIVED
609

NOV 13 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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

November 13, 2015



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT