

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

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S.C. Supreme Court

DERVICK L. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002083

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	686
RETURN	706
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF	713
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	721
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 28, 2014	723
ORDER OF DISMISSAL	770
INDICTMENT	782

1 MR. ARCHER: No, ma'am.

2 THE COURT: Very well. Thank you.

3 (Jury enters at 9:40 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. This
5 morning, I hope you had a very pleasant evening. And at
6 this time, we will hear from the State. Mr. Bell?

7 MR. BELL: Your Honor, the State would rest at this
8 time.

9 THE COURT: Ladies and gentlemen, you have now heard
10 the testimony and received the exhibits which you will from
11 the State, in the State's case in chief. We will now turn
12 to the defense.

13 And I think Mr. Archer would -- do you mind if I share
14 with the jury?

15 MR. ARCHER: Yeah. That's fine.

16 THE COURT: Ladies and gentlemen, just wanted to just
17 tell you that today -- and I don't know if you noticed the
18 assistant who was here yesterday with Mr. Archer. His
19 assistant, his paralegal, is also his bride. And she is
20 not present first thing this morning, and we don't know
21 whether or not she'll be here or not today. But Mr. Archer
22 said, "See. I need her everywhere. I need her at home as
23 well as in my office. And as I was dashing out the door
24 today, I left my hearing aid."

25 So, he -- he may be a little -- have a little more.

1 volume. In this courtroom, I think that's a good thing,
2 not a bad thing, because of the acoustics. However, we're
3 going to try to modulate our voices to accommodate that,
4 and please understand if he has to say, "Run that by me one
5 more time, Judge."

6 He's really not not listening to me, he -- we're just
7 having to communicate a little differently. And I may
8 forget that -- that I need to speak a little clearer, with
9 perhaps a little more volume. So I did want you all to
10 understand that. It's a -- Mr. Archer was kind enough to
11 share that with me, and we certainly want to accommodate
12 him in every way we can.

13 MR. ARCHER: And if he starts whispering to you, be
14 careful.

15 THE COURT: All right. Very well. Now --

16 MR. ARCHER: We're prepared to start presenting our
17 case, Your Honor.

18 THE COURT: Thank you. If you'd please call your
19 first witness, Mr. Archer.

20 MR. ARCHER: I call Mr. Christopher Smalls to the
21 stand.

22 (The witness comes forward.)

23 CHRISTOPHER SMALLS, having been
24 first duly sworn, testifies as follows:

25 THE COURT: Now, Mr. Smalls, is -- that's just your

DIRECT EXAMINATION BY MR. ARCHER - CHRISTOPHER SMALLS 503

1 holder for your phone?

2 WITNESS: Yeah. This is my ---

3 THE COURT: Your phone is not in it I see.

4 WITNESS: Uh-uh.

5 THE COURT: I just didn't want you to get that phone
6 call while you were testifying ---

7 WITNESS: Yes, ma'am.

8 THE COURT: --- and be distracted.

9 Please have a seat. Mr. Taylor's going to help you
10 with the microphone. If you would state your full name for
11 the record.

12 WITNESS: My name's Christopher James Smalls. My last
13 name's spelled S-m-a-l-l-s.

14 THE COURT: "S". Okay. Thank you, Mr. Smalls.

15 Mr. Archer, your witness.

16 DIRECT EXAMINATION BY MR. ARCHER:

17 Q Mr. Smalls, how old are you?

18 A I'm 19 years old.

19 Q Are you in school or out of school?

20 A I'm in school right now. I'm at Goose Creek High; I'm
21 a senior.

22 Q You're a senior?

23 A Yes, sir.

24 Q Okay. Now, do you -- do you know Dervick Parker?

25 A Yes. That's my cousin.

DIRECT EXAMINATION BY MR. ARCHER - CHRISTOPHER SMALLS 504

1 Q That's your cousin. Where -- when he wasn't in jail,
2 where does he live?

3 A He live with me in my bedroom at [REDACTED],
4 Lincolnville.

5 Q Okay. So you shared -- before this incident happened,
6 you shared a room together?

7 A Yes. Yes, sir.

8 Q All right. Now, you've been here, I think, every day
9 of trial, have you not?

10 A Yes, sir.

11 Q Yesterday you heard the science lady say that DN
12 evidence -- DNA evidence showed that at least three people
13 had touched that -- Dervick's gun.

14 Well, let me show you first. Let me -- where's the
15 gun?

16 THE COURT REPORTER: In the bag.

17 MR. ARCHER: In here?

18 Q I'm showing you what's been marked as State's Exhibit

19 7. Do you recognize that?

20 A Yes, sir.

21 Q What is it?

22 A Dervick Parker gun.

23 Q Okay. So, it's your cousin's gun.

24 A Yes, sir.

25 Q All right. Now, you heard the lady say at least three

DIRECT EXAMINATION BY MR. ARCHER - CHRISTOPHER SMALLS 505

1 people touched that gun, and one being Dervick. Do you
2 have any idea who -- who any of the other two might be?

3 A Yeah. Possibility it could be me, because like three
4 days before the incident, Dervick Parker -- we had came
5 from Haven Oaks over there. And he left his gun at the
6 house, and I go out in the backyard and I fired the gun off
7 two times in the air. Just because I ain't never been
8 shoot a gun; I just wonder how it feels to shoot a gun.
9 Then I replaced the gun right back in the room.

10 Q Okay. And you just wanted to experience shooting a
11 gun.

12 A Yes, sir.

13 Q Okey doke. Was anybody around when that happened?

14 A Yes. My older sister, Sade' Smalls.

15 Q She's here?

16 A Yes, sir.

17 Q And that's her there? (Indicates.)

18 A Yes, sir.

19 Q And this was how long before the shooting at Haven
20 Oaks?

21 A Let's see, this was the 26th, because it happened on
22 the 28th.

23 Q Uh-huh.

24 A February 26th.

25 MR. ARCHER: Okay. I have no other questions. - Answer

CROSS-EXAMINATION BY MR. BELL - CHRISTOPHER SMALLS

506

1 any questions Mr. Bell may have.

2 THE COURT: All right. Cross-examination.

3 CROSS-EXAMINATION BY MR. BELL:

4 Q Did you go to the police and tell them this?

5 A Sir?

6 Q Did you go to the police and tell them this?

7 A No, sir.

8 Q You knew he was arrested, weren't you?

9 A Yes, sir.

10 Q You knew the police arrested him, didn't you?

11 A Yes, sir.

12 Q Did you go to the police and tell them that, "Oh, no.
13 I fired the gun"?

14 A No, sir.

15 Q You knew he was charged with shooting a gun, didn't
16 he?

17 A Yes. I -- I got -- I know he was charged for attempt
18 to kill police, but they did not -- every time I ask
19 somebody, they like, "No. He -- he was not fired the gun."

20 They didn't let me know that he fired the gun, but he
21 was charged as attempt to kill police.

22 Q But you know he was charged with firing a gun, don't
23 you?

24 A Yes, sir.

25 Q And you didn't tell anybody about this until today.

CROSS-EXAMINATION BY MR. BELL - CHRISTOPHER SMALLS

507

1 A No. I actually told Sergeant, like, last week, about
2 it.

3 Q Okay. Last week.

4 A Yes, sir.

5 Q And you're sure this happened on February 26th?

6 A Yes, sir.

7 Q Is that your birthday?

8 A No.

9 Q Is that your mom's birthday?

10 A No, sir.

11 Q You recall what you did on February 25th?

12 A Yes, sir.

13 Q What?

14 A Went to school.

15 Q What did you do on February 24th?

16 A February 24th, I went to school.

17 Q What did you do on February 22nd?

18 A February 22nd, I went to school.

19 Q How bout the 21st?

20 A Twenty-first? That was a Sunday, I think, if I
21 recall.

22 Q What did you do on June 7th?

23 A June 7th? June 7th of this year?

24 Q Last year.

25 A Last year. June 7th. I can't recall that date, June

RE-DIRECT EXAMINATION BY MR. ARCHER - CHRISTOPHER SMALLS 508

1 7th.

2 Q And Dervick Parker's your cousin:

3 A Yes, sir.

4 MR. BELL: Thank you. I have nothing further.

5 THE COURT: Re-direct?

6 RE-DIRECT EXAMINATION BY MR. ARCHER:

7 Q Well, you -- there's something, is there not, that you
8 can tie those events to, so that you have a better idea of
9 when they occurred; is there not?

10 A (No audible response.)

11 Q Do you understand the question?

12 A No, sir.

13 Q Well, you know it was a certain number of days before
14 your cousin was arrested; is that correct?

15 A Yes, sir.

16 Q Okay. Did you know that it would have any great
17 significance whether one, two, three, six, or seven shots
18 had been fired? Did you have any idea that that would have
19 any real importance to this matter before I talked to you?

20 A I fired the gun two times in the air twice.

21 Q Uh-huh.

22 A Yes, sir.

23 Q Okay. But did you know -- have any idea whether or
24 not -- from the time when you put it back, did you have any
25 knowledge of whether or not Dervick reloaded the gun?

RE-DIRECT EXAMINATION BY MR. ARCHER - CHRISTOPHER SMALLS 509

1 A No. He shouldn't, because he didn't know I fired the
2 gun.

3 Q Okay. All right.

4 MR. ARCHER: I got no other questions.

5 THE COURT: Any re-cross?

6 MR. BELL: No, Your Honor.

7 THE COURT: Very well. You may come down.

8 And is this witness free to leave?

9 MR. ARCHER: (No audible response.)

10 THE COURT: You are free to go, if you'd come back
11 down.

12 (The witness exits the stand.)

13 Call your next witness, please.

14 MR. ARCHER: I call Sade' Smalls.

15 (The witness comes forward.)

16 SADE' SMALLS, having been first
17 duly sworn, testifies as follows:

18 THE COURT: If you'd please be seated. And when you
19 are seated, if you would state your full name for the
20 record. And I think we've got your last name, but could
21 you help us spell, by spelling your first name.

22 WITNESS: Yes, ma'am. Sade' Eddie Smalls, S-a-d-e,
23 with a hyphen over the "e."

24 THE COURT: And how -- your middle name is ...

25 -WITNESS: Elise.

DIRECT EXAMINATION BY MR. ARCHER - SADE' SMALLS

510

1 THE COURT: Elise?

2 WITNESS: Uh-huh.

3 THE COURT: Very well. Your witness, Mr. Archer.

4 DIRECT EXAMINATION BY MR. ARCHER:

5 Q All right. Ms. Smalls, how old are you?

6 A Twenty.

7 Q Okay. Are you related to Christopher?

8 A Yes, I am.

9 Q What's your relation?

10 A My brother.

11 Q Your brother. And you're related to Dervick; is that
12 correct?

13 A Yes, sir.

14 Q What's your relation to Dervick?

15 A My cousin.

16 Q Are you aware of any occasion where your brother
17 Christopher may have fired a gun?

18 A Yes, sir. I was in the house.

19 Q When?

20 A On the 26th.

21 Q Is this the occasion your brother just testified to?

22 A Yes, sir.

23 Q What did you hear?

24 A I heard two -- two shots.

25 Q And what did you do?

CROSS-EXAMINATION/MR. BELL AND RE-DIRECT/MR. ARCHER 511
SADE' SMALLS

1 A I went outside.

2 Q And what did you see?

3 A ,I saw him putting the gun in the air two times -- shot
4 the gun in the air two times. And I told him to put the
5 gun up.

6 Q Okay.

7 MR. ARCHER: I have no other questions.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION BY MR. BELL:

10 Q Who's gun was it?

11 A I don't -- I don't know. I just know that it was a
12 .38.

13 Q Okay. Did you tell the police about this?

14 A No, sir.

15 Q You knew your cousin was arrested for a crime, didn't
16 you?

17 A Yes, sir.

18 Q And you never told -- came forward and told the
19 police?

20 A No, sir.

21 Q Thank you.

22 THE COURT: Yes. Re-direct.

23 RE-DIRECT EXAMINATION BY MR. ARCHER:

24 Q Did you have any idea or knowledge that it may be of
25 importance whether or not your brother fired that gun?

1 A Excuse me?

2 Q Did you ever know that it might be important that your
3 brother fired the gun?

4 A No, sir.

5 Q Okay.

6 MR. ARCHER: No more questions.

7 THE COURT: Re-cross?

8 MR. BELL: None, Your Honor.

9 THE COURT: And is this witness free to leave?

10 MR. ARCHER: She's free to leave, Judge.

11 THE COURT: Very well. Thank you.

12 (The witness exits the stand.)

13 Call your next witness, please.

14 MR. ARCHER: I call Dervick Parker.

15 THE COURT: All right. Yes, sir. If you'd come
16 along, please, and be sworn.

17 (The witness comes forward.)

18 DERVICK PARKER, having been first
19 duly sworn, testifies as follows:

20 THE COURT: All right. If you'd please be seated.

21 And state your full name for the record.

22 WITNESS: Dervick Lamont Parker.

23 THE COURT: And Dervick is spelled...

24 WITNESS: D-e-r-v-i-c-k.

25 THE COURT: Very well. Your witness, Mr. Archer.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

513

1 MR. ARCHER: Yes.

2 DIRECT EXAMINATION BY MR. ARCHER:

3 Q How old are you, Dervick?

4 A Nineteen.

5 Q And how old were you when you were arrested?

6 A Eighteen.

7 Q All right. What were -- were you in school at that
8 time?

9 A Yes, sir.

10 Q What were you in school?

11 A What grade I in?

12 Q What grade?

13 A Eleventh grade, taking twelfth grade classes.

14 Q Okay. So, you're doing fairly well in school.

15 A Yes, sir.

16 Q What kind of grades did you make in school, generally?

17 A I just hadn't enrolled back in school, so I ain't get
18 my interim report yet.

19 Q Okay. I gotcha. And Thomas is your cousin?

20 A Christopher.

21 Q Christopher. These are your two cousins; is that
22 correct?

23 A Yes, sir.

24 Q And you had known Quinntavious Davis?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

514

1 Q How long in time this incident happened had you known
2 Quinntavious Davis?

3 A Since middle school.

4 Q Okay. Was he a friend of yours?

5 A Close friends.

6 Q What?

7 A Was. Was a close friend.

8 Q A very close friend?

9 A Uh-huh.

10 Q All right.

11 THE COURT: That's a "yes"?

12 A Yes, ma'am.

13 Q Now --

14 THE COURT: Let me just tell you -- hold on one
15 second.

16 Mr. Parker, when you say "uh-huh" or "uh-uh," we know
17 what you mean, because we all use that. We all go "uh-huh"
18 and "uh-uh."

19 But what happens is our court reporter has to
20 interpret what that means. We don't want an interpreter.
21 We want your responses to be clear for our record. So,
22 while we normally -- all of us do that, if you could answer
23 with a response, that would be -- you know, like a "yes" or
24 a "no," that would be very helpful.

25 WITNESS: Yes, ma'am.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

515

1 THE COURT: And if you forget, I'll be right here to
2 remind you.

3 WITNESS: Yes, ma'am.

4 THE COURT: Okay. Go ahead, please, Mr. Archer.

5 Q Let me see. Oh. I show you what's been marked as
6 State's Exhibit 7. Would you look at that for me, please?

7 A (Complies.)

8 Q Do you recognize it?

9 A Yes, sir.

10 Q And what is it?

11 A My gun.

12 Q How long ---

13 A Used to be my gun.

14 Q Used to be your gun?

15 A Uh-huh.

16 Q How long ---

17 THE COURT: That's a "yes"?

18 A Yes, sir.

19 Q At the time ---

20 THE COURT: Okay.

21 Q At the time this thing happened, how long had you
22 owned it?

23 A Probably like 3/4 months before.

24 Q Okay. Now, did you have this gun with you the night
25 that Detective Gibbons was shot?

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

516

- 1 A Yes, sir.
- 2 Q All right. You were at Haven Oaks that night,
- 3 correct?
- 4 A Yes, sir.
- 5 Q Why had you gone over there?
- 6 A Because at the time, me and Mia -- Mia Anderson was
- 7 dating. I always used to go back and forth to her house.
- 8 Q Did you spend a lot of time over there?
- 9 A Yes, sir.
- 10 Q Okay. And let's go to the time -- well, let me just
- 11 ask you: What sort of place is Haven Oaks?
- 12 A A real dangerous place.
- 13 Q Okay. You -- were you aware of bad things that had
- 14 happened there?
- 15 A Yes, sir.
- 16 Q What sort of things did you -- heard about or seen?
- 17 A I mean, I heard about a couple of shootings, murders,
- 18 and ---
- 19 Q You had.
- 20 A --- house getting break into.
- 21 Q So, why didn't you stay away from there?
- 22 A Because it ain't bother me.
- 23 Q And your girlfriend was there, right?
- 24 A Yes, sir.
- 25 Q Okey doke. Let's go to the night of the shooting.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

517

1 About what time -- at some point in time, you left the
2 apartment with Quinntavious Davis; is that correct?

3 A Yes, sir.

4 Q And why did y'all leave the apartment?

5 A To go outside to smoke a cigarette.

6 Q Okay. Now, Detective -- the detective said that
7 somebody shouted at him from the balcony.

8 A Yes, sir.

9 Q Did that happen?

10 A Yes, sir.

11 Q Who shouted at him?

12 A Me and Davis.

13 Q Okay. What -- what was that?

14 A Like, we just say who he is.

15 Q Who are you?

16 A Uh-huh.

17 Q Okay. Why would y'all do that?

18 A Because I -- I know a couple people round there; know
19 mostly the whole neighborhood. So, I -- I didn't know who
20 this dude was. So, I just asked him who he was. Usually,
21 when I say who you is, they respond back and say their
22 name. But he didn't even say his name.

23 Q Okay. So, what happened after that?

24 A We gone followed him. Well, we didn't really follow
25 him. We cut through -- beside the F Building. We cut

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

518

1 between D and F -- I mean, E and F.

2 Q Why don't you come down here.

3 A (Complies.)

4 MR. ARCHER: Judge, you got the pointer pen?

5 THE COURT: I do. I've got them both right here.

6 MR. ARCHER: Super. Okay. Dervick, let me show you
7 something.

8 Oh. You got two of them? Good. Wonderful,
9 wonderful, wonderful.

10 Q All right. You stand over there. Now, this is C, D,

11 --

12 A E.

13 Q -- E --

14 A F.

15 Q -- F and G.

16 A Uh-huh.

17 Q Show us where you were, when you started off.

18 A Me and Davis was right there (indicates.) He be
19 coming from this building right there (indicates.)

20 Q Okay.

21 A He come through right here, and me and Davis cut
22 through the park. We came and meet him right here
23 (indicates.)

24 Q Uh-huh. Now, why -- why did y'all do that?

25 A To see who he been.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

519

1 Q Okay.

2 A He still ain't never said who his name was.

3 Q Okay. Do you recall, I mean, when y'all -- when y'all
4 sort of meet up over here (indicates), does anybody say
5 anything?

6 A How you mean, like --

7 Q Does anybody say anything? Did you say anything to
8 him? Did -- did Quinntavious say anything to him?

9 A Yeah. We were still asking him who your name was and
10 who you was; where you come from.

11 Q Uh-huh. And what response did you get?

12 A He be like, I'm just a friend; just -- he ain't really
13 say where he come from. He be like, Just a friend.

14 Q Uh-huh. And y'all had never seen him in the complex
15 before; is that right?

16 A No, sir.

17 Q Okay. Now, at any point in time, did Quinntavious
18 Davis pull his gun?

19 A Yeah. His gun was already pull out when we gone over
20 there.

21 Q Okay. At any point in time, did the officer pull his
22 gun?

23 A Yes, sir.

24 Q Did you see him pull his gun?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

520

- 1 Q What did you do when you saw him pull his gun?
- 2 A I pulled my gun, too.
- 3 Q Okay. Did you say anything to Quinntavious?
- 4 A No, sir. I mean, at the time?
- 5 Q Yeah.
- 6 A Yeah. I tell him that he had a gun.
- 7 Q Okay. You told him -- said, He's got a gun?
- 8 A Yes, sir.
- 9 Q Okay. Were you scared?
- 10 A A little bit, yeah.
- 11 Q Okay. What -- what scared you?
- 12 A Because all us got guns out. I know something bout to
13 go wrong.
- 14 Q Uh-huh. Okay. What happens then?
- 15 A Davis, he be right here (indicates) --
- 16 Q Uh-huh.
- 17 A -- and I be right there (indicates.) Officer been on
18 the sidewalk; he still ain't answered Davis. Davis take
19 off right here by him. Officer take off running; Davis
20 take off right behind him, shooting. Shooting like -- I
21 guess like -- I don't really know. Like three times at the
22 most.
- 23 And I froze up right there for a little minute,
24 because I still be kind of blank. And I run back over to
25 the ■ Building and ran upstairs to ■ after. Davis was

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

521

1 coming in after me, like two or three minutes later.

2 Q Okay. Now so, y'all are standing out here initially
3 with -- three guys with guns, right?

4 A Yes, sir.

5 Q And that -- you were afraid something bad was going to
6 happen?

7 A Yes, sir.

8 Q Okay. Did you at any point --

9 (Attempting to use laser pointer) This doesn't want to
10 work. I'll come over by you.

11 Now, you've been here. The officer ---

12 THE COURT: Can't see, Mr. Archer. You're going to
13 have to move.

14 MR. ARCHER: Yeah.

15 THE COURT: There you go.

16 Q ~~The officer has testified that you came here to the~~
17 corner of D. Did you ever do that?

18 A No, sir.

19 Q All right. Did you -- when you were -- you were going
20 back to C from this area (indicates)?

21 A Yes, sir.

22 Q Did you go anywhere other than in a straight line from
23 -- from this area back to the C complex?

24 A No, sir.

25 Q All right. Did you ever, at any time, fire your

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

522

1 weapon at Officer Gibbons?

2 A No, sir..

3 Q All right. Now, do you recognize this?

4 A Yes, sir.

5 Q What is this?

6 A It was my jacket.

7 Q Were you wearing it that night?

8 A Yes, sir.

9 Q Were you wearing it when you went out with -- went out
10 to --

11 A With Davis?

12 Q Uh-huh.

13 A Yes, sir.

14 Q Okay. And I got to tell you, that's one ugly jacket.

15 Did you -- I'm showing you what is marked as
16 Defendant's Exhibit 11. Were you wearing that that night?
17 That shirt?

18 A That's when I was in the back of the police car.

19 Q Uh-huh. That's in the back of the police car.

20 A Uh-huh.

21 Q Is this what you were wearing under that jacket?

22 A Yes, sir.

23 Q Okay. And what I designated as "ugly jacket" is
24 State's Exhibit 8. I think I failed to identify it.

25 I'm going to ask you again: Did you ever fire a

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

523

1 weapon at Officer Gibbons?

2 A No, sir.

3 Q Did -- you did pull your weapon at some point.

4 A Yes, sir.

5 Q Do you believe he -- he could have seen you pull that
6 weapon?

7 A Probably could have.

8 Q But before you saw him pull his weapon -- did you pull
9 yours -- yours before or after you saw him pull his gun?

10 A After.

11 Q What were you doing with -- as far as the weapon was
12 concerned before he pulled it?

13 A I had my hand in my back pocket.

14 Q And that's where the gun was?

15 A Yes, sir.

16 Q So, before he pulled it, you had your hand on your
17 gun.

18 A Yes, sir.

19 Q You saw him pull it, that's when you pulled yours out.

20 A Yes, sir.

21 Q What did you do with it when you pulled it out? How
22 did you -- how were you holding it?

23 A Hold it to the side like this (indicates.)

24 Q You were holding it to the side.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

524

- 1 Q Okay. Did Officer Gibbons, at any point in time, ever
2 identify himself as a police officer?
- 3 A No, sir.
- 4 Q Was he dressed like a police officer?
- 5 A No, sir.
- 6 Q How was he dressed?
- 7 A All black with a skully on; all in one. He was
8 looking like something I ain't never seen before. People
9 in all black come to do some crimes. That's how I figure
10 it.
- 11 Q You thought he was there to commit a crime.
- 12 A Yes, sir.
- 13 Q Okay. All right. Take a seat.
- 14 A (Complies.)
- 15 Q After you were arrested, you eventually talked to the
16 police about what happened; did you not?
- 17 A Yes, sir.
- 18 Q When you talked to them, did you tell them the truth,
19 the whole truth, and nothing but the truth?
- 20 A No, sir.
- 21 Q Well, so you lied to them about something?
- 22 A Yes, sir.
- 23 Q What did you lie to them about?
- 24 A In my statement, I accused Donnell Campbell, which
25 really, Quinntavious Davis been out there with me.

DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

525

1 Q So, you told them that you were with Donnell Campbell,
2 rather than Quinntavious?

3 A Yes, sir.

4 Q Why did you do that?

5 A Because at the time, me and Davis were real cool;
6 close friends.

7 Q Uh-huh. So, you were trying to protect your friend?

8 A Yes, sir.

9 Q Okay. That caused Mr. Campbell a lot of trouble.

10 A Yes, sir.

11 Q So, you sorry for that?

12 A Very sorry.

13 Q Okay.

14 MR. ARCHER: I have no further questions, Your Honor.

15 THE COURT: All right. Cross-examination, Mr. Bell.

16 ~~(Referring to the laser pointer) He might --~~

17 MR. BELL: Thank you.

18 MR. ARCHER: You want it?

19 THE COURT: That -- that was actually mine, too.

20 MR. ARCHER: Oh. That's your's?

21 THE COURT: Can you believe how prepared I was.

22 MR. ARCHER: I'm just going to leave it there. If
23 somebody wants it --

24 THE COURT: One good one, and one nothing one. Okay.

25 Yes, sir, Mr. Bell. Cross-examination.

1 CROSS-EXAMINATION BY MR. BELL:

2 Q Sir, do you remember giving a statement to the police
3 back on February 29th of last year?

4 A Yes, sir.

5 Q I believe a Detective Vann, who's in the back of the
6 courtroom ---

7 MR. ARCHER: May we approach the bench, Your Honor?

8 THE COURT: You may.

9 MR. ARCHER: I mean, I -- I'd like to have ...

10 (Bench conference.)

11 THE COURT: Ladies and gentlemen, I need to address a
12 matter outside your presence. Please step to your jury
13 room. Do not discuss this matter or allow anyone to
14 discuss it with you.

15 (Jury exits at 10:05 a.m.)

16 THE COURT: All right. Now, you have an objection.

17 MR. ARCHER: Yes, ma'am.

18 THE COURT: All right.

19 MR. ARCHER: I filed a motion to suppress this
20 statement he's getting ready to cross-examine him on. At
21 the beginning of the trial, Mr. Bell said, "We can make
22 that simple. I don't intend to introduce the statement."

23 THE COURT: Right.

24 MR. ARCHER: But regardless of that, I'm not clearly -
25 - know as an experienced lawyer, that if my client gets up

1 and lies on the stand, he's got a right to impeach him.
2 With that very reason, I had my client explain that he
3 originally lied to the police. All right.

4 THE COURT: Okay.

5 MR. ARCHER: So that he'd be telling the truth, rather
6 than lie.

7 THE COURT: Okay.

8 MR. ARCHER: Whether by statement or omission.

9 And I -- and yesterday, I came up to Mr. Bell and I
10 said, "Now, Mr. Bell," -- I said, "Harrison, my guy's going
11 to take the stand." And I said, "If he doesn't say
12 anything about the fact he lied, you gonna impeach him?"

13 And he said, "One hundred percent."

14 THE COURT: Yes.

15 MR. ARCHER: Which is why I very specifically
16 introduced it prior right here, had him talk about it.

17 Truthfully, if Harrison had said "no," I wouldn't have
18 said anything about it. Okay.

19 But my position is that whether by ruling after a
20 suppression hearing or by agreement, he said he's not going
21 to use that statement. And he -- that -- even at that, I
22 would not -- I can't use that as a sword for my client to
23 lie.

24 But if my client has not lied on the stand, I think
25 he's bound by his agreement not to go back and start

1 questioning him based on a statement that he agreed he
2 wasn't going to use.

3 THE COURT: Okay. So, let me just be -- the statement
4 that you had your client talk about that he gave to the
5 police --

6 MR. ARCHER: Uh-huh.

7 THE COURT: -- you talked about it.

8 MR. ARCHER: Yes.

9 THE COURT: And Mr. Bell said before trial, that he
10 did not intend to use the statement. I certainly
11 understood that to mean that he didn't intend to use the
12 statement in his case in chief.

13 I'm unaware of a -- a circumstance that where the
14 other side runs up and kicks that door wide open, that
15 somehow the other side of a case has bound themselves that
16 they cannot address an issue before the jury that's been
17 put there by the -- the side objecting to it.

18 Now, I -- I would agree with you 100 percent that if
19 you had not used that statement, if it wasn't ripe for
20 impeachment, that -- that'd be one thing. But you can't
21 use -- you're now using the statement as a sword and a
22 shield.

23 MR. ARCHER: No. I don't think so.

24 THE COURT: Sure you are, Mr. Archer, for this reason
25 --

1 MR. ARCHER: Uh-huh.

2 THE COURT: Because he's changed his story. And this
3 jury has got to decide was he lying then or is he lying
4 now.

5 MR. ARCHER: Well --

6 THE COURT: And -- and it is impossible for the jury
7 to make ---

8 MR. ARCHER: Let me ask you this ---

9 THE COURT: --- stop ---

10 MR. ARCHER: May I approach?

11 THE COURT: --- to make that determination if -- if
12 you're opposing -- your opponent is hamstrung, and cannot
13 address the issue before the jury.

14 Mr. Bell, I'm sorry. I should --

15 MR. ARCHER: Well ---

16 THE COURT: -- but it's -- it's pretty obvious.

17 MR. ARCHER: Well, I -- well, let me just put on the
18 record --

19 THE COURT: Sure. Please.

20 MR. ARCHER: Okay. At first, I would have proceeded
21 with a suppression motion --

22 THE COURT: You what now?

23 MR. ARCHER: -- had it not been for the representation
24 of Mr. Bell.

25 THE COURT: Well ---

1 MR. ARCHER: And I think there's a real constitutional
2 issue of cat-out-of-the-bag when they start interviewing
3 before they give him his Miranda warnings, then come back
4 afterwards after he said everything. But that's beside the
5 point.

6 That if we just assume it was out --

7 THE COURT: Uh-huh.

8 MR. ARCHER: -- that Mr. Bell has the right to impeach
9 him if he lies from the stand. You can't, you know, use
10 that as a shield against the statement he's already made.
11 The shield is he can't be protected from what he's -- what
12 he's already said.

13 But when he admits that he was incorrect, I think Mr.
14 Bell's got to show he's lied about something before --
15 under these circumstances. He's got to show he's lying
16 about ---

17 THE COURT: Hold on one second. Norfolk Southern's --
18 (Train horn blows outside.)

19 MR. ARCHER: Huh?

20 THE COURT: Norfolk Southern's gotta do their thing.

21 MR. ARCHER: Uh-huh.

22 THE COURT: Okay.

23 MR. ARCHER: If I hadn't -- I couldn't use that. This
24 would be using it as a shield. Okay.

25 One --

1 THE COURT: But you -- what you are doing -- here's
2 what you're doing when you take that position.

3 MR. ARCHER: Uh-huh.

4 THE COURT: When you take the position that you have
5 taken, what you are doing is that you are saying to this
6 jury that he gets to choose, the witness gets to choose
7 what is the truth and when. And if he decides that today,
8 this is the truth, then -- then that can't be challenged.
9 And that certainly isn't the law.

10 Now, I don't know when he was telling the truth.

11 MR. ARCHER: Uh-huh.

12 THE COURT: He says today that he was lying then.
13 Well, maybe he's lying now. I don't know. I mean, that's
14 for the jury to determine. Certainly not for me to
15 determine.

16 ~~But what you propose -- what you propose, is that the~~
17 statement can remain unchallenged. You're right, the
18 statement didn't come in in the State's case in chief, and
19 I cannot tell you what my ruling would have been if -- if
20 Mr. Bell attempted to go into the statement. But you bit
21 into it.

22 MR. ARCHER: I -- I understand, Your Honor. But I --
23 and just for the record --

24 THE COURT: I understand. Very well. I - I'm ---

25 MR. ARCHER: For the record, I -- I ----

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

532

1 THE COURT: Mr. Bell, anything you need to add ---

2 MR. ARCHER: --- I think he should make an offer ---

3 THE COURT: --- in terms of your argument?

4 MR. ARCHER: I think he should have to make an offer
5 where it's necessary for them to use the statement to
6 impeach a statement of my client.

7 THE COURT: Thank you. Thank you. Yes?

8 MR. BELL: Your Honor, I would just add -- and it's
9 usually a defense argument that, you know, I don't see how
10 the State can be limited in it's cross-examination. I
11 mean, we're here for the truth and as been said many times,
12 many ways in the legal community, cross-examination is the
13 greatest tool to get to the truth.

14 THE COURT: Alas. Okay. Let me have the jury.

15 (Jury enters at 10:13 a.m.)

16 THE COURT: (To court security) Thank you, Mr. Taylor.
17 All right. Cross-examination.

18 MR. BELL: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. BELL CONTINUES:

20 Q Sir, you talked to the police on February 29th, the
21 day -- the day after the shooting, correct?

22 A Yes, sir.

23 Q 2008. You talked to Detective Vann and Detective
24 Bistromowitz, correct?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

533

1 Q And you gave them a statement. They read you Miranda
2 warnings, right?

3 A (No audible response.)

4 Q They told you you had the right to remain silent, and
5 anything you say can and will be used against you in a
6 court of law, right?

7 A Yes, sir.

8 Q And you -- you said you understood them and you
9 initialed and you signed that paper, right?

10 A Yes, sir.

11 Q And then, I think, the detective wrote the statement
12 as you told it, correct?

13 A Yes, sir.

14 Q And you signed the bottom of your statement that this
15 is my statement; two pages, right?

16 A Yes, sir.

17 Q I want to show you. This is a copy of -- this is two
18 pages. I'm going to hand it to you and ask if you
19 recognize this.

20 A Yes, sir.

21 Q Is that the statement you gave on February 29, 2008?

22 A Yes, sir.

23 Q Okay. I'm going to let you hold a copy so you can --
24 I'm going to ask you to read through it right now silently.
25 Just read through it so you can refresh your memory.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

534

- 1 A (Complies.) Go ahead, sir.
- 2 Q You got it?
- 3 A Yes, sir.
- 4 Q Now, as you testified and in the statement, you said
5 that Donnell Campbell, that you and Donnell Campbell came
6 out, correct?
- 7 A Yes, sir.
- 8 Q You said to smoke a blunt; is that correct?
- 9 A Yes, sir.
- 10 Q What's a "blunt"?
- 11 A Weed.
- 12 Q Okay. And you saw the -- you said "the officer," but
13 you didn't know he was an officer at the time. Is that
14 what your testimony is here?
- 15 A Yes, sir.
- 16 Q Coming outside of G Building, right?
- 17 A Yes, sir.
- 18 Q Who lives in G Building? Do you know?
- 19 A Mia.
- 20 Q Who's Mia?
- 21 A Mia Anderson.
- 22 Q Is that your girlfriend?
- 23 A At the time.
- 24 Q Okay. But she wasn't there right then. She was up in
25 the apartment, correct?

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

535

1 A Yes, sir.

2 Q Came outside. And you said, "Donnell grabbed his gun
3 from his hip."

4 A Yes, sir.

5 Q Okay. You mention Donnell twice. And that y'all --
6 he went behind the E and F building and you kind of
7 followed along; is that right?

8 A Yes, sir.

9 Q That what you -- was that what you wrote?

10 A Yes, sir.

11 Q Okay. And then you -- again, "Donnell asked him."
12 You mention Donnell by name a third time, right?

13 A Yes, sir.

14 Q And you said, "Donnell started shooting at him."

15 A Yes, sir.

16 Q A fourth time. Right?

17 A (No audible response.)

18 Q And then you started running. You heard five or six
19 gunshots.

20 A Yes, sir.

21 Q Is that what you wrote -- what you told the officers?

22 A Yes, sir.

23 Q And "I ran into the apartment where I met up with
24 Donnell."

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

536

- 1 Q "Donnell was already at the apartment."
2 A Yes, sir.
3 Q Right?
4 A Yes, sir.
5 Q That's five/six times you mention Donnell. You
6 haven't mentioned Quinttavius Davis at all, have you?
7 A No, sir.
8 Q You didn't tell them about Quinttavius Davis back on
9 February 29th, the day after the shooting, right?
10 A No, sir.
11 Q Okay. Let's go to page two, top of page two.
12 A (Complies.)
13 Q You said, "I didn't see the officer shoot back at
14 Donnell," right?
15 A Right.
16 Q "But I could hear it. Donnell had a .38."
17 A Yes, sir.
18 Q Is that the truth or a lie?
19 A A lie.
20 Q You testified you had the .38 ---
21 A Yes, sir.
22 Q --- correct?
23 "It was a grey revolver. I don't know where the other
24 game -- other gun came from that was found in the
25 apartment."

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

537

1 Is that the truth or a lie?

2 A A lie.

3 Q Where did it come from?

4 A Davis; Quinntavious Davis.

5 Q Okay. Again, "Donnell shot at the officer five or six
6 times. After Donnell shot at the officer, he ran around
7 the back of C Building. I didn't even talk to Donnell."

8 That's all you're talking about is Donnell, Donnell,
9 Donnell in this statement, right?

10 A Yes, sir.

11 Q So, you're saying this whole statement's a lie.

12 A Yes, sir.

13 Q This whole statement's a lie. Donnell didn't have
14 anything to do with the shooting.

15 A No, sir.

16 Q Donnell had -- didn't have a .38.

17 A No, sir.

18 Q So, now you're coming and saying, "Oh. It was
19 Quinntavious Davis," right?

20 A Yes, sir.

21 Q Isn't the only reason that you're saying that is
22 because he came up and testified against you the other day?

23 A No, sir.

24 Q Isn't that the only reason that you said that?

25 A No, sir.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

538

1 Q Because he pinned it on you.

2 A No, sir.

3 Q You had to -- you had to pin it on him.

4 A No, sir.

5 Q Okay.

6 MR. ARCHER: Your -- Your Honor, the reason I'm up is
7 I can't see through Mr. Bell. He's standing right in my
8 line of vision. I apologize for that.

9 THE COURT: I tell you what, if you need to come
10 closer, bring your chair.

11 MR. ARCHER: Okay.

12 THE COURT: You can bring your chair -- bring one of
13 these chairs and just move it closer. I do understand, Mr.
14 Archer.

15 My -- my concern is -- and you can move that closer.
16 Slide that chair ---

17 MR. ARCHER: No. It's is fine. This is fine.

18 THE COURT: --- to the table.

19 MR. ARCHER: I just -- I just want to be able to see -

20 --

21 THE COURT: Not a problem.

22 MR. ARCHER: --- my client and Mr. Bell.

23 THE COURT: Please re-position yourself so you can.

24 All right, Mr. Bell.

25 CROSS-EXAMINATION BY MR. BELL CONTINUES:

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

539

1 Q Now, let's talk about when the officer left the
2 apartment.

3 A Yes, sir.

4 Q Y'all were over -- y'all were over here kind of, and
5 he was at this apartment right here (indicates.)

6 A Yes, sir.

7 Q Did he come towards y'all?

8 A No, sir.

9 Q Did he show a gun and come towards y'all?

10 A No, sir.

11 Q Which way was he going?

12 A Around the -- just the -- F Building.

13 Q He was going away from you, right?

14 A Yes, sir.

15 Q He wasn't bothering you.

16 A No, sir.

17 Q Didn't say anything to you.

18 A No, sir.

19 Q You don't even live in Haven Oaks, right?

20 A No, sir.

21 Q Does Quinntavious Davis live in Haven Oaks?

22 A No, sir.

23 Q So, it's not your neighborhood.

24 A No, sir.

25 Q And y'all were worried about this guy out there, huh?

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

540

- 1 A Yes, sir.
- 2 Q But he's going away from y'all. Was he running away
3 from you?
- 4 A No, sir.
- 5 Q Was he walking?
- 6 A Yes, sir.
- 7 Q And he's going around towards the parking lot, right?
- 8 A Yes, sir.
- 9 Q Not bothering you. But you and Quinntavious have to
10 go see what he's up to, right?
- 11 A Yes, sir.
- 12 Q Because you think he's a burglar?
- 13 A He could be anybody for I know.
- 14 Q Okay. And he went around the far side of the
15 building, right?
- 16 A Yes, sir.
- 17 Q That's the building -- y'all went between E and F
18 Building.
- 19 A Yes, sir.
- 20 Q Still, he hadn't come towards you, right?
- 21 A No, sir.
- 22 Q Y'all were going towards him.
- 23 A He was going towards him.
- 24 Q Who's he?
- 25 A Davis.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

541

1 Q Where were you?

2 A In the backside of the building, right -- the end --
3 the first beginning of E and F.

4 Q You were following Quinttavius, though.

5 A Yes.

6 Q You weren't back at the C Building.

7 A No, sir.

8 Q And the officer comes around, he's walking along the
9 sidewalk, isn't he?

10 A Yes, sir.

11 Q Next to the parking lot.

12 A Yes, sir.

13 Q Minding his own business.

14 A Yes, sir.

15 Q Is he bothering anybody?

16 A No, sir.

17 Q Is he bothering any of your friends?

18 A No, sir.

19 Q Is he bothering you?

20 A No, sir.

21 Q Is he bothering Quinttavius?

22 A No, sir.

23 Q He gets around the sidewalk, and Quinttavius starts
24 asking who he is, right?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

542

- 1 Q Is the officer still on the sidewalk?
- 2 A Yes, sir.
- 3 Q Has he come towards y'all?
- 4 A No, sir.
- 5 Q Quinntavious is going towards him?
- 6 A Yes, sir.
- 7 Q You following behind?
- 8 A No, sir.
- 9 Q Now, you said the officer pulled out a gun.
- 10 A Yes, sir.
- 11 Q How did he pull it out?
- 12 A From the side.
- 13 Q From the side. Did he have it out like that
- 14 (indicates)?
- 15 A No, sir.
- 16 Q Where did he have it?
- 17 A To the side.
- 18 Q How do you know it was a gun?
- 19 A I mean, common sense would have tell you that. If he
- 20 pulls something out, it ain't gonna be no phone or nothing.
- 21 Q Mr. -- Mr. Parker, did you see the officer with a gun?
- 22 A Yes, sir.
- 23 Q Where did he have it?
- 24 A To his side.
- 25 Q Which side?

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

543

1 A His right side. You could see it moving when he
2 walking.

3 Q The side away from you, right?

4 A Yes, sir.

5 Q Did he have it down by his side like this (indicates)?

6 A When he walking, you could see it moving back and
7 forth.

8 Q He's doing like this (indicates), right.

9 A You could see the barrel of the gun.

10 Q You could see the barrel of the gun. How far away
11 from him were you?

12 A I can't really -- probably from like where you at to
13 my mama in the back.

14 Q What kind of gun did he have?

15 A I don't know what kind of gun, but ...

16 Q You saw the gun by his side?

17 A Yes, sir.

18 Q And -- but he had it by his side, right?

19 A Yes, sir.

20 Q Was he pointing it at Quinntavious?

21 A No, sir.

22 Q Was he pointing it at you?

23 A No, sir.

24 Q You said Quinntavious said -- told him -- asked him
25 again, who was he. And he said something about friends,

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

544

- 1 right?
- 2 A Yes, sir.
- 3 Q Then he said he was leaving, right?
- 4 A I think so.
- 5 Q He said, "I'm leaving."
- 6 A I think so.
- 7 Q Is the officer still walking at this time?
- 8 A Yes, sir.
- 9 Q Walking away from y'all?
- 10 A Yes, sir.
- 11 Q Okay. So, then Quinttavius kind of -- you're
- 12 testimony is he moves in behind the officer, right?
- 13 A Yes, sir.
- 14 Q Over towards the sidewalk.
- 15 A Yes, sir.
- 16 Q He fires at him.
- 17 A Yes, sir.
- 18 Q What does the officer do then? What does that man do?
- 19 A Take off running.
- 20 Q Take off running. Did he appear to be hurt?
- 21 A I don't know.
- 22 Q Did -- did he fall down or anything?
- 23 A I wouldn't know.
- 24 Q Which way was he running?
- 25 A Going in the Bi-Lo parking lot.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

545

1 Q When -- when Quinntavious fired at him, did the
2 officer pull his gun up?

3 A I wouldn't know.

4 Q You wouldn't know? Where were you?

5 A I was on my way going back to the C Building.

6 Q Okay. So, you never saw the officer again.

7 A No, sir.

8 Q Officer never pointed his gun at you.

9 A No, sir.

10 Q You didn't point your gun at him.

11 A No, sir.

12 Q Okay. How old are you?

13 A Nineteen.

14 Q You were 18 back in February?

15 A Yes, sir.

16 Q A little young to have a gun, aren't you?

17 A Yes, sir.

18 Q Why do you have a gun?

19 A For protection.

20 Q Protection from what?

21 A This world.

22 Q The world?

23 A Yes, sir.

24 Q Everybody have a gun in this world?

25 A Close of them.

CROSS-EXAMINATION BY MR. BELL - DERVICK PARKER

546

- 1 Q Just everybody at Haven Oaks.
- 2 A No. Just everybody in the world.
- 3 Q Okay. How long did you have that gun?
- 4 A Like three or four months before then.
- 5 Q Where did you get it from?
- 6 A From a friend.
- 7 Q From a friend? How much you pay for it?
- 8 A A hundred dollars.
- 9 Q Hundred dollars. Did you know the gun was stolen?
- 10 A No, sir.
- 11 Q So, your story is this is all on Quinttavius. You
- 12 didn't do anything.
- 13 A No, sir.
- 14 Q You didn't fire any guns.
- 15 A No, sir.
- 16 Q You did nothing towards the officer.
- 17 A I had my gun out. That's it.
- 18 Q And he never threatened you in any way.
- 19 A No, sir.
- 20 MR. BELL: Thank you. I have nothing further.
- 21 THE COURT: Re-direct.
- 22 RE-DIRECT EXAMINATION BY MR. ARCHER:
- 23 Q Did Quinttavius do the things you said Donnell
- 24 Campbell did in your statement?
- 25 A Half of it.

RE-DIRECT EXAMINATION BY MR. ARCHER - DERVICK PARKER

547

1 Q Okay. All right. Did -- did Quinntavious ever ask
2 the officer what he was doing there?

3 A Yes, sir.

4 Q And what was the officer's response?

5 A Nothing.

6 Q Nothing?

7 A Yes, sir.

8 Q Okay.

9 MR. ARCHER: I have no questions.

10 THE COURT: Very well.

11 MR. ARCHER: You can step down.

12 THE COURT: Is there any re-cross?

13 MR. BELL: Your Honor, the only thing I'd have is at
14 this point -- I forgot to do it -- I would move the copy of
15 the statement he's identified as his into evidence as
16 State's 45.

17 MR. ARCHER: I object, Your Honor. He's been allowed
18 to fully cross-examine him on this. And I could go on in
19 parts of what we discussed before about this.

20 THE COURT: Sure. I sustain the objection.

21 All right. You may come down, Mr. Parker.

22 (The witness steps down.)

23 THE COURT: All right. Call your next witness,
24 please, sir.

25 MR. ARCHER: That concludes our case, Your Honor.

1 THE COURT: Will there be any -- thank you, Mr.
2 Archer.

3 Will there be any reply or rebuttal?

4 MR. BELL: None from the State, Your Honor.

5 THE COURT: Very well. All right. Ladies and
6 gentlemen, you have now received the evidence and heard the
7 witnesses which you will in this case. What remains for us
8 are the arguments of counsel and my charge or instruction
9 on the law.

10 Now, ladies and gentlemen, I think rather than have
11 you -- there are some matters that I must attend to. And
12 just in terms of our scheduling, I think what is
13 appropriate, to accommodate in the most appropriate way,
14 ladies and gentlemen, is I am going to let you be at ease
15 for awhile, because there are some things that -- there are
16 matters that I must hear.

17 In all candor, there is a very short meeting that I
18 must attend for the courthouse. I told you all -- and
19 please notice as you leave Saint George, if you're heading
20 down 78, back towards Summerville -- but I must attend to
21 that for a very short period of time as well.

22 So, I think what's appropriate is to go ahead and give
23 you a break, let you get some lunch. I know you're
24 probably not hungry right now, but you can attend to that.
25 And we are going to reconvene at 12:45. I know that's a

1 little longer than we normally do, but rather than have you
2 in your jury room, I think it's more appropriate that you
3 are having your own time in that regard.

4 Ladies and gentlemen, you have not heard the arguments
5 of counsel, nor my charge on the law. And so, you must not
6 discuss this matter or allow anyone to discuss it with you.
7 You must not read anything or listen to anything about this
8 matter, of course, on the radio, television, newspaper, or
9 on the internet.

10 When you return at 12:45, here's what will occur: You
11 will hear the arguments of counsel, and then you will hear
12 my charge on the law. And then you will receive this case
13 for your deliberations.

14 Now, with the -- with the instruction not to discuss
15 this matter or allow anyone to discuss it with you, ladies
16 and gentlemen, if you will, please, go to your juror room.
17 And then you can go about your business until 12:45. Thank
18 you.

19 (Jury exits at 10:28 a.m.)

20 THE COURT: All right. Very well. Are there any
21 motions, Counsel?

22 MR. ARCHER: Renew motions.

23 THE COURT: Very well. Thank you, Mr. Archer.

24 MR. ARCHER: I do have some request to charge.

25 THE COURT: Okay.

1 MR. ARCHER: I would assume you have to see -- you
2 would have available ---

3 THE COURT: Very well. Let me -- let me see those,
4 please.

5 And Counsel, let me tell you what --

6 (To Mr. Archer as he hands paper up to the Court)
7 Thank you.

8 If you all give me about 10 minutes for an informal
9 charge conference, and then I'm going to give you the
10 charge. Andrew's finishing it now, and he'll give you
11 that. And you all can go over that, and then we'll --
12 before -- before you all come out and argue, we'll have
13 another informal charge conference.

14 But come on and step back here with me, gentlemen.

15 MR. ARCHER: Sure.

16 THE COURT: And we'll be in recess until 12:45.

17 And just for -- of course, let me just be clear, that
18 I respectfully deny your motion for directed verdict.

19 MR. ARCHER: Oh, yeah.

20 (Off the record at 10:29 a.m.)

21 (On the record at 12:59 p.m.)

22 THE COURT: All right. Anything before we bring the
23 jury out from the State?

24 MR. BELL: Nothing from the State.

25 THE COURT: From the defense?

1 MR. ARCHER: Nothing from defense, Your Honor.

2 THE COURT: Very well. All right. Let us have the
3 jury, please.

4 (Jury enters at 12:59 p.m.)

5 THE COURT: All right. Ladies and gentlemen, let me
6 tell you how we will be proceeding. You will first hear
7 from Mr. Bell on behalf of the State and his closing
8 argument, his first argument. You will then hear from
9 counsel for the defense. And you will then hear from the
10 State in their final argument. That will then conclude the
11 closing arguments. There will be then a very short break,
12 that I will explain to you when we get to that point. And
13 then I will deliver the charge to you on the law.

14 It's probably going to take me about 30 minutes to
15 deliver the charge to you. And then there will be another
16 very short break, which I will explain to you at that
17 point. And then, you will receive this case for your
18 deliberations.

19 Now, ladies and gentlemen, at this time, I ask that
20 you please draw close as we listen to closing arguments of
21 the attorneys.

22 Mr. Bell.

23 MR. BELL: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

1 MR. BELL: Mr. Archer.

2 CLOSING ARGUMENT BY MR. BELL:

3 MR. BELL: Ladies and gentlemen of the jury, at this
4 time it's my pleasure to be up here. I want to talk to you
5 briefly. At this stage, I get to open and talk to you a
6 little bit about the law that I believe is going to be
7 charged to you after our arguments, at the end of this
8 case; that Her Honor will charge you, and that you've taken
9 an oath, at the beginning of this case, to follow as she
10 charges you.

11 But as you know, the defendant is charged with assault
12 and battery with intent to kill. And the explanation of
13 assault and battery with intent to kill, the elements are:
14 First of all, there's assault and battery. An assault is
15 an offer to do bodily harm, or to touch a person
16 offensively, with the present ability to do so.

17 Such as I explained when we first started this trial,
18 if I have you here and I rare back to hit you, that's an
19 assault. I'm getting ready to offensively touch you to do
20 you harm, and I have the ability to hit you, the battery is
21 that: the touching, the offensive touching, the completion
22 of the assault.

23 "With intent to kill" in this state means that an
24 assault and battery occurs with malice aforethought.
25 Malice is a kind of a term of art. There are many

1 definitions of it and ways to describe it. It can be the
2 doing of a wrongful act intentionally, without just cause
3 or excuse. It could be a wrongful intent to injure
4 another. It could be a wicked or depraved spirit that's
5 intent on doing wrong. Those are kind of descriptions of
6 malice.

7 And there are a couple of different types of malice,
8 or ways that malice can be found. There's implied malice
9 and expressed malice. They're not different kinds of
10 malice, they're -- they're just a way that you can find
11 malice.

12 For example, as I used earlier, expressed malice is
13 like, "I'm going to kill you. I'm going to hurt you bad."
14 That's direct, expressed malice. Or if you plan -- if
15 you're planning something, planning to do somebody harm or
16 to kill them; or if you're lying in wait to do someone harm
17 or to kill them. Those are types of expressed malice,
18 direct.

19 There's also implied malice. Implied malice means
20 that you can look at the circumstances surrounding the
21 incident and that you can take those facts and imply malice
22 to it. For instance, chasing someone down intentionally
23 without any just cause; the use of a deadly weapon, such as
24 a gun. A gun's a deadly weapon. That is implied malice.

25 And that's what assault and battery with intent to

1 kill is. It's further said that basically it's murder
2 without the killing of a person, because the definition of
3 murder is killing somebody with malice aforethought, either
4 expressed or implied. So that's assault and battery with
5 intent to kill.

6 We believe that you'll also be charged a couple of
7 lesser included offenses in this case, that are offenses
8 that have some of the elements of assault and battery with
9 intent to kill, but not all of them. And they're lesser
10 included.

11 For instance, one of them is assault with intent to
12 kill, which is assault and battery with intent to kill
13 without the battery, without the touching. That you've
14 offered to hurt somebody with the present ability to do so.

15 For instance, if you point a gun at somebody, and you
16 have a gun in your hand, and you've got your hand on the
17 trigger. You have the present ability to do -- to kill
18 them, but you don't fire. Or if you fire and it goes over
19 their head and it doesn't hit them, that's assault with
20 intent to kill.

21 And finally, there's assault and battery of a high and
22 aggravated nature. That's an assault and battery, with
23 circumstances of aggravation. In South Carolina, there are
24 many circumstances of aggravation: the difference in
25 sizes, difference in gender; in -- it could be indecent

1 liberties upon a woman; use of a deadly weapon without an
2 intent to kill. Those are examples of aggravation.

3 Kind of like if you go to a bar and you drink, and you
4 tell somebody you don't like him. And he hits you over the
5 head with a beer bottle. That's generally assault and
6 battery of a high and aggravated nature. He just came up
7 to hit you. Did you harm, but he wasn't meaning to kill
8 you. He just hit you because you said something bad.
9 That's kind of assault and battery of a high and aggravated
10 nature.

11 Now, ladies and gentlemen, as I told you in the
12 beginning of this -- and the judge will charge you -- the
13 State has the burden of proving the defendant guilty. He
14 doesn't have to prove anything. He doesn't have to offer
15 anything. He doesn't have to prove himself innocent. The
16 State must prove him guilty, and we must do so beyond all
17 reasonable doubt.

18 What's a reasonable doubt? Well, again, as all law
19 is, it's one of those legal terms that's hard to define. I
20 can tell you what it isn't: The State doesn't have to
21 prove a person is 100 percent guilty, because in this life,
22 I can only think of one thing that is for certain in this
23 life, and that's death. The other human existence is --
24 there's a lot of uncertainty to it. So, the State is not
25 required to prove him -- prove a certain 100 percent guilty

1 beyond every and all reasonable doubt. Or a shadow of a
2 doubt, as some of you are fans of old -- old mystery --
3 black and white mystery movies.

4 We don't have to prove him guilty beyond a shadow of a
5 doubt. It's beyond all reasonable doubt. And all
6 reasonable doubt has been defined as "proof that would
7 leave jurors seeking the truth firmly convinced of the
8 defendant's guilt." That's the definition of reasonable
9 doubt in this state.

10 Now, ladies and gentlemen, you'll also be instructed,
11 and in this case there exists, two types of evidence; two
12 different types of evidence. But they have the same
13 weight. You can consider them same -- the same. One's not
14 greater than the other, they carry equal weight. And
15 that's direct evidence and circumstantial evidence.

16 Direct evidence is evidence that is obtained by the
17 use of your senses, your five senses: sight, smell,
18 hearing, touch, and taste. I saw something; I heard
19 something; I smelled something; I felt something; I tasted
20 something. That's direct evidence. I saw him do that.
21 That's direct evidence.

22 And there's circumstantial evidence. I'm sure each
23 and every one of you have heard circumstantial evidence. A
24 lot of people think that's -- that's some bad evidence.
25 It's not. It's good evidence. Just as good as direct

1 evidence.

2 But what is it? What's circumstantial evidence?

3 Well, circumstantial evidence is a chain of facts. It can
4 be one, it can be two, three, four, five -- however many
5 facts, that when you put them together, you can imply or
6 conclude another fact, even though that fact was not seen
7 or heard or touched by anyone.

8 For instance, I'll give you a very short example:
9 Let's say, for instance, you came into this courthouse.
10 This courthouse didn't have windows. You came in this
11 morning: The sky was blue; the sun was out. And you came
12 in the room; no windows. You leave the courthouse at the
13 evening: It's cloudy. You look down, the sidewalk's wet.
14 You look over on the road there's puddles. You get to your
15 car, and there's drops of water on your car.

16 Now, you would conclude that while you were in the
17 courthouse, it rained, because it's cloudy, sidewalk's wet,
18 there's puddles, and there's water drops on your car. You
19 didn't see it rain. You don't have direct evidence that it
20 rained. But you used those facts to conclude it rained.

21 That's circumstantial evidence. And that's what you
22 can use. You can take facts in a case, and put them
23 together to come to a concluding fact.

24 Now, ladies and gentlemen, as I talked about earlier,
25 people have different roles in this courtroom. I'm the

1 prosecutor: It's my job to present and prove the State's
2 case. Defense attorney's job to defend his client. Your
3 job is you sit as judges, equal judges as Judge Goodstein.
4 You have -- are the judges of the facts, and nobody can
5 tell you how to find those facts. It's your job, listening
6 to testimony up here on the stand, exhibits that have been
7 presented. You take what you've seen, what you've heard,
8 you go back in; and y'all 12, collectively, determine what
9 the facts in this case are.

10 And then, Judge Goodstein is the judge of the law.
11 She gives you the law. She is the final arbiter of the
12 law, and what she says about the law in this courtroom
13 goes. And it can be no different.

14 And you've taken that oath that you'll follow the law
15 that she gives you. Regardless if you don't like the law
16 or you think it's not good, if you think it's terrible,
17 that can't enter into it. What she says about the law
18 goes. And you must follow it, ladies and gentlemen,

19 And as I said earlier, and you'll also be told, part
20 of your job in finding the facts is the credibility of
21 witnesses, the believability of witnesses. And as I said
22 earlier, you do it as you do every day in life: You look
23 and see and listen, and figure out if somebody's handing
24 you a line or if they're telling you the truth. Just how
25 you do every day when you talk to friends, family, or

1 strangers. That's all I can tell you about how to find --
2 when there's somebody -- you think somebody's telling the
3 truth.

4 Now, ladies and gentlemen, at this point, I have
5 finished talking to you about the law. I will sit down
6 now. Mr. Archer will come up here and argue the facts as
7 he sees it, and I will come back at the end of his, and
8 finish up and argue the law and argue the facts as -- as
9 the State sees it.

10 Thank you very much.

11 THE COURT: Thank you, Mr. Bell. Mr. Archer.

12 CLOSING ARGUMENT BY MR. ARCHER:

13 Ladies and gentlemen, the first thing I want to do is
14 thank you for your attention over these past three days.
15 You know, this business of trying cases, from where I sit,
16 where Mr. Bell sits, I don't know if you call it as getting
17 exciting, but it sure is stressful. Okay. So, we keep
18 intensity into it, and I've come to recognize over the
19 years, that quite frequently, from your point of view, it's
20 just boring. But I watched y'all and you paid close
21 attention to what's going on.

22 And now, you know, it's my time to do two things: to
23 explain to you -- I asked a lot of questions. Okay. I
24 don't always ask them to the point of where the answers
25 that I'm looking for are obvious, all right, to explain to

1 you how I see the evidence, and what conclusions need to be
2 drawn from it.

3 Now, the first thing I'd like to address is that --
4 two things that always concern me. The law says that --
5 and by virtue of our constitution, that Dervick Parker
6 enters this courtroom presumed innocent. And sometimes
7 I've seen it expressed that he comes into the courtroom
8 bearing a righteous cloak of innocence which must be
9 stripped from him, beyond a reasonable doubt. Okay.

10 And I recognize that's what the law says, but the law
11 doesn't always appear to be real practical. I've come to
12 believe over many years that the average person, individual
13 who's not a lawyer, comes in and looks over and says, That
14 guy must have done something or he wouldn't be here.

15 But now is the time for the truth. All right. The
16 judge is going to tell you that it's your duty to presume
17 that innocence, to question the State's evidence. And the
18 job you have is awesome. The power that lies in you 12
19 people is awesome.

20 Do you realize that you are the only people in the
21 United States of America powerful enough -- I'm not just
22 talking about juries in general -- to order someone put to
23 death. Not even the president of the United States can do
24 that. Not even the president. Not legally. But a jury,
25 in a trial for murder, can say that man shall be put to

1 death. It's an awesome responsibility.

2 And although I worried when I begin a case that
3 perhaps that jury presumes my client guilty, I -- I -- I
4 really don't when I see you leaving the courtroom. Because
5 I think at that point in time, each and every person on a
6 jury realizes the awesome responsibility they bear. Okay.

7 Now, the State's burden, as I said, is to prove my
8 client, and any client, guilty beyond a reasonable doubt.
9 They owe that to Dervick Parker; they owe that to you; they
10 owe that to Shawn Gibbons. They owe the duty to dot the
11 "I's" and to cross the "T's," and to do everything within
12 their power to find the truth and to prove it to you. And
13 they haven't done that in this case.

14 There are so many contradictions in this case -- which
15 I'll be pointing out most of them to you -- so many
16 contradictions, so many holes, so many omissions in this
17 case that your consciousness should be strained to send a
18 yellow dog to the pound on this evidence, much less to
19 possibly rob a young man of his youth on a supercilious
20 charge.

21 And I've heard so many contradictions that -- in the
22 last couple of days -- done this business a long time --
23 something strange started running through my mind. When I
24 was either in the last year of law school or first year or
25 so practicing law, I cut two cartoons out of the paper that

1 had to do with the law. And one of them kept popping into
2 my mind, popping into my mind the whole trial. And it was
3 a cartoon that's no longer -- it's in the funny papers, it
4 was called "Herman." And most all of you are too young to
5 remember, but Herman was this middle-age guy with a big
6 belly and he's going bald; and he had a big nose with a
7 wart on it, you know. And in the cartoon, Herman's
8 standing in the witness box, with one hand on the bible and
9 his right hand up, and he's saying, "The truth, the whole
10 truth, and nothing but the truth? What kind of fair trial
11 is this going to be?"

12 And you know, that's -- that's -- that's true in some
13 ways. Because very few people, no matter how moral they
14 are, come into a court and tell the truth, the whole truth,
15 and nothing but the truth. They may not realize that
16 they're not telling the truth, the whole truth, and nothing
17 but the truth. I mean, some people come in and knowingly
18 lie. But I would submit to you -- I'm going to get to it
19 later -- that that includes Quintavious Davis and Donnell
20 Campbell. All right.

21 But there's other ways that you don't hear truth, the
22 whole truth, and nothing but the truth, and that is that
23 each and every one of us, the truth is blurred by the eyes
24 through which we see it. The truth is blurred by our
25 prejudices, by that which we love, by that which we hate.

1 All right. And it's in human nature, for example, that
2 when we do something wrong -- we don't like to think of
3 ourselves doing something wrong. Y'all are good people.
4 And when we do something wrong, as time goes by, our minds
5 start making it right, start shifting the facts around in
6 certain -- just like the kid who breaks the lamp. And
7 then, by the time mom gets home, he's got a story for it,
8 and he believes the story.

9 But the truth is always covered by whether we want to
10 make ourselves look good, make somebody else look bad, or
11 like I say, our loves or our hates and enemies. And -- and
12 I see a lot of that in this case. And I'll talk with you
13 about it a little bit more later.

14 There's certain things in this case that -- I will say
15 this, what I'm about to do does not give me any great joy.
16 I have the greatest respect for policemen and police
17 departments, for lots of reasons. I've been in the law for
18 so many years. I have a son that's a police officer. Many
19 of these officers who came up and spoke to you, at least
20 several -- and I won't say many, but several of them I've
21 known them. I've known Major Garrison over there for over
22 25 years. He didn't speak to you.

23 The big fellow back there -- where is he? There he
24 is. The one with the bald head and beard, and blue tie,
25 Sean Napoli. The guy who looks like he could whoop Mr.

1 Clean with one hand tied behind his back. He's a pussy
2 cat. Sweetest guy in the world.

3 So, it doesn't give me any great pleasure to say
4 anything unkind about the police. But I have a duty -- a
5 duty. And that changes things. As much as I hate to do
6 it, my duty is to Dervick. My duty to Dervick is to -- in
7 tune with every ounce of my being, to try to convince you
8 people that he is an innocent man. And I can't take any
9 friendships with these fellows and not get it in the middle
10 of that, too.

11 And the honest answer is: This investigation was
12 screwed up. It was a mess. There was a mess from the very
13 beginning.

14 Now, we've taken a long time to get here to this
15 point, but as far as the value of what the evidence in the
16 in between time, most of it's useless. You know, we
17 probably could have put up Detective Gibbons and put up my
18 client, and let y'all go back and figure it out. The rest
19 of it don't have a whole lot of value.

20 You've got Quinntavious Davis -- okay -- who sold his
21 soul for the pieces of silver. I think it was clear back
22 when Quinntavious Davis -- what an amazing guy. He started
23 off in the beginning of his testimony and said white was
24 white, and by the end of his testimony he was saying white
25 was black. He'd say, I never saw Dervick with a gun, or I

1 never saw him shoot at the officer. All I saw was the
2 officer shoot at him. And later he'd say, I saw him
3 shooting at the officer. He just went on and on. He'd say
4 -- he'd say one time -- one time in there he said, Dervick
5 told him the guy's got a gun. And the next time I asked
6 him, he said, No, he didn't tell me they guy has a gun.

7 That guy was willing to say anything he thought would
8 please Mr. Bell, because he sure got a sweetheart deal, as
9 you heard. Went from 20 years possible maximum sentence,
10 or whatever sentence he got. He could not get parole; he
11 had to do 85 percent of it. Not down to 10 years, the
12 maximum for what his pleading to, seven years. He's
13 getting seven years, and not facing a jury like you,
14 risking his youth. And he's the guy that started it all.
15 There's no argument here. He's the guy that started it all
16 by shooting at Shawn Gibbons. Now, maybe he should be not
17 -- found not guilty, too. I don't know. But there's
18 something wrong with him getting a -- seven years, for
19 which he -- he is eligible for parole. So, he can -- he
20 may or may not do seven years.

21 My client had to be here, looking at spending the rest
22 of his youth and maybe not getting out of jail til he's
23 middle age. That's not justice, not justice at all.

24 Donnell Campbell: you may be -- I mean, Donnell
25 really didn't do -- I mean, and my client's apologized up

1 here for saying that Donnell was involved. He's told you a
2 lie. He was 18 years old.

3 Thank God we don't have any 18 year olds on this jury.
4 We got people who have lived there and been there before.
5 And probably some of you may have 18-year-old kids in your
6 home, or 16s or 17s or 15s. And you know the most
7 important thing in their life is their friends.

8 He told a lie when he was first arrested. He's trying
9 to protect a friend. And he shouldn't have done that.

10 Now, Donnell Campbell's going to end up where he
11 should. Assuming that any of these fellows are going to
12 their thing, he's going to end up with accessory after the
13 fact or helping to hide some guns. Okay. That's fair. I
14 don't know why he didn't get the same tariff as -- as
15 Davis. Maybe his testimony wasn't as valuable. I don't
16 know why he didn't get a five or three or two-year cap. I
17 mean, it's clear -- everything -- he didn't do nothing but
18 hide the guns. He wasn't out there shooting. He's too
19 drunk. He passed out in the chair. That's the only thing
20 you can cop to -- conclusion. I mean, from drinking that
21 whatever -- is it Crown Royal, you know?

22 But he's also a liar. You know, he's tried -- he got
23 too far, and he started to say, And the only reason I took
24 and hid those guns was because Quinttavius Davis pointed a
25 gun at me and said if you don't do it, I'm going to hurt

1 you, Bro.

2 That's the only thing that -- when Quinttavius Davis
3 -- when Quinttavius was up here, I said that -- I believe
4 he said, I wouldn't do that. What am I going to do, hand
5 the gun to a guy that I just threatened to kill?

6 But like I say, either one of those guys were willing
7 to say anything that they thought would please the
8 prosecutor. Best thing you probably would do is toss out
9 what they say. They are totally unreliable. As far as
10 evidence right now, police is back to what does Dervick say
11 and what does Shawn say. You know?

12 Well, Shawn's a police officer. Okay? And he's a
13 fine one. He's the sort of young man that any of us would
14 be proud to have for a son or a son-in-law. But I would
15 submit to you that his testimony is not accurate. And --
16 but let me stop for a minute. Why is his testimony
17 entitled to any more weight than is Dervick's? Just
18 because Dervick is young black man who's come up on the
19 hard side, why is his testimony entitled to any more
20 weight, unless you can find a reason for it? Okay?

21 If you could point to a particular reason why you
22 think or say he's lying, give -- then you need to probably
23 give Gibbons' testimony more weight. But the fact -- the
24 mere fact is Shawn Gibbons is a nice young man, and there's
25 nothing to say that Dervick Parker's a nice young man, too,

1 but for he's charged with. Shawn's not entitled to any
2 more weight than is Dervick, just because he's a policeman.

3 Now, okay, so where does that leave us? Well, before
4 I get to where that leaves us, I think there's one thing
5 that is crystal clear in this case is that none of it would
6 have happened at all if Shawn Gibbons had simply said three
7 words: I am a police officer. And he met those words,
8 "What are you doing here?" "I'm a police officer. I'm a
9 police officer, and I'm going to tell you fellows you need
10 to put those guns away and go back to where you came from,
11 or I'm arresting you." Or you're a police officer and
12 you're under arrest.

13 It never would have happened. Because I don't think
14 any of you believe that those boys went out that night with
15 the intention of killing anybody or shooting at anybody.
16 It was a set of circumstances that escalated. And that's
17 scary. Okay? And a part of that escalation was
18 Quinntavious Davis pulling out a gun. And part of the
19 escalation was Shawn pulling out a gun, in a place
20 dangerous as the devil.

21 You know murder two months before this, a murder a
22 year before this. He asked his crime scene guy had he ever
23 been out here before. He just laughed. Yeah, you know.
24 And that is sort of critical, because one of the things
25 you're going to be asked to decide, in order to decide any

1 of these crimes, is what were peoples' intent: What was
2 Dervick's intent; what was Quinntavious' intent. Okay.

3 And that was -- that intent, was it intent to go out
4 there that night and hurt somebody? Was it an intent to
5 shoot and try to kill somebody? No. It was a set of
6 circumstances. They went -- Shawn Gibbons -- and I told
7 you this in the beginning -- is a police officer, but he
8 wasn't a police officer that night, because he never
9 identified himself as a police officer. He wasn't carrying
10 a badge, and he testified himself, "No. I didn't tell them
11 I was a police officer."

12 So -- and this scares me, that y'all are willing to
13 put my client in jail because he shot a cop. As far as the
14 rest of the world's concerned, Shawn was not a police
15 officer. Don't think -- please, put that aside and judge
16 it as though it was simply two young men, in a dangerous
17 place, at a dangerous time of night. Or three young men.
18 Not two young men and a police officer. Three young men,
19 in a dangerous place, at a dangerous time of night.

20 Now, who's right and who's wrong? Well, going back to
21 what I said, all this could have been avoided if Shawn
22 Gibbons simply -- when he said, "What are you folk -- what
23 are you doing here?" Had simply said, "I am a police
24 officer." But he did not.

25 And when he got on the stand, I asked him, Why didn't

1 you say, "I'm a police officer"? And I prayed that he
2 would say, "I didn't say it because I was under cover, and
3 I didn't want to blow my cover."

4 I was praying that's what he would say. But he didn't
5 say that. What he said was -- I mean, those guys had guns.
6 If I -- I told them I'm a police officer -- a police
7 officer, they might have shot me."

8 That's what he said. "If I told them I was a police
9 officer, they might have shot me." Not, "I didn't want to
10 blow my cover."

11 And that speaks volumes. Now, I don't blame Shawn
12 Gibbons for -- it's totally human thing to do. If I'd been
13 out there that night, I'd have run as fast as my legs would
14 have carried me. And probably virtually all of you would
15 run as fast as your legs would carry you. Okay.

16 But there's a difference: Shawn is a police officer.
17 He has a specialty that he assumed by virtue of his job. I
18 don't even have a specialty; he does.

19 And let me talk to you a little bit about the word
20 "duty." When I was a young man back in 1970s -- or early
21 '70s, I spent two years as a lawyer in a Navy base in
22 Italy. Okay. Learned Italian to the point I was almost
23 fluent. Now, today I couldn't probably remember how to say
24 "hello" to you, because I hadn't used it in that long.

25 But there was one thing, one thing that struck me when

1 I was there. And I remember it to this day. It's the
2 Italian word for duty. Okay. Now, English, "duty," you
3 think of something glorious and noble and honorable. By
4 duty, we will do our duty.

5 The word "duty" in Italian is *dovere*. It's actually a
6 verb and they changed it to a noun. And it translates into
7 English as the verb "I must" or "I have to." I have to
8 defend my children. I must go to war. Not anything
9 glorious at all. It translates into "I must, I have to."
10 Is that which I am obligated -- I have no choice. I don't
11 have a choice. I must do it whether I like it or not.
12 It's a lack of -- lack of choice. Those things that you
13 must do.

14 And Shawn Gibbons' duty that night -- during the day,
15 he's a police officer. He's got two guys out there that
16 have guns. There's nothing illegal about owning a gun.
17 Lots of people own guns. Every time the government tries
18 to limit our ability to own guns, we get all up in the air
19 and say, You can't do that. You know. So, there's nothing
20 evil or unlawful about owning a gun.

21 But there is something illegal about carrying it
22 around in certain places and certain situations. Shawn
23 Gibbons' duty that night was either to arrest those guys,
24 because they were illegally carrying guns -- and the law
25 talks about legal carrying if you're going target shooting.

1 if you're going hunting, if you put it back in your -- in
2 the trunk of your car. Okay.

3 His duty that night was to -- and if you take it to
4 the parties -- was to arrest them. As a good cop, probably
5 his duty was to say, "You guys, I'm a cop. I'm here on
6 business. You need to put those thing -- guns away and get
7 back to where you're from, or I am going to arrest you."
8 He didn't.

9 Why didn't he do his duty? Because he was afraid.
10 "Why didn't you tell them you were a police officer?" "I
11 was afraid he'd shoot."

12 Fear grabbed him at that moment, and dominated what he
13 did from that moment on. And in one way, Shawn should not
14 be ashamed of that, because fear grabs all of us in certain
15 situations. Okay. But it colors his testimony. He
16 doesn't want come here and say, "Man, I was scared to
17 death. No. I didn't tell them I was a cop. I turned and
18 I ran as fast as I could."

19 "Well, why didn't you -- when they started shooting at
20 you, why didn't you shoot at them?"

21 "I might have gotten hit. So, I ran as fast as I
22 could."

23 He was grabbed by fear and maybe he's ashamed of that.
24 I -- I don't think he should be, because you are all --
25 none of us know how we'd react. But his duty was to do

1 something else.

2 If he'd done his duty in the very first instance, none
3 of us would be here. Because those boys, I don't think you
4 believe they went out there to hurt anybody. It just ended
5 up that way. And what would have stopped it all would have
6 been Shawn Gibbons saying, "I am a police officer." Okay.
7 But fear gripped him at that point.

8 The other explanation is, you know, he says, "Well,
9 why didn't you shoot back?"

10 "Well, I was afraid I might hit somebody and hurt
11 somebody."

12 But he fires, goes right off into this empty space.
13 But he did -- he waits til he gets over here, and puts a
14 bullet through a baby's bedroom. Okay.

15 And I'm not sure -- you know, Shawn said he was as
16 close to these guys as from here (indicates) to that podium
17 at one point. Okay. And he described my client -- as did
18 every other officer -- as wearing a camouflage jacket.
19 Well, that is the ugliest darn thing I have ever seen, but
20 it sure ain't a camouflage jacket and you can't mistake it
21 for a camouflage jacket; unless what you're trying to
22 camouflage is your money. How in the world did he mistake
23 this for a camouflage jacket?

24 Well, there's a couple of possible answers. One, he
25 was scared and he wasn't observing well. So, scared. And

1 the other one, he was -- just so dark out there that you
2 couldn't see. Either way, it doesn't bode well for the
3 State's case. You know, as far as darkness, none of them
4 are willing to admit that -- what the lighting was out
5 there. But these pictures are going to come back with --
6 to you. You can see that what was up in that area --
7 there's one little light here (indicates.) Okay.

8 There's, gee, you gotta go further down. There's
9 another -- a light. I think it's somewhere way down here,
10 there's a light that shows back on the Bi-Lo. And there's
11 this one (indicates), a little pole light that sits out in
12 the parking lot. Now, we don't know what -- if any of them
13 were working. Okay. And that's a dark place. That
14 probably why it's so darn dangerous, you know, not well
15 lighted. That's a possibility.

16 But if his state of mind was such that he equates this
17 to a camouflage jacket, then his ability to judge and
18 observe facts is in severe question. Okay. Not that he's
19 lying to you, but his ability that night to observe and
20 judge facts, is in severe question.

21 Okay. Now, let's go on to some of the other holes.
22 You know, I love physical evidence and forensic evidence.
23 I love it. Why? It is the evidence that cannot speak, and
24 therefore, cannot lie. It is the evidence -- a lot of
25 times there's a lawyer -- it's happened many, many times

1 over the years and his opine is, "It's my job to think with
2 my head and not with my heart." Okay.

3 It is -- so, physical and forensic evidence is the
4 evidence that can't be affected by the heart. It is what
5 it is. No more, no less. All right.

6 And here the physical and forensic evidence tends
7 really to support Dervick's -- what Dervick has told you.
8 Okay. Not the State's. All right.

9 For example, he says that he did not fire a weapon.
10 Okay. Well, they did a gun shot residue test, and they
11 found no gun shot residue. Well, they didn't find any --
12 and we know -- we know Quintavious Davis -- didn't find
13 any on him either. But I don't know why that is. I know
14 I'll talk to you about a little bit later, too.

15 But -- but we know they didn't show any on him. And I
16 didn't fault the State.

17 I'll tell you right now, I think this is a terrible
18 crime scene investigation. And that's part of the problem.
19 That's part of the reason y'all don't have the evidence
20 that you need to make a decision. And the reason that it's
21 a terrible crime scene investigation is that the folks
22 doing the crime scene investigating, allowed the scope of
23 their investigation to be dictated by Shawn Gibbons from
24 the hospital.

25 Why -- why? Well, he's one of us. He's -- it's a

1 band of brothers. And it's men closely tied to each other,
2 big, strong, burly men that love each other because they
3 share the same risk and dangers. He was one of us.

4 And he said, "This is where I got shot." That's where
5 they looked. They didn't look anywhere else. They didn't
6 look anywhere else other than where Shawn said he got shot.

7 I'm not sure that we can be certain Shawn got shot
8 even in the place he thinks he got shot. He was scared.
9 The adrenaline was pumping.

10 We've all read the stories of the dad, his son is
11 trapped under the car, who does the superhuman -- who picks
12 up the -- adrenaline -- and lifts the car so his child can
13 get out. That's the same adrenaline. It makes you run.

14 I'm not sure how sure we can be exactly where he got
15 shot. He could have gotten shot way back there, and
16 continued to run and not really hit him, until he got to
17 where he was. No way that we can ever know. Well, I don't
18 think we even know where he got shot. Okay.

19 Now, let's look at that evidence that cannot speak and
20 does not lie. All right. But -- oh, oh. No. I didn't
21 finish.

22 Where they searched for evidence, they -- they picked
23 up the phone and they called Shawn at the hospital. Okay.
24 And asked him where did this happen, and he told them.
25 Now, by that time, there's a good probability that Shawn's

1 perception is clouded not only by his fear, but by pain
2 killers. I'm sure, when a person -- he was shot in the
3 leg. The hospital started giving him pain killers. But
4 they allowed that to dictate what they -- where -- where
5 they looked, and you know, if it'd been somebody else other
6 than a brother, a loved -- beloved brother, they would have
7 used that only as a beginning point. But they focused
8 their searches on limited areas, very limited areas. Okay.

9 And when did they do it? They did it in the middle of
10 the night, walking with flashlights. That's when they did
11 it. That certainly gives you no guarantee you'll find all
12 the evidence. For all practical purposes, the testimony --
13 by the testimony, there were four to five shots fired at
14 him here (indicates) as he ran in this direction. Okay.
15 And there were three to four shots fired at him here
16 (indicates) as he ran in that direction. Okay. That's as
17 many as nine shots.

18 The only slugs they find are Gibbons. They find one
19 in the dirt here, and one that went through the baby's
20 bedroom. There's no excuse for not finding more than that.
21 I submit to you, three -- if there -- if he's being fired
22 at going -- running in this direction, and he's being fired
23 at going at this -- from -- from here (indicates) those
24 slugs are -- unless somebody's the worst dang shot in the
25 world ought to be somewhere in that fence.

1 Where else has he gotta go? That's the background
2 they were shooting. It ought to be somewhere in that fence
3 or behind it. They couldn't find a single slug fired by
4 the defendants. So we say this one went to that gun and
5 this one went to that gun. But we can't know -- according
6 to police testimony, the seven to nine shots fired we got
7 no idea what caliber. They said, "For all we know, there
8 could have been a third person out there shooting."

9 And I submit there's no excuse for not finding some
10 slugs. No excuse. They owed it. They owed it to Shawn
11 Gibbons. They owed it to Dervick Parker to find them.

12 Now, what they did find and what they're telling us,
13 how does that match up? Well, we were told that four to
14 five shots were fired over here (indicates.) But when this
15 gun is recovered -- and the person firing it is -- there it
16 is. And the person who's firing it is Quinttavius Davis.
17 Four to five shots fired. What did they find? Well, we
18 found six remaining live shells. How much -- what's the
19 maximum that this holds? Eight. That's it. Seven if you
20 just load this up; eight if you put an extra one in the
21 chamber. Okay.

22 So, wait a minute. Four to five were shot; there was
23 only two bullets in this. Okay. Let's forget that.
24 That's not important.

25 They say -- and this is where -- where they're

1 claiming Dervick shot at him over here (indicates) three --
2 at least three -- four shots were fired. He receives this
3 gun. How many empty shells are there? Two. Oh, well.
4 That's not important. Let's forget about that.

5 That's real important stuff. Real important stuff.
6 You know, how do you get four to five shots fired from this
7 gun, and only two bullets missing; and three to four shots
8 fired from this gun, and only two empty shells? Ah, that's
9 not important.

10 You know, there's really only one thing that I can
11 think that really -- and I'm not saying this is what
12 happened. There's only one scenario that explains it all.
13 This gun can hold as many as seven -- I mean, eight
14 bullets. That from Detective Dan DeFreese. Okay. It can
15 hold as many as seven bullets. If you fire four to five
16 somewhere over in here -- we don't know exactly where,
17 because we may have run over in some other area -- we fire
18 four to five there, and you only have seven bullets in the
19 chamber -- okay -- that leaves two bullets. Okay.

20 If you then come over here (indicates) -- all right --
21 and fire four, you gonna run out of bullets at the -- at
22 seven. If you fire five here, you're gonna have two left
23 over here. Okay. If you got seven. So, what happens if
24 you run out of bullets, you got to get this; you pop
25 another magazine in here and you fire two. That comes up

1 the right number of bullets. That's the only way it comes
2 up the right number of bullets.

3 DeFreese said it could be done in a second if you knew
4 what you were doing. And -- and here's something just
5 strikes me -- this is -- this is interesting. See how it
6 sticks out? What -- what did Dan DeFreese tell us about
7 that? He said he sticks out because it ain't -- it ain't
8 the clip that's made for it. It's not the clip that's made
9 for that gun.

10 You know, maybe this gun started firing with the clip
11 that was made for it, and when it ran out of bullets,
12 another one -- which had been gotten as an extra -- was
13 popped in. Did that happen? I don't know. Do you know?
14 You don't? I mean, if you don't know, that's a reasonable
15 doubt. That means that's possible that all the shots were
16 fired by Quinntavious Davis. All of them.

17 And it didn't necessarily have to be fired in this
18 neighborhood, at the end of D where they said they had to
19 be fired, where they centered their search. Okay. Because
20 as one of these exhibits, which is supposedly taken by --
21 this always happens to me. I collect all this stuff and
22 then I get ready to look at it and I don't know where it
23 is. Okay.

24 One of the -- one of the pictures that Asbell and
25 they've taken, which is a picture looking from the fence --

1 you may remember it -- this is the way -- this is from
2 where Shawn had fired his weapon. I said, Well, couldn't
3 it have come -- couldn't it have been fired from back here?
4 No.

5 But if you look at that picture closely, you can see
6 from here -- which is taken where he takes it from, you can
7 see piece of Building G between D and C. You can see an
8 opening that goes all the way back to G.

9 So, the shots that hit Gibbons could have been fired
10 from here, from here, or even all the way back there
11 (indicates.) And they didn't go looking around back there.

12 You know, that's wrong. But you have unanswerable
13 questions. You cannot overlook them. You cannot. The
14 "I's" need to be dotted, the "T's" need to be crossed, or
15 you are violating your oath as jurors, and you're about to
16 commit a travesty in justice.

17 Now, let's look at what -- the two -- the one
18 explanation we had -- ah. Here it is. This is the
19 picture. It's State's Exhibit 7, which is supposedly taken
20 from where Gibbons was hit. And if you look, I want you to
21 look real closely when you get it back there. It's too
22 little to see and probably wouldn't be any need to put it
23 up there. But right here in between there and there
24 (indicates), you can see all the way back to Building G.
25 And filling that gap, is a piece of Building G. Okay. And

1 they didn't do a whole bunch of looking back there.

2 You know, I submit -- I bet you that two thirds of
3 the critical evidence is still out there somewhere. Just
4 still out there, waiting to be found, in a fence, or right
5 behind the fence where it went through and fell -- they
6 didn't tell you they searched in here. The bullet they got
7 fired at this building, that went through -- went in the
8 baby's room, it went all the way through the wall into a
9 baby's room. They looked here. They never looked back
10 here to see if they could find any bullets.

11 They owed it. They let the scope of their search be
12 dictated by Shawn Gibbons; whereas, if it had been a
13 stranger, they would have started from ground zero and gone
14 on. All right. And Shawn deserves better than that, and
15 Dervick deserves better than that.

16 You kind of have to -- particularly with a case, I
17 think part of the important points -- you got to kind of
18 take some of the officers' testimony, like the ones that
19 were up on the roof, and -- and realize that that is
20 tainted to some degree by their love of Shawn, by their
21 desire to see justice done. Okay.

22 We had a bunch of them to say, Well, we heard so many
23 small caliber shots and so many large caliber shots, with
24 the idea, I suppose, of saying the smaller caliber shots
25 were fired by either Dervick or by Quinttavius Davis. Dan

1 DeFreese got up here; he's been doing this stuff for 40
2 years. I said, "Can you tell the difference between a
3 .380, a .38, and a .40?"

4 He said, "I can't. I can't tell the difference. It
5 doesn't sound a bit different."

6 Maybe if you got some high powered electronic
7 equipment you can put it on there and you can see a
8 difference, but the average human being is unable to,
9 between those three calibers. Maybe if you got a .22
10 versus a .40 caliber. Yeah. But between those three
11 calibers, it just is impossible to hear a difference.

12 Is that critical? Well, it merely says that somewhere
13 for some reason, either by the heart or otherwise, there
14 some element, some testimony has been pushed a little bit.
15 And I expect they all were the same. But DeFreese said,
16 no, you wouldn't have heard them.

17 Keep remembering how testimony is twisted without
18 people ever intending to tell you they were wrong. You
19 know, Dervick can tell you stuff about that. I don't want
20 to get him to talk to you all night, and tell you what I
21 thought is essential stuff: I did not fire the gun; this
22 is what happened; and what did I do afterwards.

23 Now, his story is substantiated by evidence. One, he
24 says I got -- when the shooting started, I got scared. And
25 remember what he did? "I ran back to C. I didn't run out

1 and shoot anybody. I ran back to C."

2 What did the girls in C say again? "Dervick got there
3 probably at least two minutes before Quinntavious did."

4 So, they were caught by SLED. They said, "Dervick got
5 back there at least two minutes before -- at least two
6 minutes before Quinntavious did."

7 So, when he said, "I remember I ran back to C," he's
8 probably telling the truth. And you've got substantiation
9 of that from other witnesses. Okay.

10 His -- what happened to his two empty cartridges?
11 That was a surprise to him. At least he says it's a
12 surprise to him. And -- but he looked -- went out and
13 talked to his cousin, who you heard from; said, "You know,
14 I'll took the gun, and I went out in the backyard and I
15 fired it twice."

16 And his sister said, "I heard him firing the gun, and
17 I came in and said, 'What the hell are you doing?'"

18 All right. Well, you know something, what does the
19 physical evidence say about that, whether or not you judge
20 him as the one who's credible? Well the lady -- DNA lady
21 says, "I looked at Dervick's -- identified this as
22 Dervick's gun, didn't we? -- and on one sample I didn't
23 find one DNA, I found the DNA of three people." Three
24 different people.

25 Well, I think we now know who two of them are.

1 Neither us nor Dervick may know who the first one was, but
2 we know who two of them are: One's Dervick, and one's
3 Christopher Smalls. That is another situation in which
4 Dervick's testimony has been backed up by physical
5 evidence.

6 So, you know, we got a really good and plausible
7 explanation of why there's two bullets missing from
8 Dervick's gun, because Christopher shot it twice and he
9 didn't tell him that. They were missing before that night
10 ever took place. We don't have any plausible explanation
11 of anything else. The difference between two -- two rounds
12 missing was now they're fired -- the difference between two
13 from -- from -- two from this gun -- they got proof of two
14 from this gun and two from this gun, and somewhere around
15 nine shots are fired. We don't have any explanation are
16 they accurate, but that's all right, folks. If that
17 doesn't bother you, go back and find him guilty. If that
18 doesn't bother you. But it should, you know.

19 There is -- let's talk about the general crime scene
20 investigation. You know, I really don't know -- we know
21 that there was no gun shot residue found on Quinntavious --
22 not Quinntavious, on Dervick. And they say they weren't
23 able to find any on Quinntavious Davis. I don't know why
24 they didn't find any on Quinntavious Davis, but -- but it --
25 -- but -- but the fact they could not find any on Dervick,

1 that tends to substantiate what he says about not firing
2 the gun. Okay. It does tend to substantiate the evidence
3 that cannot speak and does not lie.

4 Now, if there was any issue whether the lady -- the
5 gun shot residue lady saying -- she said, "You know, it
6 gets off of human skin because we -- we sweat, we rub our
7 hands, we wash our hands, we do all sorts of stuff. It can
8 stay forever on something inanimate like this (indicates
9 jacket) unless you do something very particular to take it
10 off.

11 Well, of course, they sent this off to be -- the gun
12 shot residue gets on everything. You can look at that
13 picture and tell it gets on everything. Of course, they
14 sent this off to be analyzed to see if there was gun shot
15 residue. Surely did. Evidence that could have convicted
16 Dervick or freed him, obvious simple evidence that's simply
17 worn. I don't have the ability to send it off. My client
18 don't have the money. But the evidence to convict him or
19 set him free, laying right here on this ugly jacket that
20 don't look like a camouflage jacket. That's no justice.
21 There's no justice to that when the State doesn't do what
22 it needs to do or should do.

23 And one thing is amazing to me, and we spent a long
24 time -- almost three quarters of a day -- listening to
25 forensic experts who said, "I got 37 samples of this and 26

1 samples of that, and I couldn't tell anything from it. I
2 couldn't tell squat." It just was not sufficient for him.

3 I've never seen so much useless forensic evidence that
4 went off and came back, and the forensic examiner said it
5 wasn't good enough for me to tell anything. Amazing. I
6 mean, you always have some; you should expect some. But 80
7 percent or 90 percent of what they sent off comes back, We
8 can't tell anything from it.

9 Maybe, ladies and gentlemen, it was contaminated in
10 the taking. Maybe it was contaminated, and that's why they
11 couldn't find anything. These guys -- the DeFreeses, the -
12 - the black lady who was the DNA person -- they have high
13 standards, very high standards. They're not going to say
14 this is certain unless that is certain. Okay. But the
15 very manner of collecting the evidence -- they -- there's
16 an old saying in computers: Garbage in, garbage out.

17 You know, computers are wonderful things. But if you
18 feed them garbage information, you get garbage results.
19 That makes you wonder when you see so much evidence, so
20 much evidence that goes up and you can't find anything,
21 could be simply sloppy collection work.

22 Well, I have this tendency not to write down what I'm
23 going to say, but say what I feel. And I'm about through
24 with arguing in particular about the evidence. And I'm
25 sure -- and in every -- every trial, whenever I go sit down

1 there and say, Oh, I need to tell them such and such. I
2 meant to tell them. I forgot to tell them. That was
3 important. And I'll do it again this time. So -- and I'm
4 not going to be able to get up after Mr. Bell gets up and
5 argues, because this is my last chance to talk to you.

6 But in issue too is to look for those answers to the
7 questions that are inconsistent and the consistencies. All
8 right.

9 And I'm going to talk briefly -- he is charged with --
10 in the indictment with assault and battery with intent to
11 kill. I have a question on his behalf, and the judge has
12 granted, that she will charge you with some lesser included
13 offenses, meaning that this is the big boy and it -- you
14 got this, this, this, and this. Well, right below it,
15 there's one which says instead of having to do those four
16 things, you got to do these three things. And then one
17 before that says instead of having those three things, you
18 gotta do those two things. See, they're included in the
19 bigger offense. And I have asked, and I believe that you
20 will be charged, on AWIK, A-W-I-K, assault with intent to
21 kill, which is the assault without battery, that
22 Quinntavious Davis cut his deal for. It was cut -- it was
23 assault without a battery. Okay.

24 And for ABHAN, which is assault and battery of a high
25 and aggravated nature. Okay.

1 You know, assault and battery with intent to kill
2 requires a malicious and evil heart, what you'd probably
3 call "malice." It's an evil heart; you intended to do
4 harm. That's assault and battery. When you intend to do
5 harm and you actually not only threaten it -- assault is
6 the threat. You pull a gun on somebody, that's an assault.
7 You shoot them and hit them, that's the battery. Okay.

8 So -- but it has to have malice, an evil heart. You
9 intended to do something. Okay.

10 AWIK, assault with intent to kill, you have to have
11 evil heart, but you never touch them. Okay. You never end
12 up doing it. Assault and battery of a high and aggravated
13 nature, the evil heart is pretty irrelevant. You injure
14 somebody in a serious manner with aggravated circumstances
15 of some sort. One, the injury's real serious. Two, it was
16 a police officer. This was a police officer but nobody
17 knew about that. All right.

18 So, you're going to have the right to consider those,
19 the lesser included offenses. And by asking that, you
20 know, like that -- something -- I have to tell you about a
21 time about a trial I had a judge says -- I asked him for
22 manslaughter instead of murder, and involuntary
23 manslaughter is an accidental killing. We went back in the
24 room after he finished his charge to the jury. He said,
25 "I'm disappointed with you Archer."

1 I said, "Why, Judge?"

2 Went on to -- got on one of the tests of the Supreme
3 Court and said, "I thought you were a murder or nothing
4 kind." Okay.

5 And that's a reference to a strategy in the law, where
6 I force you either find him guilty of assault and battery
7 with intent to kill or let him go. I don't give you any
8 other outs. Okay. I make you -- he's charged with murder
9 and I think he may be entitled to an accidental killing, I
10 don't ask for the accidental killing. I force you to find
11 him guilty of murder, we're looking at killing somebody
12 with an evil heart. So that you'll go back and say, "You
13 know, if we had another choice, we could find him guilty.
14 But we don't."

15 Well, I ain't that brave. Okay. I ain't that brave
16 with assault and battery for my client. And it doesn't
17 mean, by the fact that I haven't asked you for the charge
18 yet, that I agree with any of those lesser offenses.
19 Honest to goodness, what is appropriate is acquittal,
20 because the evidence just is not there. And the evidence
21 that is there doesn't support the State's case, and the
22 evidence that is there does tend to support what Dervick
23 said.

24 Man, I was impressed with that -- that cousin of his.
25 You know, one of the primary strategies for cross-examining

1 a witness on things like alibi -- he was with me and he
2 couldn't have been there -- well, what did you do on the
3 day before? What did you do on the day before that? What
4 did you do three days before? Isn't it strange you
5 remember what you did on the day you were trying to help
6 this guy for work, but you can't remember what you did the
7 day before?

8 He looks down and he says, "What did you do the day
9 before that?"

10 "I was in school."

11 "What did you do the day before that?"

12 "I was in school."

13 "What did you do the day before that?"

14 "I was in school."

15 "What did you do the day before that?"

16 "It was Sunday."

17 That was the most amazing thing I'd ever seen. I'd
18 never seen a witness be able to do that.

19 Anyway, now, finished talking to you about the facts.
20 I want to talk to you about reasonable doubt. Okay. In 37
21 years of practice of law, I've heard as many definitions of
22 reasonable doubt as there are days in the year. Okay.

23 Federal Court says it doesn't -- it doesn't instruct
24 their jurors as to reasonable doubt in more. It just says
25 they know what it is. But you know, to me, there's a

1 saying and it says both in the American law and the English
2 law; it's famous. And is -- it is better for a hundred
3 guilty men to go free than for one innocent man to be
4 wrongly -- to convict him. Okay.

5 That's always interested me and I've researched it.
6 You know, in England, it comes from a fellow who was a
7 legal scholar. Okay. In America, the guy was a lawyer. I
8 mean, that's what you expect. I mean, it's either going to
9 be a lawyer or some scholar, because practical people don't
10 think that way. You know, practical people are going to
11 say, Hey, look man, I'll sacrifice the one to get a hundred
12 bad motorcycles off the road, you know.

13 But -- and what's interesting is that sometimes
14 there's an argument over whether it started with the guy in
15 England or it started with the guy in America. And it
16 appears that it happened almost simultaneous, these
17 statements, and independent. And maybe it's just great
18 ideals are not unique to one particular person in one
19 place. All right.

20 The guy who said it was a lawyer. The guy who said it
21 not only was a lawyer, he's what -- if we lived today in
22 his day, you would have called him a "flaming liberal
23 radical lawyer." Okay. He was so radical that he
24 advocated the violent overthrow of his duly appointed
25 government. And eventually took up arms in open rebellion

1 against that government. He was a lawyer, he was a
2 radical, he was a revolutionary. He was John Adams, the
3 signer of the Declaration of Independence. One of the
4 three main people -- you know, Thomas Jefferson, Hancock,
5 framers of the Constitution of the United States of
6 America. He was our first vice-president and he was the
7 second vice-president of the United States of America, you
8 know. And he said it in 1770, defending the captain of the
9 British troops at what we call "the Boston Massacre."

10 In 1770, eight British troops, along with their
11 captain, were confronted by protestors, colonists
12 protesting England and such. And they opened fire and
13 killed someone. All right. And as a result, both the
14 captain and his men were charged with manslaughter. Now,
15 here's a man that stood for everything John Adams hated:
16 the king, the king's tariff. But John Adams stepped
17 forward, and defended the captain. All right.

18 Got him off. Got him off. But that -- is that trial
19 -- that their -- Adams was a brilliant man, and some of his
20 trials are probably available almost word for word, and
21 others they're just summaries of them. If you're
22 struggling at trial, you'd have this -- this saying, "It's
23 better for a hundred innocent men -- guilty men to go free,
24 than for one innocent man to go to jail."

25 And you know, he's not the only man who followed and

1 believed that, because in March of 1785, there's a letter
2 from Benjamin Franklin to Robert Vaughn, in which he says,
3 "It's better for many guilty men to be let go, than for one
4 innocent man to go to jail."

5 You know, the right to be found guilty beyond a
6 reasonable doubt is a constitutional guarantee. It stems
7 from that, drawn up by those brave and wise men who
8 established the greatest democracy on earth, you know.

9 And more than that, that is how those men understood a
10 reasonable doubt, that it's better to let -- it's better to
11 let go a guilty guy and take the risk against a man going
12 to jail. And many -- I told you when I got here that I've
13 been doing this for 37 years, and I still love it. And --
14 and when I read about guys like Benjamin Franklin and --
15 and then John Adams, it makes me love what I do even
16 greater. And they believed in those principals.

17 And -- and what it says -- ladies and gentlemen, I'm
18 not going to try to give you -- the judge will tell you
19 about, Oh, you can balance this; you can put this on the
20 scales. That says what a reasonable doubt is. That says
21 how important it is to us as Americans to do it, to be able
22 to follow it, you know.

23 I've talked too long. And so I'll leave you. But
24 please, go through the evidence carefully. Go through it
25 assuming the best possible thing for Dervick at every

1 stage. And ask has the State disproved the best possible
2 thing for Dervick at every stage. Go back, think, assume.
3 You know, assume he's your child or your best friend, not a
4 stranger. Some of you may treat him like you would
5 consider a stranger.

6 You know, the kids done something. And you're sitting
7 there and you say -- short term you say, Well, I know the
8 little blankety-blank's done this. But he said he did this
9 and this, and I can't -- I can't disprove it. So, I'm not
10 going -- I'm not going to whack him. Okay.

11 You know, if I knew -- if I could actually look at
12 this -- and I got no doubt the little so-and-so did it.
13 But he claims he did this and this, and I can't say he
14 didn't. So, I'll let him go this time. Let's give him the
15 benefit of reasonable doubt. That's part of the definition
16 of reasonable doubt. Man, I've known Joe for 30 years. I
17 don't care what they say. They're going to have to prove
18 it to me, because that ain't Joe. That's the way -- that's
19 the way you approach all of this.

20 And I feel most confident that you will. I thank you
21 for listening to me. I'll not get a chance to say anything
22 more, so whatever questions I forgot to state, whatever
23 things I forgot to say, I hope you remember whatever I
24 can't. But I hope you will -- I hope you will -- some
25 answer on the -- try first to find an answer that consists

1 of his innocence before you look for an answer that
2 consists of his guilt. Thank you very much.

3 THE COURT: Thank you, Mr. Archer. And Mr. Bell.

4 MR. BELL: Thank you, Your Honor. Mr. Archer.

5 REPLY BY MR. BELL:

6 MR. BELL: Ladies and gentlemen of the jury, before I
7 start into my remarks, I want to also thank you for your
8 participation on the jury this week. Our country does not
9 ask much from it's citizens: pay taxes, maybe military
10 service in times of war, and jury duty. I hope that during
11 this week that you have learned something, that you have
12 learned how the criminal justice system in this country
13 really works, and not just how it works on TV. And I hope
14 that you've learned something, I hope that you've enjoyed
15 it.

16 And believe me, we understand how important you are,
17 because without you, there would be no criminal justice
18 system in the United States or in the State of South
19 Carolina and in Dorchester County. So, we know how
20 important you are, and we thank you for your time and your
21 attention this week. I too have noticed that y'all have
22 been certainly attentive, and we appreciate that. This is
23 an important case.

24 I'll put this up.

25 Ladies and gentlemen, as I stated, I think, from the

1 get-go, being a police officer's dangerous work. Going
2 behind the lines as an undercover officer is even more
3 dangerous work. Especially in the case of Shawn Gibbons in
4 this trial, because he was in an apartment by himself in
5 Haven Oaks, an admittedly dangerous place.

6 He was there because it was a dangerous place. The
7 other police officers were there because it was a dangerous
8 place. That's why they were there, they were trying to
9 help the situation.

10 But he was by himself. He had officers on the roof of
11 the Bi-Lo shopping center and in the vicinity. But he was
12 by himself. And at some point, as he testified, he felt
13 compromised.

14 And you heard his story. I'm going to go through his
15 story, because his story's important. And his story is
16 corroborated by every piece of evidence that's been
17 presented to you in this trial. And it's been corroborated
18 by testimony.

19 I totally disagree with the defense. I think there's
20 plenty of evidence. There's good evidence, and there was
21 good police work done in this case. There was a good
22 investigation done, as best as it could be under the
23 circumstances.

24 Let's start with Shawn Gibbons' story, Sergeant
25 Gibbons' story. He's over in G Building. He feels

1 compromised. He hears somebody talking about somebody in
2 the apartment he was in. He leaves, and which way is he
3 going? He is trying to leave. He's trying to get out of
4 there. He's radioed, "Come pick me up."

5 And where's he going? He's trying to get to the
6 parking lot to the road, so somebody can come pick him up,
7 another officer. He's minding his business. He's not
8 bothered anybody. Except there's two fellows over here in
9 C Building, who happen to see him, see him leaving.

10 He's on their turf, and they don't know who he is.
11 Instead of just sitting there, smoking their blunt or
12 smoking whatever they were doing, they had to go bother
13 him. They had to go roust him, because he was on their
14 turf. And what happens? Quinttavius Davis and the
15 defendant, Dervick Parker, start going after him. They
16 yell to him.

17 Remember the first witness, Shawn Gibbons, said they
18 yelled to him. And that was corroborated. Quinttavius
19 Davis, and even the defendant himself, got up and said, Oh,
20 yeah. We yelled at him.

21 But he kept on his way. He was trying to get out of
22 there. He didn't want to mess with anybody; he didn't want
23 anybody messing with him, because he was alone. All he had
24 was his gun, he had no other backup, and he keeps on. He
25 even goes so much as to go around this building to try to

1 stay away, keep distance between these people yelling at
2 him.

3 Well, what happens? He comes out around the building,
4 and guess what? Here they come through this opening, two
5 guys. And he said one of them had a red shirt on. What
6 was the testimony? Quinttavius Davis had a red shirt on.
7 Other guy had what looked like a camouflage jacket on.
8 Remember he said he -- they got no closer than 10 or 20
9 yards. That's 30 or 60 feet away from him at 10:30/11
10 o'clock at night.

11 Guess what? He says, I didn't recognize the other
12 fellow, but I recognized Dervick Parker. We'd identified
13 him; we knew him by name. He said that from the get-go,
14 and that was never questioned. Never questioned.

15 And remember, he identified -- I said -- asked him,
16 "Do you see that man in the courtroom today?"

17 He said, "Yes. There he is."

18 "Does he look the same?"

19 "Well, no. He had dreadlocks."

20 Where's the defense picture from that night with his
21 shirt on? He's wearing dreadlocks, exactly how Sergeant
22 Gibbons -- you can look at it. It's a defense exhibit.
23 Exactly as how he described: He had dreadlocks.

24 And what else did he say? From the get-go Shawn
25 Gibbons said, "I saw Dervick Parker with a revolver in his

1 hand, and I saw the other guy that I don't know, he had an
2 automatic weapon."

3 And they came up to him, and they started questioning
4 him. And you heard the audio: Who are you? What are you
5 doing here? Let's listen to it again.

6 (Audio plays briefly.)

7 Those guys were confronting him; he's on their turf.
8 They don't know what he's up to. We're going to get him.
9 He's trying to leave. He's even trying -- he's trying to
10 talk his way out of it. He's trying to do it in a peaceful
11 manner, trying to get out of there. "I'm leaving. I'm
12 leaving."

13 All the testimony is, while this time -- he is moving
14 away from them. He's not wanting to have anything to do
15 with them. He wants it to be peaceful confrontations. He
16 knows it's a dangerous place there. He's a police officer;
17 he knows about Haven Oaks.

18 Then what happens? They get out here, Quintavious
19 Davis fires two shots at him. Sergeant Gibbons says, "I
20 wasn't hurt. I heard the shots, and then I took off
21 running for the fence," because he's trying -- he knows he
22 can get out.

23 What evidence do we have of that? We have State's 42
24 and 43, two spent cartridges and they came from that
25 automatic Walther .380. Matches -- according to Agent

1 DeFreese, matches. They're on the ground, by the dumpster
2 right here. Two shots.

3 Sergeant Gibbons runs over here, trying to get there.
4 Remember, why -- why didn't you fire back? Why didn't you
5 fire back? I was running. I would have turned myself
6 around and stopped, and presented -- I would have presented
7 myself as a target, with a good shot of myself getting
8 injured.

9 He's still trying to get away, get away safely, not
10 compromising himself. He's by himself, with two men with
11 guns. That's not being scared, that's being smart. He
12 tries to shoot one, the other one's going to shoot him.
13 Those odds aren't good. That's smart. That's not being
14 scared.

15 The State takes offense at characterizing Sergeant
16 Gibbons' actions as being scared. He was being smart. He
17 was trying to get out of there without anybody getting
18 hurt. And he almost made it. He got to the fence line,
19 when he saw Dervick Parker -- he didn't say another guy.
20 "I saw Dervick Parker at the corner of this building. He
21 fired at me, it hit my leg. I rolled, I came up, and I
22 fired back."

23 I think he also said he knew -- he heard another shot
24 bounce off. So he talks about two shots over here
25 (indicates) and then he fires back. And how do we know?

1 We know that there's somebody at the corner of this
2 building, ladies and gentlemen. How do we know that? From
3 the evidence.

4 We know it: (a) From State's 16, the bullet that was
5 found in the ground by Lieutenant Asbell. He said that it
6 -- the trajectory was heading from here towards the corner
7 (indicates.)

8 Second, we have the bullet hole in [REDACTED]
9 which was testified right here, right by this window here
10 (indicates.) That shows that Sergeant Gibbons was
11 returning fire from somebody in this area.

12 We have his wound. He was shot in the leg.
13 Thankfully, that was the only wound. He got out of that
14 with the fleshy part of the leg, thank goodness. It could
15 be much worse, ladies and gentlemen. We could be here in a
16 murder trial. But we're not. Somebody was looking out for
17 Sergeant Gibbons that night.

18 He gets out, he radios these -- his compadre's up here
19 heard this. They saw two men going back to C Building.
20 They got down as fast as they could. They got to them, and
21 they found him and got him to first aid.

22 Now, ladies and gentlemen, my recollection of all the
23 testimony, most shots at anybody, anybody said from that
24 witness stand were a total of nine shots heard on that
25 night. Defense goes, Well, there's only two fired over

1 here by the evidence. There's only two fired over here by
2 the evidence. That's four. Where's the other five come
3 from? Where do the others come from? Oh. Must have been
4 another clip, the phantom clip.

5 Defense forgets about one thing, ladies and gentlemen:
6 Shawn Gibbons fired one, two, three, four, five shots. Two
7 plus two plus five is nine. Those are all the shots that
8 are fired. The evidence -- the evidence collected accounts
9 for all nine shots, the most that anybody heard.

10 And you have to remember another thing, ladies and
11 gentlemen, people aren't standing around going, That's
12 gunfire. Let's hear it again: one, two, three, four,
13 five, six, seven, eight, nine. They're not standing around
14 counting shots.

15 You heard those girls. They were headed outside.
16 They heard gunshots. We're running back inside. So,
17 people aren't standing around, trying to count gunshots.
18 But the most anybody says is nine shots.

19 The police come. Of course, police-involved shooting,
20 police officers are going to come from everywhere. But
21 they rope off the crime scene that they know right here
22 (indicates.) They rope off right here and they start
23 collecting evidence. Because where do you look for
24 evidence, ladies and gentlemen, of any crime? If somebody
25 was murdered right here, where are they going to look for

1 murder evidence? Right here.

2 Sergeant Gibbons was shot right here (indicates),
3 they're going to start right here. That's -- that's logic.
4 Of course, they're going to look for evidence where
5 Sergeant Gibbons said it happened, because that's where it
6 happened. That's ludicrous to say, Oh. They were guided
7 by Sergeant Gibbons. Remember, he was on pain medication.
8 He didn't know what was happening."

9 That's ludicrous, absolutely ludicrous.

10 First of all, Lieutenant Asbell said he looked here,
11 he looked over at the building, because he said he was at
12 the corner of the building; and then they looked -- went
13 back around here (indicates.) Guess what? He found two
14 shells there, five shells here where Sergeant Gibbons said
15 he was, said he was shot. In fact, he said he found a
16 little bit of blood, which I think is State's 40. It
17 wasn't tested. It was only tested against the three --
18 defendant. But there was blood right along here
19 (indicates.)

20 What did Lieutenant Asbell testify to, ladies and
21 gentlemen? Did you hear what he said? He was asked, "Did
22 y'all look for any other bullets or any other -- any other
23 evidence?"

24 He said, "We looked up and down this fence line. We
25 took metal detectors up and down this fence line. We found

1 a whole bunch of other crap, but we just couldn't find any
2 bullets."

3 It's not from a lack of trying, ladies and gentlemen.
4 They tried to find evidence. They wanted to find evidence.
5 This isn't a botched investigation. What did the SLED
6 agent, Agent Porter, say? He said, "We looked here. We
7 looked all over in here. We looked everywhere."

8 The defense's theory is that Quinntavious Davis shot
9 at him here (indicates), and he came around over here and
10 shot at him some more with his two clips on the automatic.
11 Well, that's a wonderful theory for the defense; that's a
12 wonderful theory for the defendant.

13 But there's a problem in that: His gun expelled two
14 cartridges over here -- it's an automatic -- semi-
15 automatic. Sergeant Gibbons semi-automatic expended five
16 cartridges over here. They looked all around the corner of
17 this building. There are no expended cartridges, which is
18 odd. Nobody was picking up their cartridges. They were
19 leaving them for the world to see.

20 What's the only gun in this case that doesn't expel
21 cartridges? That's right, ladies and gentlemen, the
22 revolver, that now apparently agreed they had -- that
23 Dervick Parker had had that night.

24 Nine shots, we have nine spent cartridges from that
25 night. The revolver that he took back, that Donnell

1 Campbell got from Quinntavious -- the revolver he got from
2 Dervick, the auto-matic -- semi-automatic that he got from
3 Quinntavious, two guns that were found in that apartment,
4 after a search warrant; along with this jacket.

5 And they want to make a big thing about the jacket.
6 Oh, they didn't test it. Well, this doesn't look like
7 camouflage. Well, ladies and gentlemen, you hold this back
8 10 to 30 yards, 30 to 60 feet. In this light, you might be
9 able to tell it's got money on it. Ten thirty at night,
10 can you? And they were going on the fact that Sergeant
11 Gibbons said it was a camouflage jacket. When they found
12 it, this is a money -- obviously, up close it's a money
13 jacket, not a camouflage jacket. At night, 10:30, 15 yards
14 away, camouflage. Could look like it.

15 He was looking at guns. He was concerned, yes,
16 because these two guys had guns on him and he only had one.
17 He wasn't scared. He was concerned, he was trying to get
18 out there with his life.

19 Ladies and gentlemen, then we went further. Oh, no.
20 The State didn't do anything. They just went and took it
21 over. Well, we took all the guys that we believed involved
22 -- that were involved, ran GSR kits. You heard that, all
23 three individuals: Dervick Parker, Quinntavious Davis, and
24 Donnell Campbell.

25 And what do we know from those? Well, we now know

1 Quinntavious Davis fired a gun. He admitted to it.
2 Sergeant Gibbons believed that he did, because he was
3 behind him. He was the first person that was given the GSR
4 kit, maybe -- maybe an hour after this happened, if --
5 maybe sooner.

6 What were the results? He didn't have any GSR,
7 because what did Ms. Amick tell you, Agent Amick? That
8 it's very fragile evidence. It falls off, it can be washed
9 off. Very fragile.

10 She also said that, "Yes. If you have a totally
11 inanimate object it will stay, but if you throw something
12 around, it will fall off just like it falls off hands."

13 Like somebody taking their coat off in a hurry, trying
14 to change their appearance in the apartment, where they
15 found that coat. They found the coat on the bed, not on
16 the defendant, Dervick Parker. He had a shirt on; he
17 didn't have that on.

18 What else? We tried to get fingerprints off the guns.
19 The State made the attempt. And I will guarantee you one
20 thing, if the State had made an attempt, defense attorney
21 would have gone off, "Oh. They didn't care. They didn't
22 try to get fingerprints. This is terrible investigation.
23 It's a botched investigation. They didn't try to get
24 fingerprints. I'm shocked."

25 None of them were -- were good enough for.

1 identification. You heard that testimony. We tried.
2 Sometimes the evidence is just not there. You can't
3 manufacture evidence.

4 If this brethren, band of brothers wanted to frame
5 Dervick Parker, there would have been fingerprints
6 probably, right? Try to -- tried to have an investigation
7 that was above board, that we can find who did it or not
8 did -- not did it. No fingerprints.

9 But we found DNA on the pistol. Who's DNA? Dervick
10 Parker's. In order to match his DNA on that gun, you'd
11 have to find another person in 22 trillion people. There's
12 only five -- what did she say, six or seven billion people
13 in the world. You have to multiply that about three or
14 four hundred times to get to 2.2 trillion. So, he had the
15 gun.

16 The guns were found in Keysha Duncan's apartment, not
17 his apartment. He doesn't live there. Quintavious Davis
18 doesn't live there. So, what right to they have to go see
19 somebody coming out of an apartment? It's not their place.
20 It's not their place. They're not there protecting.
21 Somebody was on their turf, and they didn't like it. So,
22 they had to do something about it.

23 Yes. The State made deals with co-defendants. But
24 what deals did we actually make? Quintavious Davis and
25 all the evidence shows that he fired and did not hit

1 Sergeant Gibbons. He's guilty of assault with intent to
2 kill, what he's pleading to.

3 But his testimony -- this case doesn't rise and fall
4 on his testimony. We have all the evidence that also
5 corroborates Sergeant Gibbons and shows the guilt of
6 Dervick Parker.

7 Donnell Campbell, he's guilty of accessory. He took
8 the guns and he put them in. Sure, they fudged their
9 testimony to make them look better. That's human nature.
10 Donnell wanted to think that, you know, he was -- done it
11 at gunpoint. Of course, that makes no sense, because once
12 he got the gun, he's not at gunpoint any more. He has the
13 guns. But he still went and hid them anyway.

14 Let's talk about the defense a little bit.. Early on,
15 there was a mention of self-defense and we never heard of
16 again. There's no self-defense. The only person doing
17 self-defense in this case was Sergeant Gibbons. He was
18 trying to make sure that he didn't get shot.
19 Unfortunately, he did.

20 So, what's the next step? Well, we learn that Mr.
21 Parker gave a statement to police the day after, saying,
22 Dervick -- Donnell Campbell had the gun, had the revolver;
23 went out and shot four times and shot Sergeant Gibbons. I
24 was just following around. I didn't have the gun.

25 Why did you do that? Then he testifies Quinntavious

1 Davis was the one that shot him.

2 "Why did you say Donnell Campbell?"

3 "I was looking out for my friend. I was trying to
4 protect my friend."

5 Well, ladies and gentlemen, if that's what he's going
6 to do to protect his friend, what's he going to do to
7 protect himself? If he's going to lie for a friend, he's
8 certainly going to lie for himself. And he has lied.
9 Which -- which side do you believe? The day after this
10 happened, he didn't have a gun, he was just out there.
11 Now, all of a sudden, "Well, I had the revolver, but I
12 didn't do any shooting."

13 And then his cousin comes in. "Oh. I shot the gun
14 two days before."

15 "Well, when did you tell anybody about this?"

16 "Oh. Last week."

17 Did you know that your -- your cousin's been charged
18 with this for over a year, and you finally come forward
19 about this last week? That -- that doesn't happen, ladies
20 and gentlemen. Trying to help his cousin.

21 He could have come to the police and said, "Look.
22 Y'all got it all wrong. I fired the gun."

23 We hadn't heard that. Haven't heard that.

24 Ladies and gentlemen, I totally disagree. This
25 investigation was not screwed up. There's lots of evidence

1 here. Evidence is what -- what it shows and what it
2 doesn't show. The evidence corroborates Sergeant Gibbons'
3 story. And the one thing that the defense did not attack -
4 - did not attack at all, did not say a word about, is
5 Sergeant Gibbons identifying the defendant as the person
6 that shot him, because they couldn't -- they couldn't
7 overcome that.

8 Now, why should you take Sergeant Gibbons' word over
9 the defense -- defendant's word? Just because he's a
10 police officer? No. Because there is not one incident in
11 this trial where the Defense showed Sergeant Gibbons was
12 lying, was caught in a lie. Who was caught in a lie in
13 this trial? The defendant. Who admitted to lying? The
14 defendant. That's why you ought to give more weight to
15 Sergeant Gibbons' word. He didn't lie. He didn't lie.

16 Next, the defense wants to blame Sergeant Gibbons.
17 Oh, this is Sergeant Gibbons' fault. This would never have
18 happened if he would have said I'm the police, or you're
19 under arrest. Ladies and gentlemen, in this day and age,
20 those aren't magic words. That might have made the
21 situation worse if he'd have said that.

22 As I've said and as he said, he was trying to get out
23 of there, he wasn't bothering anybody, he wasn't expecting
24 to be bothered. He was just trying to get out of there.
25 But he was on people's turf, and they had to do something

1 about it.

2 It's not Shawn's fault. Shawn didn't ask these people
3 to fire at him. The only time he brought a gun out was
4 when he saw guns and he was concerned. And he had it at
5 his side. He never -- you heard the defendant, he never
6 pointed it at anybody.

7 "Oh, but I knew he had a gun by his side. I could see
8 it."

9 He must have x-ray vision, because everybody says he
10 had it by his side, his right side as he was walking. And
11 these guys were over here (indicates.)

12 Don't buy into it, ladies and gentlemen. Don't buy
13 into it. Keep your eyes focused on the evidence and
14 Sergeant Gibbons' story and all the testimony.

15 Ladies and gentlemen, I've kind of gone over this
16 quickly. I didn't want to bore you any more. I wanted to
17 hit the high points.

18 The evidence corroborates every single step of
19 Sergeant Gibbons. There's an overwhelming amount of
20 evidence that proves the defendant is guilty beyond all
21 reasonable doubt. In fact, by this time, he's been
22 stripped of his robe of innocence. He's naked before you
23 in his guilt.

24 There are no holes. There's no omissions in this
25 case, ladies and gentlemen. The defense would want you to

1 have it, because it helps his client. But there aren't.

2 The State has given you the evidence, the testimony,
3 that proves beyond all reasonable doubt the defendant,
4 Dervick Parker, is guilty of assault and battery with
5 intent to kill. The gun is in his hand, the DNA is in --
6 on the gun.

7 Davis had the automatic; that's not being questioned.
8 We have the angles showing how Sergeant Gibbons returned
9 fire and somebody that was firing at him at the corner of D
10 Building. The evidence gives no alternative view to those
11 facts.

12 I'm going to ask you this, ladies and gentlemen: The
13 State believes that there are only two possible verdicts in
14 this case, guilty of assault and battery with intent to
15 kill or not guilty. We believe it's assault and battery
16 with intent to kill, because these people went out with
17 guns with malice. They followed -- in affect, they hunted
18 Sergeant Gibbons down, and then they shot at him for no
19 good reason at all. Sergeant Gibbons did nothing to
20 deserve to be shot at and shot on this occasion.

21 This was their work. This was in their mind: "We're
22 going to do harm to this person who's on our turf," who
23 turned out to be Sergeant Gibbons; who's put his life on
24 the line of all the people of Dorchester County, by trying
25 to help make this a better area.

1 Before I end, ladies and gentlemen, I want to leave
2 you with this thought. It's a quote. It's a quote by a
3 very smart man, who's actually, I believe, a physicist, if
4 I remember. But he has a quote that's -- that's very
5 appropriate for this situation.

6 Albert Einstein, I don't know if any of you have heard
7 of him or not, but he's a very smart man. Lived in early
8 part of this century. He was involved in the -- the making
9 of the first nuclear bomb in World War II. He said this:
10 He said, "The world is a dangerous place to live. Not
11 because of the people who are evil, but because of the
12 people who don't do anything about it."

13 Ladies and gentlemen, the State of South Carolina,
14 Dorchester County, and Sergeant Gibbons ask that you do
15 something about this evil: To do justice, to find the
16 defendant guilty of assault and battery with intent to
17 kill. Thank you.

18 THE COURT: Thank you, Mr. Bell.

19 Ladies and gentlemen, the break is going to be your
20 break. In a moment, I'm going to ask you to step to your
21 jury room. Do not discuss this matter and do not allow
22 anyone to discuss it with you.

23 And guess what? You're in charge of how long the
24 break lasts. When you all have -- if you got smokers who
25 want to do the smokey-smoke thing, go smoke. And when you

1 all have taken a little comfort break, and if maybe had a
2 little water or something to drink or whatever, just knock
3 on the door and come on back.

4 And when you return, I'm going to deliver the charge
5 or the instruction to you. So, I'd ask you to please be
6 mindful, you have not heard the instruction on the law.
7 You are not prepared to deliberate. So, just remember, do
8 not discuss this matter or allow anyone to discuss it with
9 you. If you will step to your jury room, again.

10 Madam Presiding Juror, this might be your first act of
11 -- of presiding jury-ism. That when you all are ready to
12 come on back in -- all right. Now, you realize, if it gets
13 to be like an hour, I'm going to be looking for you,
14 though.

15 (Jury exits at 2:49 p.m.)

16 THE COURT: Thank you, Mr. Taylor. All right. We'll
17 take a break and we'll be in recess until we hear from the
18 jury. But -- so, y'all don't go far. All right.

19 Oh. And let me just mention, when I begin the charge,
20 not going to be any coming and going in the courtroom,
21 okay? All right. Great. Thank you.

22 (Briefly off the record for break.)

23 THE COURT: All right. Anything before we bring the
24 jury out from the State?

25 MR. BELL: Nothing from the State, Your Honor.

1 THE COURT: The defense?

2 MR. ARCHER: What is this now?

3 THE COURT: The -- you know those people? They coming
4 back out.

5 MR. ARCHER: Yes, ma'am.

6 THE COURT: All right. You okay with that?

7 MR. ARCHER: I'm okay with that.

8 THE COURT: All right.

9 MR. ARCHER: We're good.

10 THE COURT: Wonderful.

11 (The jury enters at 3:10 p.m.)

12 CHARGE ON THE LAW BY THE COURT:

13 THE COURT: Madam Presiding Juror and ladies and
14 gentlemen of our jury, you have now heard the evidence and
15 the arguments of both sides. It is now my duty to explain
16 or instruct you on the law applicable to this case.

17 Ladies and gentlemen, the indictment in this case
18 charges the defendant, Mr. Dervick Lamont Parker, with the
19 crime of assault and battery with intent to kill. I remind
20 you that the fact that the defendant, Mr. Parker, was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and cannot be considered by you of
23 evidence of guilt in this case. Nor does it create any
24 presumption or inference of guilt.

25 Ladies and gentlemen, this document, the indictment,

1 is simply the formal written instrument which contains the
2 charge made against Mr. Parker. It is the formal document
3 by which this case is brought into this court.

4 Ladies and gentlemen, the indictment in this case
5 alleges as follows: That the defendant, Dervick Lamont
6 Parker, did in Dorchester County, on or about February the
7 28th, 2008, with malice aforethought, did commit an assault
8 and battery upon the victim, Detective Sergeant Shawn
9 Gibbons, by shooting the victim. This offense being a
10 violation of Section 13-3-620 of the Code of Laws of South
11 Carolina, as amended.

12 Now, ladies and gentlemen, to this indictment, Mr.
13 Parker has pled not guilty, and that places upon the State
14 of South Carolina the burden of proving each and every
15 element of this charge and of this indictment beyond a
16 reasonable doubt.

17 Now, ladies and gentlemen, a person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove himself or herself innocent. I charge
20 you that it is an important rule of the law that a
21 defendant in a criminal trial, no matter what the
22 seriousness or the charge may be, will always be presumed
23 to be innocent of the crime for which the indictment was
24 issued; unless guilty has been proven by evidence
25 satisfying you of that guilt beyond a reasonable doubt.

1 This presumption of innocence does not end when you
2 begin your deliberations, but it accompanies the defendant,
3 Mr. Parker, throughout the trial, until you reach a verdict
4 of guilt based on evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the defendant,
8 Mr. Parker, which remains with him until it has been
9 stripped from him by evidence satisfying you of Mr.
10 Parker's guilt beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every defendant is entitled,
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilty beyond a reasonable doubt.

16 What then is a reasonable doubt in the law? A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. The State has the
19 burden of proving the defendant guilty beyond a reasonable
20 doubt. Some of you may have served as jurors in civil
21 cases where you were told that it is only necessary to
22 prove that a fact is more likely than -- true than not
23 true. Such as, by the greater weight or the preponderance
24 of the evidence.

25 In criminal cases, the State's proof must be more

1 powerful than that. It must be beyond a reasonable doubt.
2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt. There are very
4 few things in this world that we know with absolute
5 certainty. And in criminal cases, the law does not require
6 proof that overcomes every possible doubt.

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

14 I remind you that during this trial, you and I have
15 certain duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case, and
17 I also have the duty to rule on the admissibility of the
18 evidence offered during this trial.

19 You are to consider only the competent evidence before
20 you. If there was any testimony ordered stricken from the
21 record in this case, during the trial, you must disregard
22 that testimony. You are to consider only the testimony
23 which has been presented from this witness stand and any
24 exhibits which have been made a part of the record in this
25 case; and any stipulations. Another word for stipulations

1 is "agreements of counsel."

2 I had the additional duty to charge you the law
3 applicable to this case. As the presiding judge, I am the
4 sole judge of the law of this case. And it is your duty as
5 jurors, to accept and apply the law as I now state it to
6 you. If you already have any idea as to what the law is or
7 should be, and it should differ from what I now tell you
8 the law is, you must abandon your preconceived idea,
9 because you are sworn by your oath to accept and to apply
10 the law exactly as I state it to you.

11 Now, in every case tried in this court before a jury,
12 the jury, you, are the sole and exclusive judge of the
13 facts in this case. A trial judge cannot intimate, state,
14 comment on, or make any statement to a trial jury about the
15 facts in a case. Since you, the jury, are the sole judge
16 of the facts in this case, you are not to infer from what I
17 may have said or done during the progress of this trial, in
18 ruling on the admissibility of evidence or otherwise, or
19 anything that I say to you now during the course of this
20 instruction being given, that I had any opinion about the
21 facts in this case. The law does not allow me to have an
22 opinion about the facts in this case. This is a matter
23 solely for you to determine.

24 As jurors, it is your duty to determine the facts in
25 this case, and it is your duty to determine the effect, the

1 value, the weight, and the truth of the evidence presented
2 during this trial.

3 Now, ladies and gentlemen, there are two types of
4 evidence which are generally presented during a trial.
5 They are called "direct evidence," and "circumstantial
6 evidence."

7 Direct evidence is the testimony of a person who
8 claims to have actual knowledge of a fact, such as an
9 eyewitness. It is evidence which immediately establishes
10 the main fact to be proved.

11 Circumstantial evidence is proof of a chain of events
12 and circumstances indicating the existence of a fact. It
13 is evidence which immediately establishes collateral facts,
14 from which the main fact may be inferred. Circumstantial
15 evidence is based on inference and not on personal
16 knowledge or observation.

17 Let me give you a classic example. Direct evidence:
18 It's February. It's cold. Snow is forecast. You go
19 outside, eleven o'clock, and lo and behold, white stuff
20 stops -- starts hitting you in the face and covering your
21 lawn. And you look out and you say, "Ah. It's snowing."
22 That is direct evidence that it is snowing. You see the
23 snow.

24 Circumstantial evidence: It's February. It's
25 extraordinarily cold, and snow is forecast. You look out

1 on your poor little brown, crispy lawn before you go to
2 bed, eleven o'clock. And you snuggle in and it is indeed
3 cold. And you wake up the next morning and all over your
4 lawn is a fresh -- what, we're South Carolina -- half-inch
5 dusting of snow. That is circumstantial evidence that it
6 snowed overnight. Hence, it was cold, it was forecast, you
7 went to bed, no snow. You woke up, snow. You can talk
8 about what you know as collateral -- collateral facts, but
9 you infer that it snowed overnight.

10 All right. Now, the law makes absolutely no
11 distinction between the weight or value to be given to
12 either direct or circumstantial evidence. Nor is a greater
13 degree of certainty required of circumstantial evidence
14 than of direct evidence. You should weigh all the evidence
15 in the case. And after weighing all the evidence, if you
16 are not convinced of the guilt of the defendant beyond a
17 reasonable doubt, you must find the defendant not guilty.

18 Now, necessarily, you must determine the credibility
19 of the witnesses who have testified in this case. Ladies
20 and gentlemen, another word for credibility is simply
21 "believability." They mean the same thing.

22 It becomes your duty as jurors to analyze and to
23 evaluate the evidence, and to determine which evidence
24 convinces you of its truth. In determining the
25 believability of witnesses who have testified in this case,

1 you may believe one witness as against several witnesses,
2 or several witnesses against one witness. You may believe
3 a part of the testimony of a witness and reject the
4 remaining part of the same witnesses testimony. You may
5 believe the testimony of a witness's in its entirety or you
6 may reject a witness's testimony in its entirety.

7 You may consider whether any witness has exhibited to
8 you any interest, bias, prejudice, or other motive in this
9 case. You may also consider the appearance and the manner
10 of the witness while on the witness stand.

11 Now, ladies and gentlemen, in this case, you have
12 heard from witnesses who were determined to be expert
13 witnesses. Our rules of evidence ordinarily do not permit
14 witnesses to testify regarding their opinions or
15 conclusions. An exception to this rule exists for
16 witnesses we call "expert witnesses," a witness who by
17 education, experience, profession, knowledge, training has
18 become an expert in some art or science, profession or
19 calling. And that witness may state an opinion as to
20 relevant and material matter, in which the witness claims
21 to be an expert. And they may also state their reasons for
22 the opinion.

23 You should consider any expert opinion given in
24 evidence in this case like any other evidence. You give it
25 the weight to which you deem it is entitled. If you decide

1 that the opinion of an expert witness is not based on
2 sufficient education and experience, or if you should
3 conclude that the reasons given in support of the opinion
4 are not sound, or that the opinion is outweighed by other
5 evidence, you may disregard the opinion in its entirety.

6 An expert witness's testimony is to be given no
7 greater weight than that of other witnesses, simply because
8 the witness is an expert. Further, you are not required to
9 accept an expert's opinion even though it is
10 uncontradicted.

11 Now, expert testimony is given for the purpose of
12 helping you understand the evidence, and not for the
13 purpose of controlling your judgement.

14 Now, ladies and gentlemen, I further charge you that
15 mere presence and prior knowledge that a crime is going to
16 be committed, without more, is insufficient to constitute
17 guilt. However, presence at the scene of a crime by pre-
18 arrangement to aid, encourage, or abet in the preparation
19 of the crime, constitutes guilt as a principal. While mere
20 presence and prior knowledge without more are insufficient
21 to establish guilt, presence at the scene of a crime by
22 pre-arrangement to aid, encourage, or abet in the
23 preparation of the crime, will constitute guilt as a
24 principal.

25 Ladies and gentlemen, a principal in a crime is one

1 who either, in person, perpetrates the crime of -- who
2 being present aids and abets and assists the commission of
3 that crime, I charge you, ladies and gentlemen, that mere
4 presence at the scene of the crime, is not sufficient to
5 convict.

6 I further charge you that if a crime is committed by
7 two or more people who are acting together in committing
8 the crime, the act of one is the act of all. A person who
9 joins with another to commit an unlawful act is criminally
10 responsible for everything done by the other person which
11 happens as a probable or natural consequence of the acts
12 done in carrying out the common plan and purpose.

13 For example, two people can be guilty of killing
14 another person when only one of the two had a gun. There
15 was only one bullet and only one of the two fired the shot
16 that caused the death. If two or more people act together
17 -- acting together -- are together, acting together,
18 assisting each other in committing the offense, the act of
19 one is the act of all. Or as it is sometimes said, "the
20 hand of one is the hand of all."

21 Prior knowledge that a crime is going to be committed
22 without more is not sufficient to make a person guilty of
23 that crime. Mere knowledge that another person is going to
24 commit a crime, even if the defendant is present when the
25 crime is committed, is not sufficient to convict the

1 defendant as a principal. Guilt, as a principal, is shown
2 by actual or constructive presence at the scene, as a
3 result of prior arrangement. Therefore, a finding of prior
4 arranged plan or common scheme is necessary for a finding
5 of guilt as a principal. The State must prove beyond a
6 reasonable doubt, by competent evidence, the theory of the
7 hand on one is the hand of all.

8 Now, a principal in a crime is one who either actually
9 commits the crime, or who is present aiding, abetting, or
10 assisting in committing the crime. When a person does an
11 act in the presence of and with the assistance of another,
12 the act is done by both. Where two or more, acting with a
13 common plan or intent, are present at the commission of a
14 crime, it does not matter who actually commits the crime,
15 all are guilty. The hand of one is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near to aid and abet and assist in the
18 commission of the crime. However, mere presence at the
19 scene of a crime is not sufficient to convict one as a
20 principal on the theory of aiding and abetting.

21 Intent is also a necessary element, for there must
22 have been a common design or intent to commit the crime,
23 and the crime must have been committed pursuant thereto,
24 with the person aiding and abetting by some overt act.
25 Intent means intending the result which actually occurs,

1 not accidentally or involuntary. Intent may be shown by
2 acts and conduct of the defendant, and by other
3 circumstances from which you may naturally and reasonably
4 infer intent. The State must prove these elements to you
5 beyond a reasonable doubt.

6 Now, in order to establish criminal liability,
7 criminal intent is required. For example, the mental state
8 required to be proven by the State for a particular crime
9 might be purpose, intent, knowledge, recklessness, or
10 criminal negligence. Criminal intent must be proven by the
11 State beyond a reasonable doubt. Criminal intent is always
12 a matter that must be determined by the jury, from the
13 circumstances surrounding the situation.

14 There is no way to prove intent through a mathematical
15 certainty. There is no way medical science can dissect a
16 person's brain and determine what the person had in mind.
17 So, the law says that criminal intent may be inferred from
18 the circumstances shown to have existed.

19 This is how you make a determination of whether or not
20 the element requiring intent was present. It is not
21 necessary to establish intent by direct and positive
22 evidence. But intent may be established by inference, in
23 the same way as any other fact, by taking into
24 consideration the acts of the parties and all the facts and
25 circumstances of the case.

1 Criminal intent is a mental state, a conscious wrong-
2 doing. It is up to you to determine what the defendant
3 intended to do based on the circumstances to have existed.

4 Criminal intent can arise from action or failure to
5 act. And it can arise from many circumstances:
6 indifference to duty, consequences that are considered by
7 the law to be the equivalent of criminal intent.

8 Now, ladies and gentlemen, you have heard testimony
9 regarding the penalty a person can serve for the crime
10 alleged in the indictment. In determining the guilt or
11 innocence, in determining whether the defendant is guilty
12 or not guilty, you cannot consider any possible penalty for
13 any particular crime. The punishment for the crimes are a
14 matter for me to determine, and should never be considered
15 by you in any way whatsoever, in arriving at a fair and
16 impartial verdict as to whether the defendant is guilty or
17 not guilty.

18 Now, ladies and gentlemen, we're going to talk about
19 the offense of assault and battery with intent to kill.
20 Then we're going to talk about some lesser -- two actually,
21 lesser included defenses. One is assault with intent to
22 kill, and then assault and battery of a high and aggravated
23 nature. But we're going to begin with assault and battery
24 with intent to kill.

25 Now, ladies and gentlemen, the defendant, Mr. Parker,

1 has been charged with assault and battery with intent to
2 kill. In order to prove assault and battery with intent to
3 kill, the State must prove beyond a reasonable doubt that
4 the defendant committed an unlawful act of a violent nature
5 to the person of another with malice aforethought. That
6 the defendant committed an unlawful act of a violent nature
7 to the person of another with malice aforethought.

8 Ladies and gentlemen, an assault occurs when a person
9 unlawfully attempts or offers to commit a violent injury
10 upon another person, and had the present ability to
11 complete the attempted injury. An assault is the
12 intentional creation of a reasonable fear of immediate
13 bodily harm. It is not necessary that the attempted injury
14 or harm actually take place.

15 For example, if I walk up to you and when we are
16 within arm's reach I draw back to hit you, that is an
17 assault. That is an assault.

18 A battery is the unlawful touching of another person
19 by a person who has committed the assault. An unlawful
20 touching can be caused by a part of the accused body or by
21 any object the accused puts in motion. A battery is the
22 completion of the assault by using or applying force to
23 another person, however slight, in a rude, angry, or
24 resentful manner, without legal justification for doing so.

25 Using my earlier example, if I walk up within arm's

1 length of you and I raise my hand back to look as though I
2 would strike, that is the assault. But if you go forward
3 and hit, then that is the battery. Assault; battery.

4 Malice is hatred, ill will, or hostility towards
5 another person. It is the intentional doing of a wrongful
6 act without just cause or excuse, and with an intent to
7 inflict an injury or under circumstances that the law will
8 infer an evil intent.

9 Malice aforethought does not require that malice exist
10 for any particular time before the act is committed. But
11 malice must exist in the mind of the defendant just before
12 and at the time of the act or at the time that the act is
13 committed. Therefore, there must be a combination of the
14 previous evil intent and the act.

15 Malice aforethought: Malice aforethought may be
16 express or inferred. These terms "express" and "inferred"
17 do not mean different kinds of malice, but merely the
18 manner in which malice may be shown to -- to exist; that is
19 either by direct evidence or by inference from the facts
20 and circumstances which are proved.

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another; or when the
23 person prepared beforehand to do the act which was later
24 accomplished. For example, lying in wait for a person or
25 any other acts of preparation going to show that the deed

1 was within the defendant's mind, would be express malice.

2 Malice may be inferred from conduct showing a total
3 disregard for human life. Inferred malice may also arise
4 when the deed is done with a deadly weapon. A deadly
5 weapon is any article, instrument, or substance which is
6 likely to cause death or great bodily harm. Whether an
7 instrument has been used as a deadly weapon depends on the
8 facts and circumstances of each case.

9 The following are examples of instruments which may be
10 deadly weapons: A shotgun, rifle, dirk, dagger, a knife, a
11 slingshot, metal knuckles, a razor, gasoline, a firebomb or
12 Molotov cocktail, and lighter fluid. A gun may be a deadly
13 weapon even if it is not operating.

14 If facts are proved beyond a reasonable doubt
15 sufficient to raise an inference of malice to your
16 satisfaction, this inference would be simply an evidentiary
17 fact to be considered by you, along with the other evidence
18 in the case; and you may give it the weight that you decide
19 it should receive.

20 A specific intent to kill is not an element of assault
21 and battery with intent to kill, but there must be a
22 general intent to commit serious bodily injury. Intent
23 means intending the result which actually occurs, not
24 accidentally or involuntary. Intent may be shown by acts
25 and conduct of the defendant, and other circumstances from

1 which you may naturally and reasonably infer intent.

2 Evidence of the character of the assault, the
3 character of the instrument used, the manner in which it
4 was used, the purpose to be accomplished, and the resulting
5 wounds or injuries may be considered in determining the
6 intent with which the assault was committed. Intent may be
7 inferred when it is demonstrated that the defendant
8 voluntarily and willfully commits an act, the natural
9 tendency of which is to destroy another's life.

10 Now, ladies and gentlemen, if you find that the State
11 has failed to prove assault and battery with intent to
12 kill, each and every element, beyond a reasonable doubt and
13 you find Mr. Parker not guilty of assault with intent to
14 kill, then you may consider the lesser included offense of
15 assault with intent to kill.

16 You know, lesser included offenses -- I can't help,
17 this picture comes up in my mind. You know those little
18 eggs. I think they're called "Russian eggs." Where there
19 -- it's like, you know, you pull one off and then there's a
20 little -- and then you pull that one off and there's -- I
21 don't know why that -- I always think of those as lesser
22 included.

23 If you find that the State has not proven that the
24 defendant is guilty of assault and battery with intent to
25 kill, you may then determine whether the State has proved

1 if the defendant is guilty of assault with intent to kill.
2 In order to prove assault with intent to kill, the State
3 must prove beyond a reasonable doubt that the defendant,
4 with malice aforethought, unlawfully attempted or offered
5 to commit a violent injury upon another person, and had the
6 present ability to complete the attempted injury. An
7 assault is the intentional creation of a reasonable fear of
8 immediate bodily harm. It is not necessary that the
9 attempted injury or harm actually take place.

10 For example, if I walk up to you and when we are
11 within arm's reach, I draw back to hit you, that is an
12 assault.

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

18 Malice aforethought does not require that malice exist
19 for any particular time before the act is committed. But
20 malice must exist in the mind of the defendant just before
21 and at the time of -- the act is committed. Therefore,
22 there must be a combination of the previous evil intent and
23 the act.

24 Malice aforethought: Malice aforethought may be
25 express or inferred. These terms "express" and "inferred"

1 do not mean different kinds of malice, but merely the
2 manner in which malice may be shown to have existed; that
3 is by either direct evidence or inference from the facts
4 and circumstances which are proved. Express malice is
5 shown when a person speaks words which express hatred or
6 ill will for another, or when the person prepared
7 beforehand to do the act which was later accomplished. For
8 example, lying in wait for a person, or any other acts of
9 preparation, going to show that the deed was within the
10 defendant's mind would be express malice.

11 Malice may be inferred from conduct showing a total
12 disregard for human life. Inferred malice may also rise
13 when the deed is done with a deadly weapon. A deadly
14 weapon is any article, instrument, or substance which is
15 likely to cause death or great bodily harm. Whether an
16 instrument has been used as a deadly weapon depends on the
17 facts and circumstances of each case.

18 The following are examples of instruments which may be
19 deadly weapons: A shotgun, rifle, dirk, dagger, knife,
20 slingshot -- slingshot, metal knuckles, a razor, gasoline,
21 a firebomb or Molotov cocktail, lighter fluid. A gun may
22 be a deadly weapon even if it is not operating.

23 If facts are proved beyond a reasonable doubt
24 sufficient to raise an inference of malice to your
25 satisfaction, this inference would simply be an evidentiary

1 fact to be considered by you, the jury, along with all the
2 other evidence in the case; and you may give it the weight
3 you decide it should receive.

4 A specific intent to kill is not an element of assault
5 with intent to kill, but there must be a general intent to
6 commit serious bodily injury. Intent means intending the
7 result which actually occurs, not accidentally or
8 involuntary. Intent may be shown by acts and conduct of
9 the defendant, and other circumstances from which you may
10 naturally and reasonably infer intent.

11 Evidence of the character of the assault, the
12 character of the instrument used, the manner in which it
13 was used, the purpose to be accomplished, and the resulting
14 wounds or injuries may be considered in determining the
15 intent with which the assault was committed. Intent may
16 also be inferred when it is demonstrated that the defendant
17 voluntarily and willfully commits an act, the natural
18 tendency of which is to destroy another's life.

19 Now, ladies and gentlemen, if you find that the State
20 has failed to prove each and every element of assault with
21 intent to kill, then you would consider the lesser included
22 offense of assault and battery of a high and aggravated
23 nature.

24 Now, let me also say -- let me -- let me instruct you
25 on assault and battery of a high and aggravated nature.

1 Now, assault and battery of a high and aggravated nature
2 includes all of the elements of assault and battery with
3 intent to kill except, except malice aforethought --
4 assault and battery. Not malice aforethought.

5 In addition, the State must prove beyond a reasonable
6 doubt an aggravating circumstance. Circumstances of
7 aggravation include the use of a deadly weapon, the intent
8 to commit a felony, the infliction of serious bodily
9 injury, a great disparity between the ages or physical
10 conditions of the parties, a difference in the genders of
11 the parties, the taking of indecent liberties or
12 familiarities with a female through the use of force, the
13 purposeful infliction of shame and disgrace, and the
14 resistance of lawful authorities. These are only examples
15 of circumstances of aggravation. Assault, battery, and
16 circumstances of aggravation.

17 Now, ladies and gentlemen, there are two possible
18 verdicts which you may find in this case: guilty or not
19 guilty. And we are going to go over your verdict form
20 right now.

21 Now, ladies and gentlemen, before we even go into the
22 verdict form, a couple of things I want to discuss with you
23 about them. Your verdict must be unanimous. That means
24 this must be the verdict of each and every one of you.

25 (To juror alternates) Sort of a hint to the two of

1 you, when the jury goes out this next time, that you --
2 y'all going to stay with me, my alternates. Okay. All
3 right.

4 Ladies and gentlemen, this must be the verdict of all
5 12 of you. This is not the verdict of any one of you; this
6 is not the verdict of the majority of you. It must be the
7 verdict of each and every one of you. It must be
8 unanimous.

9 Now, ladies and gentlemen, as I have gone through
10 placing the possible verdicts on paper, I have written the
11 two possible verdicts: not guilty and guilty. I actually
12 wrote them "guilty" and "not guilty." I could have written
13 them "not guilty" and "guilty." I could have put "not
14 guilty" first, and "guilty" after that. Please, take no
15 hidden meaning in the fact that one of these possible
16 verdicts came first and then the other one second. There
17 is no hidden meaning here, I can assure you. It's just,
18 you know, reality. People put words on a piece of paper,
19 one of them has to come first, and then the other one
20 comes. So please, take no hidden meaning.

21 Now, ladies and gentlemen, hopefully, hopefully this -
22 - this -- our verdict form should be clear. It says (as
23 read): "Please circle the appropriate verdict below, and
24 follow the accompanying instructions carefully. Number 1,
25 as to the charge of assault and battery with intent to

1 kill, we the jury unanimously find the defendant ..., "
2 whichever is the unanimous verdict of this jury, you will
3 then circle the verdict. And it will be one of those two.
4 It will be not guilty or guilty, guilty or not guilty.
5 Whichever it is, circle it so it's absolutely clear which
6 it is. Okay? All right.

7 Now, if you find the defendant guilty of assault and
8 battery with intent to kill, then you stop your
9 deliberations and you sign your name; and today's April the
10 16th, 2009, simply to tell you what today's date is.

11 Now, if you find that the State has failed to prove
12 each and every element of assault and battery with intent
13 to kill beyond a reasonable doubt, then you would -- and
14 you have found him then not guilty of assault and battery
15 with intent to kill, then you consider the charge of
16 assault with intent to kill.

17 Now, if you -- if you find yourself considering Number
18 2, it reads as follows (as read): "As to the charge of
19 assault with intent to kill, we the jury unanimously find
20 the defendant ..., " and then you would consider the
21 evidence, and you would make your decision and render your
22 verdict if you find the defendant guilty, then you would
23 stop your deliberation, sign your name and date it.

24 If you find that the State has failed to prove each
25 and every element of assault with intent to kill beyond a

1 reasonable doubt, you would then find the defendant not
2 guilty. And in that event, then you would consider the
3 charge of assault and battery of a high and aggravated
4 nature.

5 Number 3 reads as follows (as read): "As to the
6 charge of assault and battery of a high and aggravated
7 nature, we the jury unanimously find the defendant ...,"
8 and then you would circle whichever would be your verdict,
9 guilty or not guilty. Just whichever, if you'd circle it.

10 Very well. Now -- and then you -- of course, you
11 would date and sign the verdict form.

12 These instructions are written on this sheet for you.
13 Okay.

14 Now, ladies and gentlemen, in a moment, I'm going to
15 be sending you back to your jury room with this
16 instruction: Do not discuss this matter or allow anyone to
17 discuss it with you.

18 And at this point you should say, Wait a minute.
19 You've been telling us for days that at this juncture we
20 were going to deliberate. So, I'm going to tell you
21 exactly what is going to happen. I'm going to turn to
22 these lawyers and I'm going to ask them two questions:
23 Have I given this jury all of the law that they may need
24 for their deliberations? And have I stated it correctly?

25 Now, sometimes I need to bring juries back out,

1 because I have failed to give them instruction that they
2 may need for their deliberations. And in the event that I
3 need to bring you back out for that reason, please don't
4 consider that instruction with any emphasis. Just know
5 this is my chance to get this right and give you all the
6 law that you may need.

7 I may need to bring you back out to correct something
8 that I have said incorrectly and to correct an error. In
9 the event that I need to bring you back out for that
10 reason, please allow me to correct my error in your mind, I
11 ask you in advance. Again, this is my chance to get this
12 right, give you all of the law that you may need for your
13 deliberations, and to state it for you correctly.

14 Now, in the event that I do not need to bring you back
15 out, you will be brought the verdict form and the exhibits
16 and an instruction to begin your deliberations. Now, Mr.
17 Taylor and I been doing this for about 11 years. And he
18 has been, for 11 years, telling the jury, "Now begin your
19 deliberations."

20 And he may forget. It's been 11 years, it's about
21 time for him to forget one. So, you will not have your
22 verdict form and these exhibits unless you are prepared to
23 deliberate.

24 And let me tell you that all 12 of you must be present
25 to deliberate. So, if you need to take a break, if

1 somebody needs to have a smokey-smoker break or have a
2 little comfort break, stop your deliberations, take your
3 break, and then simply reconvene your deliberations when
4 all 12 of you are together again. Just remember that all
5 12 of you must be together for you to deliberate.

6 Now, when you have concluded your deliberations and
7 you filled out the verdict form, you will knock on the
8 door, you will return to the courtroom, and you will hand
9 the verdict form to Mr. Taylor who will in turn hand that
10 to me. You do not publish the verdict. Just pass it
11 along, and then he will pass it to me.

12 Now, ladies and gentlemen, I will leave you with this
13 concluding thought. And it's this, the word "verdict," the
14 word "verdict," comes from the Latin phrase *veridicto*,
15 which means "to speak the truth"; "to speak the truth."

16 Ladies and gentlemen, that is now your task. Please
17 step to your jury room. Do not discuss this matter, and do
18 not allow anyone to discuss it with you.

19 (Jury exits at 3:59 p.m.)

20 THE COURT: All right. Ms. Perkins and Ms. Smith.

21 JUROR: Yes.

22 THE COURT: You are my alternates, and let me tell you
23 what I'm going to ask you to do for me. I'm going to ask -
24 - ask you to give us 15 minutes more of your time. And let
25 me tell you why. I believe that if something should happen

1 to one of our jurors as the deliberations begin -- and
2 believe it or not, that does happen -- that I believe I
3 could stop the deliberations, seat one of you, and then
4 begin the deliberations anew and save the trial.

5 So, you've given me so much of your time. I'm going
6 to implore you for 15 more minutes. But do let me know
7 when -- y'all keep up with it, because -- and when the 15
8 minutes is up, let somebody know. Because I do want to
9 speak to you before you go and thank you for -- for being
10 with us.

11 So, if you would please go with Mr. Taylor.

12 (To Mr. Taylor) Put them where they can get some
13 chocolate. Something good, George.

14 (Alternates exit the courtroom at 4 p.m.)

15 THE COURT: All right. Any exceptions or additions
16 from the State?

17 MR. BELL: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. ARCHER: Your Honor, I'd simply put on the record
20 ---

21 THE COURT: Uh-huh.

22 MR. ARCHER: --- exception to the failure to charge
23 self-defense.

24 THE COURT: Absolutely. Thank you so much. Thank you
25 so much.

1 All right. And -- and I did not charge self-defense,
2 because I did not find sufficient -- I did not find any
3 element -- any evidence on a number of the elements without
4 fault: Failure to retreat immediately come to mind. So,
5 that's -- that is why I did not -- I chose not to charge.

6 Very well. We will be in recess until we hear from
7 our jury. Counsel, what am going to ask you to do, though,
8 is go over the evidence, both of you. And the verdict form
9 once more, to be sure that what is going to the jury is
10 what's supposed to go to the jury. I'm ever mindful that
11 it was my case that -- that was tried in Calhoun and had
12 that paper in the back pocket that wasn't discovered until
13 after the trial.

14 MR. BELL: The CD is not going to the jury.

15 THE COURT: The CD is not going to the jury. And you
16 know, it's one of the things I had wanted to mention to
17 them.

18 I can send a note back or I can bring them back out
19 and share that with them. Tell me what your preference is.

20 MR. ARCHER: What -- what is not going to the jury?

21 THE COURT: Remember the disk? Remember the disk? I
22 -- I'm not going to let the disk with the recording ---.

23 MR. ARCHER: Oh. Okay.

24 THE COURT: --- go back, because there's several
25 things. And I would not want them --

1 MR. ARCHER: It makes no difference to me how you --

2 THE COURT: Okay. Mr. Bell?

3 MR. BELL: No -- no objections to sending a note.

4 THE COURT: Sending a note.

5 MR. ARCHER: No.

6 THE COURT: All right. And what should I call that,
7 gentlemen? The recording? They only heard one.

8 MR. BELL: The recording.

9 THE COURT: All right. The recording -- here's what
10 I'm going to say, guys (as read): "The recording is
11 available -- is available for you to hear. Please let me
12 know if you wish to hear it."

13 And Bonnie, we'll mark this as a Court's Exhibit.
14 Okay.

15 THE COURT REPORTER: Yes, ma'am.

16 (Marked Court's Exhibit No. 1, note
17 from the Court to jurors.)

18 THE COURT: George, if you'll -- George, if you'll
19 take -- put the note on top, so I'm sure that they see that
20 note. And Bonnie's just putting a sticker on it.

21 (Sotto voce discussion between
22 the Court and Court Security.)

23 THE COURT: All right.

24 (Exhibits and verdict form go
25 back to the jury at 4:05 p.m.)

1 (Off the record at 4:05 p.m.)

2 (On the record at 5:54 p.m. as jury enters.)

3 (Marked Court's Exhibit No. 2, juror note.)

4 THE COURT: Ladies and gentlemen, I have your note.
5 And I intend to recharge you on the law "the hand of one is
6 the hand of all." Let me turn on my microphone.

7 Okay. If a crime is committed by two or more people
8 who are acting together in committing a crime, the act of
9 one is the act of all. A person who joins with another --
10 let me make sure. Hold on. All right.

11 (Sotto voce discussion between the Court and law clerk.)

12 THE COURT: A person who joins with another to commit
13 an unlawful act is criminally responsible for everything
14 done by the other person which happens as a probable or
15 natural consequence of the acts done in carrying out the
16 common plan and purpose.

17 For example, two people can be guilty of killing
18 another person when only one of the two had a gun. There
19 was only one bullet, and only one of the two fired the shot
20 that caused the death. If two or more people are together,
21 acting together, assisting each other in committing the
22 offense, the act of one is the act of all. Or as it is
23 sometimes said, "the hand of one is the hand of all."

24 Prior knowledge that a crime is going to be committed
25 without more is not sufficient to make a person guilty of

1 that crime. Mere knowledge that another person is going to
2 commit a crime, even if the defendant is present when the
3 crime is committed, is not sufficient to convict the
4 defendant as a principal. Guilt, as a principal, is shown
5 by actual or constructive presence at the scene, as a
6 result of prior arrangement. Therefore, a finding of a
7 prior arranged plan or common scheme is necessary for a
8 finding of guilt as a principal. The State must prove
9 beyond a reasonable doubt, by competent evidence, the
10 theory of the hand on one is the hand of all,

11 A principal in a crime is one who either actually
12 commits the crime, or who is present aiding, abetting, or
13 assisting in committing the crime. When a person does an
14 act in the presence of and with the assistance of another,
15 the act is done by both. Where two or more, acting with a
16 common plan or intent, are present at the commission of a
17 crime, it does not matter who actually commits the crime,
18 all are guilty. The hand of one is the hand of all.

19 Present at the commission of a crime means to be
20 sufficiently near to aid and abet and assist in the
21 commission of the crime. However, mere presence at the
22 scene of a crime is not sufficient to convict one as a
23 principal on the theory of aiding and abetting.

24 Intent is also a necessary element, for there must
25 have been a common design or intent to commit the crime,

1 and the crime must have been committed pursuant thereto,
2 with the person aiding and abetting some overt act. Intent
3 means intending the result which actually occurs, not
4 accidentally or involuntary. Intent may be shown by acts
5 and conduct of the defendant, and other circumstances from
6 which you may naturally and reasonably infer intent. Now,
7 the State must prove these elements beyond a reasonable
8 doubt.

9 Ladies and gentlemen, if you would please retire to
10 your jury room, and continue your deliberations.

11 (Jury exits at 6:00 p.m.)

12 THE COURT: All right. Any exceptions, additions?

13 MR. BELL: None from the State, Your Honor.

14 MR. ARCHER: None for the defense.

15 THE COURT: Very well. We will continue in recess.

16 (Off the record at 6:01 p.m.)

17 (On the record at 6:16 p.m.)

18 (Marked Court's Exhibit No. 3, juror note.)

19 THE COURT: All right. Anything before we bring the
20 jury out from the State?

21 MR. BELL: Nothing from the State.

22 THE COURT: From the defense?

23 MR. ARCHER: Yes, Your Honor.

24 THE COURT: All right.

25 MR. ARCHER: It -- it's been brought to my attention

1 just a few moments ago, that possibly Quintavious Davis,
2 who was prime -- State's witnesses, may have several
3 convictions for crimes of which I was not aware. One of
4 these were drug offenses, possession of a sawed-off shotgun
5 or machine gun, and -- for which I didn't -- me not being
6 aware of, I could not cross-examine him on those things.

7 Now, I think it's most unfortunate that we've spent a
8 week here and -- and I may be have to make a motion for
9 mistrial based on that. Perhaps -- and we may be moments
10 away from a decision of the jury, which could make it all
11 irrelevant. All right.

12 But I feel like I have to preserve my rights and my
13 client's rights in that regard. I -- I -- in my judgement
14 -- to be honest with you, Judge, my judgement tells me that
15 it's -- it's not an open-and-shut case on behalf of the
16 prosecution.

17 But by the same token -- as a practical matter, I'd be
18 happy if we could take -- your judge -- if Your Honor would
19 withhold her decision until after we take the verdict. And
20 maybe that's -- and to me, that's a practical way to do
21 this, because if by chance the verdict should be in my
22 client's favor, we're done. We don't have half of
23 Dorchester County Sheriff's Department sitting down here
24 for another week.

25 But I do want to be very certain I'm not waiving my

1 client's rights in that regard.

2 THE COURT: All right. I -- I guess I'm not -- first
3 of all, I think it's important that -- for -- that we put
4 on the record that I just finished the -- taking the plea
5 of Mr. Davis and sentencing him, just now.

6 MR. ARCHER: Uh-huh.

7 THE COURT: And that it was during the course and
8 conduct of that plea that came to light, based on my
9 interrogation of Mr. Davis during the plea, I asked him
10 whether or not he was on probation or parole, and he
11 indicated that he was. And that he had been on probation
12 and parole since I want to say January or February of '08 -
13 - '07; '07.

14 And he is on -- as I understand it, he is on probation
15 for possession of a machine gun or sawed-off shotgun. And
16 of course, I asked him whether or not he understood that
17 his plea would violate the terms of that probation.

18 At that moment, it came to light -- and Mr. Bell said,
19 "I was unaware that he -- I thought this was -- would be
20 his first conviction. And I was unaware that he had a
21 prior conviction."

22 At which point, Mr. Bryan informed me that for
23 whatever reason, while his arrest may have been indicated
24 on a rap sheet, the conviction is not on the rap sheet.
25 And Mr. Bell indicated he pulled the rap sheet on the 13th

1 of April in preparation for this trial, and it is not
2 showing up on his rap sheet.

3 That was also echoed by Mr. Bryan and by Probation and
4 Parole. And what he indicated is only because he is on
5 probation, and -- and their computer system, which is
6 different than the -- as I understand it, from the computer
7 system that the -- the solicitors have, it showed up on
8 Probation's computer. He's on probation out of Charleston.
9 He's not on probation out of Dorchester County, which
10 further complicates it, because there would have been
11 knowledge, you know, inter-office, if he had been convicted
12 here in Dorchester County.

13 So, it appears that -- it appears -- and -- and let me
14 do this since -- since you've raised that. Because I'm
15 afraid we will lose the ability to have that.

16 Mr. Bell, I need to have your rap sheet that you were
17 referring to earlier.

18 MR. BELL: I've given the one that I had originally,
19 and the one that I ran Monday in response to Mr. Archer's
20 motion to have a rap sheet for the witness, that I provided
21 that.

22 THE COURT: Very well. Now, can you tell which one is
23 which?

24 MR. BELL: Yes. One of them -- and you can refer it.
25 I can hand them -- this one is the one that's dated

1 4/13/2009 at 11:46:03, is when it was run through SLED and
2 NCIC. If you want to mark that as a Court's Exhibit --

3 THE COURT: I do. I do. I'm going to let Bonnie do
4 that. Yeah. Yes, I do. And both of -- neither one show
5 the conviction; am I right?

6 MR. BELL: No, Your Honor.

7 THE COURT: Okay.

8 MR. BELL: It shows a charge of -- from 11/10/2006,
9 and I go down and there is no conviction on the paperwork
10 that I have.

11 (Marked Court's Exhibit No. 4, rap sheet.)

12 (Marked Court's Exhibit No. 5, rap sheet.)

13 MR. BELL: And this is the original rap sheet that
14 we're working off. It's dated January 16, 2008. It's
15 similar. It shows the arrest, but no conviction.

16 THE COURT: Very well. Tell me this, Mr. Bell, what
17 was the subpoena for? Do you -- do you have a copy of the
18 subpoena or the request?

19 MR. BELL: Subpoena for --

20 THE COURT: For the rap sheet.

21 MR. BELL: Well, I mean, generally we have a rap
22 sheet. The request --

23 THE COURT: Listen to my question: What did Mr.
24 Archer serve you with?

25 MR. BELL: It was a motion. It was the motion that he

1 made.

2 THE COURT: And what was -- was it just the Rule 5 or
3 in the Brady motion, or was it a specialized motion?

4 MR. BELL: Well, he had the Rule 5 Brady motion, I
5 think, originally. But he also had a motion, -- pre-trial
6 motion to provide for the non-law enforcement witnesses rap
7 sheets --

8 THE COURT: Was that oral or was it written?

9 MR. BELL: It was written. I think he filed it with
10 the -- with the Clerk of Court.

11 THE COURT: Okay. Did -- was it -- was it -- I want
12 to be -- I just need to be sure that that's a part of the
13 record.

14 MR. ARCHER: I'm not sure. Be honest, right at this
15 point, I'm not sure if it was oral or written. But we --
16 I've dealt for many years with ---

17 THE COURT: I know. I'm just making the record ---

18 MR. ARCHER: --- with Mr. Bell.

19 THE COURT: --- clear, Mr. Archer.

20 MR. ARCHER: Generally, we -- on a number of occasions
21 I'd call and say, "Harrison, I don't have this or I need
22 this. Can you -- will you get it to me?"

23 THE COURT: Sure. I understand

24 MR. ARCHER: And -- I mean, that's old-time way of
25 doing things.

1 THE COURT: I understand.

2 MR. BELL: I'm pretty sure that was a -- that's -- I
3 mean, I've got a copy of it written. I don't know whether
4 it was filed. (As read) "A motion for disclosure of
5 criminal records."

6 THE COURT: What does it say?

7 MR. BELL: (As read) "By and through the undersigned
8 attorney ---"

9 THE COURT: Oh. You gotta slow down. You gotta slow
10 down.

11 MR. BELL: I'm sorry. It says (as read): "You will
12 please take notice that the defendant, applying through the
13 undersigned attorney, will move before the presiding judge
14 of the Court of General Sessions, at the Dorchester County
15 courthouse, as soon as the matter can be heard, upon order
16 of the solicitor, to provide criminal records of all
17 witnesses he intends to call at trial."

18 THE COURT: Okay.

19 MR. BELL: And then I think he tailored that more
20 towards the lay witnesses ---

21 MR. ARCHER: I don't want any records for police
22 officers.

23 MR. BELL: If you want to make that a Court's Exhibit,
24 I have a copy of it here.

25 THE COURT: I do... I absolutely do.

1 MR. BELL: And we had a hearing on it.

2 THE COURT: Hold on. Let -- let Bonnie wrap this,
3 because I -- I got another question to ask of you.

4 (Marked Court's Exhibit No. 6, motion document.)

5 MR. ARCHER: I do -- I believe at the beginning of the
6 trial, we put it -- you put it on the record.

7 THE COURT: Uh-huh. We did.

8 MR. ARCHER: Yeah.

9 THE COURT: All right. Now, in compliance with the
10 motion, Mr. Bell, tell me what you did.

11 MR. BELL: In compliance with the motion, I ran his
12 rap sheet again on Monday, April 13th, and I provided a
13 copy to Mr. Archer.

14 THE COURT: Mr. Bell, when you are requested to
15 provide criminal records for potential witnesses for the
16 State, what has been your normal course?

17 MR. BELL: To run our rap sheet. We are capable to
18 run them on the NCIC -- which is the National Crime
19 Information Center -- the FBI data base, and the State of
20 South Carolina State Law Enforcement Division data base.

21 THE COURT: Have you ever done otherwise in your
22 practice?

23 MR. BELL: Not according to one of those motions. No.

24 THE COURT: Yeah. Right. Did you have any indication
25 until you -- until moments ago, that in fact, Mr. Davis had

1 a record?

2 MR. BELL: I had no indication he had that conviction.

3 THE COURT: And for what it's worth, your physical
4 reaction was -- hearsay observation on my part, that you
5 were slightly shocked.

6 MR. BELL: Yeah. I was -- I was shocked.

7 THE COURT: Yes.

8 MR. BELL: Because I certainly -- if I knew about it,
9 I would have provided it -- provided it.

10 THE COURT: All right.

11 MR. ARCHER: And -- and I ---

12 THE COURT: Yes.

13 MR. ARCHER: --- I know -- I know him to be an
14 honorable man.

15 THE COURT: Oh. I know.

16 MR. ARCHER: But it does provide -- regardless, it
17 provides a bit of a dilemma, I think.

18 THE COURT: I think that the motion is made because
19 your motion was one for the records. And that is your
20 motion.

21 MR. ARCHER: Yes, ma'am.

22 THE COURT: And you -- you would move for a mistrial -

23 --

24 MR. ARCHER: Yes, Your Honor.

25 THE COURT: --- at this point on the basis that the

1. record failed to be provided.

2. MR. ARCHER: That's correct.

3. THE COURT: I understand.

4. MR. ARCHER: That the State of South Carolina is
5. responsible for doing that ---

6. THE COURT: I understand.

7. MR. ARCHER: --- whether it's Mr. Bell or -- or
8. whoever else.

9. THE COURT: I understand. And just so the record is -
10. - is complete and the reason is is that you would have --
11. you would have cross-examined Mr. Davis regarding that
12. record.

13. MR. ARCHER: I certainly would have. I mean, if I had
14. -- particularly possession of a sawed-off shotgun or
15. machine gun. I would have done everything I possibly could
16. have to cross-examine him on that.

17. THE COURT: Okay.

18. MR. ARCHER: Given the nature of the events.

19. THE COURT: All right. All right. I'm going to deny
20. the motion for a mistrial for this reason: Because I think
21. that the record is clear that the solicitor, in fact,
22. complied with the motion. And I heard the motion before we
23. began the trial, and saw and heard from both of you that
24. the rap sheet had been pulled and had been given to
25. counsel.

1 And all indications are it was, in fact -- that is, in
2 fact, the rap sheet. And that until the time that I was
3 actually questioning Mr. Davis, regarding whether or not he
4 was on probation and parole, but for that, I don't know
5 that that information, while it was in the hands of
6 Probation, it was not in the hands of the solicitor.

7 So -- and I guess I'll ask this: Mr. Bell, has that
8 ever happened where a rap sheet was defective in that
9 regard? Have you ever had that experience?

10 MR. BELL: I've certainly have had experience where
11 the rap sheet does not reflect all the convictions on a
12 particular individual. They're certainly not complete. I
13 think the record's only good as what information they get
14 in.

15 THE COURT: Yes. Okay. All right. All right. Very
16 well.

17 However, it was certainly clear to Mr. Archer that
18 what you were sharing with him was, in fact, his rap sheet.

19 MR. BELL: Yes, Your Honor.

20 THE COURT: All right. All right. And we'll just
21 leave it there. We can do no more with it than that. All
22 right.

23 MR. ARCHER: Necessary I make -- renew it as part of a
24 motion for a new trial.

25 THE COURT: Oh. Indeed. Indeed, Mr. Archer. I

1 understand. Uh-huh.

2 MR. ARCHER: Okay.

3 THE COURT: All right.

4 MR. ARCHER: Bring the jury in?

5 THE COURT: Yes. We're going to bring the jury in.

6 Oh. Before you do that, let me just say to -- I know
7 there are a number of well-meaning family members on both
8 sides. And I -- I'm actually -- I'm always -- my heart is
9 always warmed when family members -- when I see that they
10 care so much about their loved ones and their co-workers
11 and their family.

12 I think that's a wonderful thing, not a negative thing
13 at all. I think it's a marvelous thing and -- and I'm
14 delighted that that is, in fact, what -- what our victim in
15 this matter has had. And I think it's wonderful that Mr.
16 Parker has had that same support.

17 What must, however, occur is that there must be
18 dignity maintained, irrespective -- and I -- of course, I
19 have no way of knowing what the verdict might be. But
20 there cannot be a reaction, there cannot be a reaction when
21 this verdict is read. That is not appropriate. That is
22 not appropriate to -- for that to happen in the presence of
23 the Court and the presence of this jury.

24 I say that, because I want everyone to know that I
25 will hold you in contempt. And contempt in South Carolina

1 is punishable by up to a year in prison and a \$1500 fine --
2 \$500 -- 500 community service hours. Please help me,
3 because that would be so very sad for me to have to do
4 that. But I will do that.

5 Now, if anybody is concerned about your ability, no
6 matter what the result -- and again, I have no idea what it
7 might be -- please exit the courtroom now. You will find
8 out seconds later. If you think there's any possibility
9 that you will not be able to contain your emotions, please
10 go ahead and take advantage of leaving now. Because you're
11 going to find out seconds afterwards. Very well.

12 Thank you all so much. Thank you so much. All right.
13 Let us have the jury please.

14 MR. TAYLOR: Yes, ma'am.

15 (Jury enters at 6:34 p.m.)

16 THE COURT: All right. Ms. Husser, there has been an
17 indication the jury has reached it's verdict. Is that
18 correct?

19 PRESIDING JUROR: Yes, ma'am.

20 THE COURT: Please pass it to Mr. Taylor for me.

21 PRESIDING JUROR: (Complies.)

22 THE COURT: Thank you. All right. Thank you -- thank
23 you for returning that.

24 PRESIDING JUROR: Uh-huh.

25 THE COURT: This -- this is just the note from

1 earlier, and we'll mark that as the Court's Exhibit.

2 (Marked Court's Exhibit No. 7, juror note.)

3 THE COURT: All right. I find that the verdict is in
4 appropriate form.

5 (As read) "State of South Carolina, County of
6 Dorchester, in the Court of General Sessions, of the First
7 Judicial Circuit, Indictment No. 2008-GS-18-481, State of
8 South Carolina vs. Dervick Lamont Parker.

9 "Question No. 1: As to the charge of assault and
10 battery with intent to kill, we the jury unanimously find
11 the defendant guilty. Signed Pamela Husser, 4/17/09."

12 Ladies and gentlemen, if this was your verdict in your
13 jury room and continues to be your verdict here in the
14 courtroom, please indicate by raising your right hand.

15 (All jurors raise their right hands.)

16 THE COURT: Let me find that all of our jury's --
17 jurors have their right hands raised.

18 All right. Sir, anything before we dismiss our jury?

19 MR. ARCHER: No, ma'am.

20 THE COURT: Very well. Ladies and gentlemen, I want
21 to thank you for your service on this jury and on this jury
22 panel this week. You are now at liberty to discuss this
23 matter if you wish. It is completely up to you, however,
24 whether or not you wish to discuss this matter or not.

25 You're going to go home. There's going to be someone

1 curious about what you have been up to, and it is
2 completely up to you whether or not you wish to talk about
3 it. Now, you may want them to take you to dinner to talk
4 about it.

5 Now, should anyone persist in speaking about this
6 matter with you, and you've told them, I don't want to talk
7 about it." Your remedy is to contact Ms. Graham and she
8 will contact me, and I will intercede on your behalf. Let
9 me tell you, that in 11 years, maybe arguably that's
10 happened once. It's very, very, very rare. But sometimes
11 it could be college students studying the jury system and
12 the like, and so I always mention that to juries that I
13 have the opportunity to serve with, so that there will --
14 you know where to go should that ever occur to you.

15 Now, ladies and gentlemen, let me remind you that you
16 have, of course, your exemption for the year 2010 and 2011
17 for your service on a court of record, if you choose to
18 exercise it. You are now not eligible to serve in a court
19 of record for the balance of 2009.

20 Let me also share with you, I used to tell jurors "the
21 check was in the mail." And then Ms. Graham said, "Stop
22 that. That's not true."

23 The check is not in the mail. But it will be very
24 soon. Interestingly enough, my -- one of my children
25 served on the jury a couple of weeks ago. It was very odd.

1 But he's already received his check.

2 So -- but you know the trip to Tahiti, of course, that
3 we chatted about? It will get you to Jedburg. So, in any
4 event, it is truly only a small, small token of -- of what
5 you have given to our system. And that, of course, is your
6 dear and precious time.

7 Now, ladies and gentlemen, you're service on this jury
8 and on this jury panel is now ended. Let me tell you what
9 will occur is that in a moment, I am going to hear any
10 motions that might be made. And then it is my task to pass
11 sentence. You are now a member of the public. If you wish
12 to remain, you are fine where you are. But if you do wish
13 to leave us, you certainly are free to do that at this
14 time.

15 Thank you so much, ladies and gentlemen, for your
16 service.

17 (Jury exits at 6:39 p.m.)

18 THE COURT: All right.

19 MR. ARCHER: I of course, move for judgement,
20 notwithstanding the verdict. But more importantly, I would
21 move for a new trial. We've all been confronted with
22 somewhat of a unique situation here.

23 And there's no indication that Mr. Bell failed to
24 disclose something he should have disclosed or knew about.
25 But in a way, I don't see it as a Brady issue. I see it as

1 inherent fair trial issue that -- one thing that concerns
2 me greatly about this going to the jury is the instruction
3 that the jury asked for right before receiving a verdict,
4 which was "hand of one/hand of all." Which tells me that
5 QuinttVIOUS Davis somehow figured right importantly in
6 their deliberations.

7 And I think we can technically say, Well, he disclosed
8 everything we knew about. And usually, the position you're
9 in in this situation is you're in after-discovery evidence.
10 Trial's over with, guy's been sentenced; all of a sudden
11 "boom," here's new evidence.

12 Here we're sitting when the trial's not over with, the
13 jury's still in deliberations. So, not really after-
14 discovery evidence. I mean, I'll be honest, I've been in
15 this business 37 years and never had something like this
16 particularly occur.

17 But I -- I do very -- as an experienced trial counsel
18 and particularly given their request for the "hand of
19 one/hand of all," I mean, that's what seemed to -- sort of
20 brought them to their verdict. I can't help but think that
21 QuinttVIOUS Davis played a critical role in their
22 decision.

23 I took that initially -- I found that when juries come
24 back and ask for instructions, they're real close to a
25 verdict for the most part. And -- and usually it's not a

1 good sign, necessarily, for a defendant.

2 But to some extent, I thought, Well, maybe they're
3 beyond talking about he is responsible on his own, and --
4 but we're going to put him responsible because of his
5 association with Quinttavius Davis. You know, if they
6 thought he was the principal actor, they wouldn't be asking
7 -- the principal actor -- actor, they wouldn't be asking
8 for that particular instruction. It would -- it would be
9 irrelevant. Okay.

10 So, none of us can ever know, because under the rules,
11 we cannot invade the province of the jury room. But I
12 think that it is a basic ---

13 THE COURT: Just a second.

14 (Sotto voce discussion between
15 the Court and court security.)

16 THE COURT: I'm sorry, Mr. Archer.

17 MR. ARCHER: I -- I think it is a basic due process
18 and fair trial issue, that my client did not get the
19 fairest trial to which he was entitled. Not because
20 somebody did something under the table, but because the
21 State somehow messed up.

22 I mean, the fact he didn't get his fair trial was not
23 due to his fault or omission on my part. It was due to
24 some sort of omission on the part of the State. And that
25 for that reason a new trial should be granted. And they

1 were not yet into that territory -- since it is discovery
2 prior to verdict, we're not into that territory where we
3 have to not only show additional evidence, where we have to
4 show very specifically how it would affected the outcome of
5 the trial, because it's discovered and objected to prior to
6 verdict.

7 THE COURT: Uh-huh. No question it was.

8 MR. ARCHER: And -- and so, you know, I think that --
9 and most of us would accept this that -- that defendants
10 are entitled to the fairest of all possible trials and ---

11 THE COURT: No, sir. That is not the standard.

12 MR. ARCHER: Huh?

13 THE COURT: That is not the standard. The standard is
14 that he is not entitled to the fairest of all possible
15 trials. That is not the articulated standard.

16 MR. ARCHER: Well, it's not the articulated standard -
17 -

18 THE COURT: Yes, sir.

19 MR. ARCHER: -- but I think we wouldn't be in this
20 business. What I'm saying is that -- that -- that, you
21 know, as people concerned with justice.

22 But -- but I mean, I think it was just -- it's
23 extremely unique. And I think that having been discovered
24 prior to verdict and objected to, that ---

25 THE COURT: Okay.

1 MR. ARCHER: --- and with certain indications that the
2 information bore in some critical areas of jury's
3 consideration, that a new trial should be granted.

4 THE COURT: Thank you, Mr. Archer.

5 MR. ARCHER: And I would add, of course, for the
6 record ---

7 THE COURT: Yes, sir. I appreciate that.

8 Mr. Bell, what I did not do is I did not allow you to
9 speak to -- to the matter earlier. And I just -- certainly
10 I want to give you an opportunity to do that.

11 MR. BELL: Well, Your Honor, I think that -- quite
12 honestly, I think the overriding factor with Mr. Davis more
13 so was the fact that he was given a plea bargain, and
14 Defense was able to flesh that out. And the jury was quite
15 knowledgeable. I tend to disagree with what he says,
16 because the jury knew he was pleading guilty to assault with
17 intent to kill. And yet they found the defendant guilty
18 with assault and battery with intent to kill. So, I don't
19 know how much that "hand of one, the hand of all" played
20 into it, Your Honor. So, I tend to disagree.

21 Your Honor, all I can say is that the State -- we had
22 as much information as we had, we disclosed everything we
23 had, and -- and that's my argument. That he had a chance
24 to flesh out his testimony and I don't think that it would
25 have made one difference here nor there.

1 I think the biggest overriding factor with Mr. Davis's
2 testimony was -- testimony was the deal that the State
3 engaged him with, and the jury knew that. And I don't
4 think that this had a factor in their decision at all, and
5 I don't think that a new trial should be granted.

6 THE COURT: All right.

7 MR. ARCHER: May I?

8 THE COURT: Sure you can respond.

9 MR. ARCHER: I don't think that we were yet in the
10 territory -- without doing -- sitting down to a bunch of
11 research -- that we were yet in the territory where we need
12 to show that this evidence would have been so critical it
13 was highly likely to change the outcome of the trial.

14 But in any event, that's -- I see Your Honor's close
15 to making a decision, and -- and so I'll sit down and await
16 your decision.

17 THE COURT: You know, I guess what -- it is an unusual
18 and it is a unique situation. And -- and I guess -- I
19 guess the -- the part of it -- here's the part of it that -
20 - that I'm struggling with. Of course, you -- you know
21 it's gotta be a showing of -- of prejudice.

22 And I'm satisfied that the solicitor's office, as the
23 prosecutor in this case, had provided all the information
24 that they were aware of, and that they had within their
25 possession. And clearly -- obviously, Mr. Davis is someone

1 that you could have spoken with as well, and you probably
2 did or attempted to.

3 And I guess what I'm struggling with is if -- if he
4 had -- if you had asked him and he'd told you nothing or
5 was untruthful with you, then your position would have been
6 also to get the rap sheet. And I know that that is the
7 practice of the Bar.

8 I decided and it clearly was an error in the entry of
9 information on the NCIC and on SLED's information as well.
10 That while the arrest was there, the conviction was not.

11 MR. ARCHER: Uh-huh.

12 THE COURT: And both of you were aware of the arrest,
13 because you had possession of the rap sheet or access to
14 the rap sheet, but neither one of you had the conviction.
15 So the information certainly is -- you -- you know, you
16 both had. It's just -- just as Mr. Bell said, garbage
17 in/garbage out.

18 MR. ARCHER: Uh-huh. I might --

19 THE COURT: Yeah. Go ahead.

20 MR. ARCHER: I -- I -- I did call Mr. Davis's lawyer.
21 I mean, of course, I can't contact him directly. He's
22 represented by counsel.

23 THE COURT: That's right. That's right.

24 MR. ARCHER: I did contact Mr. Davis's lawyer, and
25 asked -- I think what I told him, I said, Gee, what I'd

1 really like to do is have the opportunity to talk to him
2 before trial ---

3 THE COURT: Sure.

4 MR. ARCHER: --- but if not, if you could tell me
5 basically what his testimony's going to be. And he said, I
6 -- I gotta talk to him.

7 And -- and I said, Well, that being the case that I
8 don't -- I -- I made this two arguments: One, that I
9 wanted to back-check and make sure I knew what the deal
10 was. I didn't think that -- that disclosing the deal was
11 disclosing any attorney/client privileged information.

12 THE COURT: Uh-huh. Sure.

13 MR. ARCHER: You know. And secondly, I said, Well, if
14 your client has discussed all of this with Mr. Bell, what
15 his testimony's going to be, then I don't think it's any
16 longer attorney/client privilege.

17 THE COURT: Right.

18 MR. ARCHER: But the best I got was: Here's what the
19 deal is. We're going -- he's going to be allowed to plead
20 to AWIK.

21 And -- and I -- I can't fault that. I -- I probably
22 would have done the same thing as his lawyer.

23 But I do want to make it clear to the Court, that I
24 did attempt to get all the possible information I could
25 from and by and about Mr. Davis.

1 THE COURT: And you didn't subpoena any -- I mean, you
2 could -- there was -- there would be no record to subpoena
3 from Mr. Davis, because he doesn't have a rap sheet.

4 MR. ARCHER: And I wouldn't know just bringing it to
5 the Department of Probation.

6 You know, I -- I sort of feel this, I mean, you know,
7 that -- you know, you can look at it as a Brady issue, you
8 can look -- there's a lot of different ways you can look at
9 this. Okay.

10 THE COURT: But I don't think this ---

11 MR. ARCHER: The Brady issue -- nobody -- nobody has
12 intentionally suppressed something. But -- but really what
13 happens in the end is, the State fouls up something;
14 whether it's Mr. Bell or Probation Department or the Clerk
15 of Court or whoever it is. Okay. The State fouls up
16 something -- fouls it up, and then turns to my client and
17 says, Too bad; too late, you know.

18 And there's something fundamentally unfair about that.
19 He has not set on his laurels. He has exercised his rights
20 under Brady. Even up to the last he was calling me,
21 talking to Harrison about want the -- you know, the
22 criminal records; I want this and that. He has actively
23 pursued his rights under that -- in that regard. And
24 because the State makes a mistake, and we don't find it out
25 til the jury's walking through the door, too bad. That --

1 there's something wrong there.

2 I'm not -- I don't have case law to give you.

3 THE COURT: Okay.

4 MR. ARCHER: But you know --

5 THE COURT: Yeah.

6 MR. ARCHER: -- there -- there's this -- but it's --
7 there's something fundamentally unfair about that he should
8 pay because -- or have no rights, because some -- this
9 department of the -- of the State didn't talk to that
10 department of the State and didn't talk to Mr. Bell. But
11 still, the State of South Carolina has -- has injured his
12 right to a full trial, you know, on the issues. And that's
13 -- that's -- that's ---

14 THE COURT: I -- I'm with you.

15 I am prepared to rule and I'm going to -- to deny the
16 motion, judgement notwithstanding the verdict and new trial
17 for this reason: If the information had been disclosed,
18 then it would have been disclosed and it would have been
19 the opportunity for Mr. Archer to additionally cross-
20 examine Mr. Davis. Because it was a criminal record
21 though, it could only be used for impeachment purposes;
22 assuming arguendo it could be used, it could only be used
23 for impeachment, with limiting instruction. And would have
24 been additional impeachment.

25 I don't believe that -- I am not convinced that the

1 impeachment, as to that issue, would have changed the
2 result. And I don't believe that the error, which all
3 agree was certainly not intentional, would have or does
4 undermine my confidence in the -- in the verdict.

5 (Sotto voce discussion between the Court and law clerk.)

6 The only -- the only authority my law clerk has been
7 able to find is State vs. Allen, 276 SC 412, 279 SE2nd 365.
8 And there are only two, I think, relevant points the case
9 made. And they talk about whether or not it is important
10 if the evidence would have just been impeaching is -- is
11 important.

12 And also here -- now here's the interesting part of
13 this case. And -- and I'm going to read a part of it. It
14 says (as read): "Here Ballard's Federal conviction was a
15 matter of public record. It was available to the
16 respondent and his counsel through due diligence that did
17 not constitute after-discovered evidence."

18 And in this case, the -- the judge, on that basis, had
19 actually granted a new trial and -- and was reversed. You
20 know, it's interesting because the question is the normal
21 and customary public record certainly was consulted, but
22 there certainly isn't an argument that it was yet a matter
23 of public record, you know, I guess, in that the sentencing
24 sheet would have been filed with the Clerk of Court and was
25 certainly a matter with Probation. But as a practical

1 matter, I am certainly aware that both the State and
2 Defense counsel, unless they have information otherwise,
3 that people tend to rely on the rap sheet.

4 MR. ARCHER: That -- that poses another thought to a
5 legal ---

6 THE COURT: Okay.

7 MR. ARCHER: --- a legal ---

8 THE COURT: Sure. Of course.

9 MR. ARCHER: --- a legal.

10 THE COURT: Of course.

11 MR. ARCHER: And I don't know if this has ever been
12 dealt with. Whether or not it makes a difference whether a
13 Brady violation is accidental or intentional. Now, it
14 certainly makes a difference if a prosecutor intentionally
15 fails to disclose. He's going to be subject to the
16 discipline committee, as is happening now with the people
17 who prosecuted Senator Stephens. Okay.

18 But does it -- I'm not -- I don't know the answer.
19 Does it make a difference if the State's failure to
20 disclose information is accidental or intentional? And --

21 THE COURT: I understand.

22 MR. ARCHER: -- and I'm not sure that through normal
23 due diligence -- if he couldn't find it, I -- I'm certainly
24 not going to find it. I mean, I -- I think you got a
25 certain right to rely on what you're given by the State,

1 and I don't have to go back and search the Clerk of Court's
2 records to find -- find the stuff.

3 THE COURT: Well that, no doubt, will be determined.
4 And help us all. Educate us all.

5 MR. ARCHER: Uh-huh.

6 THE COURT: Very well. I'm going to -- I do
7 respectfully deny the motion and note your exception
8 thereto.

9 All right. Now ---

10 MR. ARCHER: And of course, for the record ---

11 THE COURT: Yes.

12 MR. ARCHER: --- I accept the failures upon -- to do
13 the charge that this -- that was self-defense.

14 THE COURT: Yes. Very well.

15 MR. ARCHER: Just to maintain that.

16 THE COURT: Of course. Of course. All right.

17 Very well. I think it is appropriate that we go
18 forward at this time with the sentencing.

19 MR. ARCHER: Yes.

20 (The defendant and Mr. Archer, along with Mr. Bell
21 and Mr. Hilton, approach the Bar.)

22 MR. ARCHER: (To the defendant) Step over here by the
23 mike.

24 DEFENDANT: I ain't gonna run.

25 COURT SECURITY: We know that.

1 MR. ARCHER: They know that.

2 THE COURT: I'm sorry. What was that?

3 DEFENDANT: I was telling I wasn't gonna run.

4 THE COURT: You said you were gonna run?

5 MR. ARCHER: No. He said he was not gonna run.

6 DEFENDANT: Wasn't ---

7 THE COURT: Yeah.

8 MR. ARCHER: He saw the deputies gathering around him

9 ---

10 THE COURT: I understand.

11 MR. ARCHER: --- and he said I'm not gonna run.

12 THE COURT: You know, that -- that is just our policy
13 and procedure, Mr. Parker.

14 MR. ARCHER: They have to do that.

15 THE COURT: Anything further from the State?

16 MR. ARCHER: Your Honor, nothing further from the
17 State. He -- I will say this, he has no prior adult
18 record. Sergeant Gibbons does not wish to address the
19 Court.

20 What I will say, however, in prior dealings with
21 Sergeant Gibbons in this incident, his concern was not that
22 he was a police officer, but his concern was that he was
23 just kind of another person there. And you know, went
24 after -- that went after some person that was there. And -
25 - and that's what his concern has always been, that there

1 may have been another innocent party out there that may
2 have suffered the same fate.

3 And -- and he is not asking for special treatment
4 because he's a police officer. He's more concerned that
5 this may have happened to an innocent person, that was not
6 there, you know, as part of their job and all that. And
7 that's been his concern all along.

8 THE COURT: Thank you, Mr. Bell. Yes, sir, Mr.
9 Archer.

10 MR. ARCHER: Your Honor, I think the two -- you've
11 heard most of -- you heard the case. And I think that --
12 that there are two significant factors. And one is that
13 this was clearly -- the action was clearly initiated not by
14 Dervick, but by Quinntavious Davis. He's the one that goes
15 chasing after the officer and shooting.

16 And it's always struck me in my head and -- and
17 Officer Gibbons has always -- has always said they didn't
18 have a way to know I was a police officer. Okay.

19 THE COURT: Right.

20 MR. ARCHER: And that if Your Honor were faced with
21 three young men -- take the police officer out -- three
22 young men who meet on -- in a dark place and a dangerous
23 place, and they're all armed; and you know, one -- one of
24 them has seen the others have -- pulls a weapon. You know,
25 I'm not sure how badly you would hurt any of those three.

1 You know, you -- what you have is a recipe for
2 disaster. You know, and the fact -- and this doesn't mean
3 that -- that he did anything wrong; that -- that in all
4 likelihood, I think if -- if Sergeant Gibbons had walked
5 away without pulling his weapon, none of this would have
6 happened.

7 Now, that doesn't say -- that doesn't in anyway say --
8 say it. But I mean, I think it goes to the nature of the
9 sentencing, that -- that boy, we just -- that -- that was
10 like there was gas fumes all over the place -- dangerous
11 place, dangerous time of the night, stranger. All of a
12 sudden, you know, these two men were armed, which is -- is
13 the saddest thing.

14 I remember -- I -- when I was Chief Public Defender, I
15 used to go around and talk to kids. Guns don't do nothing
16 but get you in trouble or get you killed. They get you
17 killed as often as they get you -- keep you from getting
18 killed, you know.

19 But you know, I -- when you -- when you think about
20 that situation, the part that really, I presume, ignited it
21 was Gibbons pulling his weapon. And -- and -- and I do
22 kind of believe that probably none of this would have
23 happened -- because I don't think these boys went out there
24 to intentionally, Hey, let's go out and shoot somebody. It
25 was simply a situation that escalated, you know.

1 I do think probably Quinttavius Davis, whatever else
2 I think of him, said this -- I see somebody that's got no
3 business being here. I'm going to run him off. You know?
4 And -- and that things just escalated rather too quickly.

5 But that I -- I don't -- certainly don't think he
6 deserves the maximum punishment or anywhere near that. And
7 -- and you know, I don't know what the basis of the jury's
8 decision was, whether it was "hand of one or hand of all --
9 was the hand of all," or whether it was he was the fellow
10 that shot, and so forth.

11 But -- but like I say, if we -- if we had three street
12 kids out there under these same circumstances, under these
13 same sets of facts, you'd turn and say, "You're going to
14 spend some time in jail. A lesson you need to learn, guns
15 get you nowhere but jail."

16 And of course, if it were known that the person that
17 they were shooting at was a police officer, they ought to
18 go away forever. Put him away, you know, as I believe I
19 said in opening argument.

20 As far as the whole world was concerned, looking in
21 even then, we weren't -- they weren't -- it was not a
22 police officer, you know.

23 So, I would ask that you sentence him within that
24 context. You know, it wasn't "I don't like you and I'm
25 going to shoot you." That deserves -- that's a lot of

1 time. It wasn't a lot of other situations where, you know,
2 they -- obviously the jury had to decide there was some
3 malice there. But it wasn't truly the evil heart as I see
4 it, you know. It was a bad situation, and probably the
5 worst part of it was two young men -- you know, at 60, to
6 me 18 year olds are children, and they don't have good
7 judgement.

8 And -- and it was two young men with poor judgement
9 who are confronted with a -- what -- even my -- my eyes
10 would have probably proved -- seen to be a bad situation.
11 And they made some bad -- instantaneous and bad choices.

12 So you know, I would ask that Your Honor -- and -- and
13 we know, too, that he's going -- whatever sentence you give
14 him, he's going to do 85 percent of it, substantial hard
15 time, you know.

16 But I do think there's something -- some decency and
17 good about this young man. He was in high school at the
18 time. He's going to school. He -- a lot of things. And -
19 - and I would simply hate to see him do so much time that
20 the good in him does not have a chance to flower. That's
21 all I have to say.

22 DEFENDANT: May I say something, Your Honor?

23 THE COURT: Of course you can, Mr. Parker.

24 DEFENDANT: Before you sentence me, right, I'd like to
25 say I apologize for the police officer getting shot, you

1 know. Like my -- the attorney said, I try to do as much
2 time, because I got a little girl at home who just one
3 years old. She turned one and I'm trying to get home to
4 her at a reasonable time. So, can you -- will you please
5 sentence me -- sentencing me, I get a reasonable time. I
6 mean, I don't want my mama to catch no heart attack. And I
7 just try to get to them -- home fast as possible.

8 MR. ARCHER: And I will say this, we did attempt to
9 enter a plea, and had what we thought was sort of an
10 understanding. And -- and -- and right in the middle of
11 that, that -- that fell apart, so I mean ...

12 And -- and to be honest with you, given what it -- was
13 apparent, I did not force -- I thought we had a decent case
14 to try and ---

15 THE COURT: Uh-huh.

16 MR. ARCHER: --- and given the amount of time that ---

17 THE COURT: Uh-huh.

18 MR. ARCHER: --- was becoming apparent, we may have
19 drawn the first hearing, I -- I -- I -- my advice to him
20 was to go to trial. So, I hope you don't blame him for
21 that.

22 THE COURT: I would never do that.

23 MR. ARCHER: Yes, ma'am.

24 THE COURT: I would never, ever, ever ---

25 MR. ARCHER: Put me in jail for that time.

1 THE COURT: --- thwart anyone whom exercise their
2 right to a -- to a jury trial.

3 MR. ARCHER: Uh-huh.

4 THE COURT: Certainly never. All right.

5 I'm checking just to be sure.

6 (Sotto voce discussion between the Court and law clerk.)

7 SENTENCE BY THE COURT:

8 THE COURT: I guess this is what goes through my mind,
9 but let me -- I -- I -- I -- I would say very little. But
10 -- but I'd speak for just a moment. But I think it's
11 important for me to do what I -- what I must do. And now
12 that's done.

13 Mr. Archer, it's interesting you talked about what if
14 there had been three street kids, and all three of them
15 there with guns. I am afraid that rather than Detective
16 Gibbons getting shot in the leg, that one or more of them
17 would have been dead. I believe that was exactly what
18 would have happened.

19 So, as opposed to three kids from the street out in
20 the -- late at night, with guns, as opposed to Detective
21 Gibbons out, I guess from that prospective, it's thank God
22 it was Detective Gibbons instead of another street kind;
23 because we would have lost a life.

24 I will tell you that it breaks my heart that young Mr.
25 Davis and young Mr. Parker were there with guns. It breaks

1 my heart that they have grown up in a world where having a
2 gun is an accessory. It's like a hat. It breaks my heart.

3 But to -- in any regard, to intimate that Detective
4 Gibbons, in any way, exacerbated the situation is just
5 wrong. It's just wrong. Detective Gibbons was clearly at
6 that apartment complex that night doing one thing and one
7 thing one: trying to make this world a better place for
8 all of us; and for that little girl growing up in this
9 world, that needs to grow up in this world without drugs
10 and guns being on every street corner.

11 That's what he's doing. So, I will tell you that I
12 admire the fact that he was there. I mean, clearly, based
13 on everything that I heard about this apartment complex --
14 which obviously is right around the corner from a high
15 school. And that's terribly troubling. No doubt that's
16 why law enforcement has paid such close attention to it.
17 But he obviously was there just trying to make the world a
18 better place.

19 And there's no question but that these young men
20 pursued him. I mean, both of these young men -- and good
21 for them for being honest. But they both depict a picture
22 that they just didn't like the fact that he was there. And
23 so they just pursued him with guns. Oh, my goodness.

24 If they thought that he was a risk to granny, and was
25 breaking in that abandoned apartment, why not call law

1 enforcement. I mean, this has got to be crime watch gone
2 mad.

3 MR. ARCHER: Uh-huh.

4 THE COURT: So, my heart breaks over this
5 circumstance, because I don't want to lose this young man,
6 with a beautiful family who obviously love him very much.
7 He's got a daughter that desperately needs him. And it
8 breaks my heart that he made the choices that he made.

9 If that's the world that we live in, then we live in a
10 world of anarchy. And there is no peace, and there is no
11 safety. And clearly, clearly, the fact that Detective
12 Gibbons had to suffer at these young men's hands is a
13 travesty to me. And they must bear the consequence for
14 their actions.

15 So, at this point, I certainly am prepared to pass
16 sentence. Anything further from anyone?

17 MR. BELL: Nothing from the State.

18 MR. ARCHER: Nothing from me, Your Honor.

19 THE COURT: All right. Mr. Parker, I commit you to
20 the State Department of Corrections for a period of 20
21 years, giving you credit for all the time that you have
22 served.

23 DEFENDANT: Thank you.

24 THE COURT: I certainly wish you good luck.

25 DEFENDANT: I can hug my family before I go?

1 THE COURT: You have hugged them, Mr. Parker.

2 DEFENDANT: Yes, ma'am. I just asked -- asked ---

3 THE COURT: I'm going to leave that to my security. I
4 always leave that to them.

5 All right. We will be adjourned in this matter.

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7 --- END OF TRANSCRIPT OF RECORD ---

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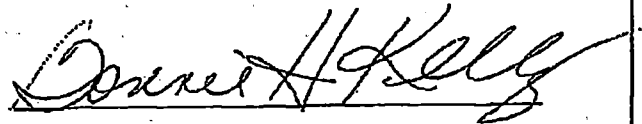
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CERTIFICATE

1
2
3 I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL
4 COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE
5 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
6 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT
7 OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
8 INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE,
9 RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR
10 DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 13th THROUGH
11 THE 16th DAY OF APRIL, 2009.

12 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
13 COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

14
15
16 

17 BONNIE H. KELLY,
18 COURT REPORTER

19
20 COLUMBIA, SOUTH CAROLINA

21 SEPTEMBER 30, 2009

FORM 5

STATE OF SOUTH CAROLINA)

County of Dorchester)Derrick L. Parker # 334246)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011-CP-18- 2453

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEC. I., DAY 5, #2020
990 Wisacky Hwy., Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Dorchester County
General Sessions, St. George, South Carolina
3. Name(s) of co-defendant(s) (if any) Quintavious Davis and
Donnell Campbell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-18-0481 (Assault and Battery with
Intent to Kill)

FILED - RECORDED
2011 DEC -7 PM 2:13
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

- ☒ X X X X X X X
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 16th 2009 (20 YEARS)
- ☒ X X X X X X X
☒ X X X X X X X
6. Check whether a finding of guilty was made:
- ☒ after a plea of guilty X X X X X X X
☐ (b) after a plea of not guilty ✓
☒ after a plea of nolo contendere X X X X X X X
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA STATE COURT OF APPEALS
- ☒ X X X X X X X
☒ X X X X X X X
- (b) the result in each such Court to which you appealed:
- i. APPEAL DENIED
- ☒ X X X X X X X
☒ X X X X X X X
- (c) the date of each such result:
- i. DENIAL FILED FEBRUARY 16th 2011
- ☒ X X X X X X X
☒ X X X X X X X
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- ☒ X X X X X X X
☒ X X X X X X X
☒ X X X X X X X
9. If you answered "no" to (7), state your reasons for not so appealing:
- ☒ X X X X X X X
☒ X X X X X X X

- XXXXXXXXXX
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL, to wit:
 ● VIOLATION OF FOURTH, FIFTH, SIXTH & FOURTEENTH
 ● CONSTITUTIONAL AMENDMENTS, AS LISTED BELOW.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL (SEE ATTACH-
 ● MENTS A, B, C
 ● XXXXXXXXXX
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. motion to RECONSIDER SENTENCE.
 ● XXXXXXXXXX
 ● XXXXXXXXXX
 ● XXXXXXXXXX
- (b) the name and location of the Court in which each was filed:
- i. Dorchester County, S.C. GENERAL SESSIONS COURT
 ● XXXXXXXXXX
 ● XXXXXXXXXX
 ● XXXXXXXXXX

(c) the disposition thereof:

i. Motion for reconsideration of sentence "DENIED."

X X X X X X X

X X X X X X X

X X X X X X X

(d) the date of each such disposition:

i. August 13th 2009

X X X X X X X

X X X X X X X

X X X X X X X

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

X X X X X X X

X X X X X X X

X X X X X X X

X X X X X X X

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

X X X X X X X

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

X X X X X X X

X X X X X X X

X X X X X X X

(b) the proceedings in which each ground was raised:

X X X X X X X

X X X X X X X

X X X X X X X

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL (I HAVE ONLY
~~now had an inclination to respect and study law)~~
X X X X X X X

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No.
 (b) your trial, if any? YES.
 (c) your sentencing? YES.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. MR. MARK ARCHER, ESQUIRE
2344 CROSS GROVE AVE., N. CHARLESTON, S.C., 29405
 ii. S.C. COMMISSION ON INDIGENT DEFENSE
1330 Lady Street, Suite 401, Columbia, S.C., 29201
X X X X X X X
X X X X X X X
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL, SENTENCING, AND MOTION TO RECONSIDER SENTENCE.
X X X X X X X
 ii. SOUTH CAROLINA STATE COURT OF APPEALS.
X X X X X X X
X X X X X X X
X X X X X X X

19. State clearly the relief you seek in filing this application:

To have conviction and sentence for Indictment # 2008-
GS-18-6481 vacated, and Applicant remanded back to
Durham County, S.C., for re-trial.

20. Are you now under sentence from any other court that you have not challenged?

Four (4) 10-year concurrent sentences for "MANUFACTURE
OF COCAINE BASE," Indictments # 2008-GS-K-475, 477, 479 &
483.

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, DERRICK LAMONT PARKER, #334246, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Derrick L. Parker #334246

SWORN to and subscribed before me this 10
 day of Nov. 2011.

Diana Sims (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, DERVICK LAMONT PARKER, # 334246, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

DERVICK L. PARKER #334246
Applicant

SWORN or affirmed to and subscribed before me this

10 day of Nov, 2011.

[Signature]
Notary Public

My Commission Expires: 11-4-2015

Attachment "A"

Allegation I: (a)

Ineffective Assistance of Trial Counsel

This Applicant, Derrick L. Parker, #334246, Asserts that his Sixth Amendment Right to competent Trial Counsel was grossly violated when Trial Counsel proceeded to allow Applicant to go to Trial without adequate documentation of all facts of the case, thereby depriving the Applicant the opportunity of a fair Trial.

Argument:

The Sixth Amendment to the Constitution of the United States provides: "In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his Defense."

It is ludicrous to attempt to interpret the Sixth Amendment of the United States Constitution to mean an Indigent Defendant in any criminal matter is guaranteed a level of Legal Counsel the Government itself would retain in legal endeavors.

Nevertheless, Adams v. United States ex. rel. McConry, 317 U.S. 269, 279, 63 S. Ct. 236, 241-42 (1942) makes it plain that "The right to the Assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on Considerations

that go to the substance of an accused's position before the law. The public conscience must be satisfied that Fairness dominates the administration of justice. An accused must have the means of presenting his best defense."

The Supreme Court of the United States has made it clear that "of all the rights that an accused person has, the right to be represented by competent counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Chronic, 466 U.S. 648, 654, 104 S.Ct. 2039, 2044 (1984).

The Legal Record itself will prove to the Court that Trial Counsel was woefully unprepared to defend his Client in State Court against such serious criminal allegations when Trial Counsel does not possess now, nor has ever possessed, all documentation relevant to his Client's "best defense" allowed and guaranteed to him under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

Irrespective of the State's determination of whether or not a witness statement or a particular letter or exhibit can help the Defendant, this Applicant, Derwick L. Parker, #334246, will undoubtedly prove beyond any doubt that the Dorchester County Solicitor's Office consistently and willfully violated this Applicant's United States Constitutional Rights to legal due process also by failing to

relinquish all legal documentation it possessed to the Defendant and his Trial Counsel, thereby depriving this Applicant of his Constitutionally guaranteed opportunity for a fair and "best defense."

And Trial Counsel himself could only provide his Client with inadequate and ineffective legal counsel as a result, thereby Trial Counsel obviously deprived Defendant of his U.S. Constitutional Rights to legal due processes and an opportunity for a fair and "best defense."

This Applicant, Derrick L. Parker, #334246, citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), will move to have the Dorchester County's Solicitor's Office immediately produce for this Applicant the following material:

A. Any oral, written or recorded statements made by any person to the Solicitor's Office, Grand Jury, or any law enforcement agency in connection with this case.

B. Any and all investigation reports, information, or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict any of the testimony of any witness whom the State will or may call at Trial. Giles v. Maryland, 386 U.S. 66,

87 S.Ct. 793 (1967); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959).

C. The names and addresses of all witnesses interviewed by the Solicitor's Office or any other law enforcement agency who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict any of the testimony of any witness of the State whether or not the witness may testify at Trial.

D. All records of arrest or criminal convictions of the Defendant or any co-defendant and all State's witnesses in relation to this case, Giglio v. United States, 405 U.S. 105, 92 S.Ct. 763 (1972).

This Applicant has no doubt whatsoever that the mere request for the above-stated material will prove to the Honorable Court that Applicant's former Legal Counsel indeed did not possess at or before Trial this material guaranteed to the Defendant by State as well as Federal Law to assist with Defendant's fair and best defense, and that this Applicant himself only now claims under Brady, supra, Kyles v. Whitley, 514 U.S. _____, 115 S.Ct. 1555 (1995), and its progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 105, 92 S.Ct. 763 (1972);

United States v. Tashman, 478 F. 2d. 129 (5th Cir. 1973);
Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959);
Alconia v. Texas, 355 U.S. 28 (1957); Mooney v. Holohan,
 294 U.S. 103, 55 S.Ct. 340, reh. den. Ex parte Mooney,
 294 U.S. 732, 55 S.Ct. 571 (1935); Meore v. Illinois,
 408 U.S. 736, 92 S.Ct. 2562 (1972), reh. den. 409 U.S. 897,
 93 S.Ct. 87 (1972); that he is entitled to any and all
 records, memoranda, and documents, as well as a
 statement of the Circuit Solicitor and all appropriate
 State, Federal, and local law enforcement agencies as
 pertains to and in regards of above.

For this cause, the violation of Applicant's
 United State's Constitutional Sixth Amendment Right to
 competent Legal Counsel, this Applicant, Derrick L. Parker,
 #334246, should have all convictions and sentences
 vacated and this Applicant immediately remanded back
 to Dorchester County, South Carolina, for retrial.

Respectfully Submitted,

Derrick L. Parker

#334246

Date:

Nov, 10, 2011

Attachment "B"

Allegation I: (b)

Ineffective Assistance of Trial Counsela. Violation of Fourteenth Constitutional Amendment

This Applicant, Derrick L. Parker, #334246, being fully informed as to the strict guidelines of the South Carolina Rules of Criminal / Civil Procedures as well as to the high integrity held of both State as well as Federal Constitutional Law and Statute, now herein asserts that his Sixth and Fourteenth Amendment Rights have been maliciously and flagrantlly violated by the Dorchester County, South Carolina Judiciary and it's Attending offices.

Argument:

At Jury Trial in Dorchester County, held on April 13th through 16th, 2009 before the Honorable Diane S. Goodstein, in which the Defendant (and present Applicant in these proceedings) was charged with Assault and Battery with Intent To kill, State witness Sergeant Shawn Gibbons of the Dorchester County Sheriff's Office testified that on the night of February 28th, 2008, while engaged along with other Sheriff's personnel in an undercover narcotics operation at the excessively crime-ridden and drug-infested Haven Oaks Apartment Complex in Summerville, S.C., that the Defendant along with one or more co-defendants attempted to approach and question him as to the Defendant's impression of the undercover officer's suspicious

and secretive actions. Trial Transcript pages 92-94.

In an attempt to keep his true identity deliberately hidden and his "cover" intact, Sergeant Gibbons chose to avoid and attempt to elude the Defendant, therein causing the Defendant and co-defendant even greater suspicion and only encouraged further pursuit. Tr. Trans. pages 94 & 95.

When the Defendant and co-defendant caught up with undercover narcotics Sergeant Gibbons in an alleyway, Sgt. Gibbons testifies he observed both the Defendant and co-defendant pull out handguns, and yet again, in an effort to deliberately conceal his true identity and attempt to elude the two (2) legal and lawful residents of the aforesaid apartment complex, secretly drew his own handgun and continued to act suspiciously, even going so far as to deliberately lie to the Defendant in an attempt to incite even greater suspicion and concern from the Defendants. Tr. Trans. pages 96 & 97.

It has never been established for the Legal Record (at Trial or otherwise), exactly what instigated an exchange of gunfire between Sgt. Gibbons and the Defendant and co-defendant, but Sgt. Gibbons became wounded by gunfire in the lower right leg with the Defendant and co-defendant later arrested for and charged with Assault and Battery with Intent To Kill. Tr. Trans. pages 97-103.

The Applicant, Dervick L. Parker, asserts his Fourth and Fourteenth Amendment Rights were deliberately violated when Sgt. Shawn Gibbons refused to reveal himself when faced with a situation of armed confrontation by a United States citizen.

The Fourth Amendment to the Constitution of the United States

expressly provides for U.S. citizens to "be secure in their persons, houses, etc.", and is directly intertwined with the Defendant's Fourteenth U.S. Constitutional Amendment Right that "all persons" of U.S. citizenry is entitled "due process of law" and "equal protections" under same.

At the time Sergeant Gibbons became aware the Defendant and co-defendant were armed, he had no reason to assume his questioners were anything less than mere concerned law-abiding U.S. citizens in the pursuit of the security of their persons and houses, and chose to invoke further confrontation than to reveal himself as a legal representative of law enforcement, violating this Applicant's Sixth Amendment Right also to know the true identity of his accusers.

On two separate occasions during the incident, Sgt. Shawn Gibbons had ample opportunity to diffuse the escalating situation even before and such weapons were presented, but chose instead to wrongfully and unlawfully incite further suspicion and confrontation through deliberate avoidance and falsehood, thus becoming himself the sole individual responsible for all that ensued as a result.

When confronted with two (2) apparent legal and lawful residents of the apartment complex, the Narcotics operation was at an obvious end (T. Trans. pages 92-94), and Sgt. Gibbons no longer had legal authority nor legal reason to deceive the two (2) initial lawful U.S. citizens confronting him.

At this stage of events, Sgt. Gibbons had an obligation to peacefully and without prejudice diffuse the situation by immediately and properly

identifying himself as a Dorchester County Sheriff's Officer.

This violates the Defendant's U.S. Constitutional Rights through both State and Federal Constitutional Law.

For the above causes, the deliberate violation of the Defendant's Fourth, Sixth and Fourteenth U.S. Constitutional Amendment Rights, this Applicant, Derrick L. Parker, #334246, should have all convictions and sentences vacated and this Applicant immediately remanded back to Dorchester County, South Carolina for re-trial.

Respectfully Submitted,

Derrick L. Parker

#334246

Date:

Nov, 10, 2011

Attachment "C"

Allegation I (C):

Ineffective Assistance of Trial Counsel,

& Violation of Applicant's Fifth and Fourteenth
Constitutional Amendment Rights Collectively

This Applicant, Derrick L. Parker, #334246, now asserts (Under Ineffective Assistance of Trial Counsel) that his Fifth, Sixth, and Fourteenth U.S. Constitutional Amendment Rights were grossly violated when it was discovered during Trial and on the Legal Record that the State's two(2) most prominent witnesses (Donnell Campbell and Guinnatavious Davis) were allowed by the Court to present glaringly apparent conflicting testimony against the Defendant, with Defense Counsel failing to object and subsequently motioning for mis-trial and the Trial Judge abusing her discretion in allowing such obviously inadmissible evidence and failing to halt the illegal and highly unconstitutional proceedings herself.

Argument:

The Applicant will now assert his Fifth U.S. Amendment Right not to be "deprived of life, liberty, or property without due process of law," and his Fourteenth U.S. Amendment Right not to have been deprived of his life, liberty, and property without due process of law, to wit: to include through the enforcement "of any law which shall abridge this

Applicant's privileges or immunities," were grossly and deliberately violated when Dorchester County, South Carolina Judiciary presented two (2) conflicting State's witnesses at Trial, thereby allowing clearly inadmissible evidence to wrongly convict and deprive the Defendant of his legal guaranteed U.S. Amendment Rights to equal protection and proper due process under State as well as Federal Constitutional Laws.

When Trial Judge allowed the two conflicting witnesses to continue to attempt to falsely condemn and wrongfully convict the Defendant, Trial Judge gravely erred in allowing questionable and obviously inadmissible evidence to be used against the Defendant, and therein committing critical "error of law" in abusing her discretion. State v. Golden, 372 S.C. 428, 435, 641 S.E.2d 912, 917 (Ct. App. 2007), and State v. Irick, 344 S.C. 460, 464, 545 S.E. 2d 282, 284 (2001), and State v. Funderburk, 367 S.C. 236, 239, 625 S.E. 2d 248, 249-50 (Ct. App. 2006).

Decisions regarding the admissibility of evidence are within the discretion of the Court and will not be reversed absent an abuse of discretion. State v. Sweet, 374 S.C. 1, 647 S.E. 2d 202 (2007) and State v. Taylor, 360 S.C. 18, 598 S.E. 2d 735 (Ct. App. 2004).

"On Appeal, the question is whether the Trial Court's decision is controlled by an error of law or is without evidentiary support." Taylor, 360 S.C. at 23, 598 S.E. 2d at 737.

This humble Applicant, Derrick L. Parker, asserts Trial Court,

the Honorable Diane S. Eastern, erred in her discretion through "Error of law", and that there is substantial legal evidence in support of this fact.

Conflicting eye-witness testimony being accepted and used to deprive the Defendant of his life, liberty and property should be glaringly obnoxious to even the most novice of Attorneys, and citing the fact that Defense Attorney at Trial failed to object to such an obvious violation of his Client's U.S. Constitutional Rights when it was discovered on Legal Record that the State was using false testimony against his Client only further validates this Applicant's allegations of ineffective/incompetent Trial Counsel, and the Honorable Court itself is bound by both State Statute and U.S. Federal Constitutional Law to intervene on an accused's behalf when presented with such inadequate and obviously insufficient levels of legal performance regarding such serious violations of legal due processes and equal protections.

Therein was the Defendant deprived of his legal and Constitutional Fifth and Fourteenth, as well as Sixth U.S. Amendment Rights when Defense Counsel failed to object to the evidence being used, failed to immediately Motion the Honorable Court for mistrial, and the Honorable Court failing to halt the improper and clearly unfair and unjust proceedings in an effort to protect the integrity of the Court as well as the legal due processes of the Defendant when presented with such obvious disregard to the Defendant's guaranteed U.S. Constitutional Rights to proper and fair legal due processes and equal protections.

For the above herein sufficiently proven violations of this Applicant's Fifth, Sixth and Fourteenth U.S. Amendment Rights collectively, this Applicant, Derrick L. Parker, #334246, should have all convictions and sentences, imposed upon him as a result of the above grievous violations of his U.S. Constitutional Rights, be immediately vacated and this Applicant be returned to Dorchester County, South Carolina, for re-trial.

Respectfully Submitted,

Derrick L. Parker

#334246

Date:

Nov 18, 2011

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2011-CP-18-2453

Dervick L. Parker, 334246,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

In response to the post-conviction relief application filed on December 7, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2008 term of the Dorchester County Grand Jury for Assault and Battery with Intent to Kill ("ABWIK") (2008-GS-18-0481). Mark L. Archer, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. On April 16, 2009, the Applicant was found guilty and sentenced to twenty (20) years imprisonment.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Parker, Op. No. 2011-UP-060 (S.C. Ct. App. filed February 16, 2011). The Remittitur was sent March 24, 2011.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to

amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel, to wit violation of Fourth, Fifth, Sixth & Fourteenth Constitutional Amendments, as listed below."
 - a. "...Trial Counsel proceeded to allow Applicant to go to Trial without adequate documentation of all facts of the case, thereby depriving the Applicant the opportunity of a fair Trial."
 - i. Solicitor failed to turn over all evidence pursuant to Brady v. Maryland. Therefore, counsel was unable to provide effective assistance.
 - b. "...His Sixth and Fourteenth Amendment Rights have been maliciously and flagrantly violated by the Dorchester County, South Carolina Judiciary and it's Attending offices."
 - i. When questioned by Applicant and co-defendant about his suspicious activity, undercover officer "chose to avoid and attempt to elude the defendant, therein causing the defendant and co-defendant greater suspicion and only encouraged further pursuit."
 - ii. When Applicant and co-defendant caught up with him in an alleyway the officer continued to attempt to conceal his identity and act suspiciously.
 - iii. "It has never been established...exactly what instigated an exchange of gunfire..."
 - iv. "The Applicant, Dervick L. Parker, asserts his Fourth and Fourteenth Amendment Rights were deliberately violated when Sgt. Shawn Gibbons refused to reveal himself when faced with a situation of armed confrontation by a United States citizen."
 - c. "...When it was discovered during Trial and on the Legal Record that the State's two (2) most prominent witnesses (Donnell Campbell and Quinttavius Davis) were allowed by the Court to present glaringly apparant (sic) conflicting testimony against the Defendant, with Defense Counsel failing to object and subsequently motioning for mis-trial and the Trial Judge abusing her discretion in allowing such obviously inadmissible evidence and failing to halt the illegal and highly unconstitutional proceeding herself."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general

claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466

U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. To the extent that Applicant alleges trial court error, such allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss these allegations.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[Signatures continued on next page.]

MARY S. WILLIAMS
Assistant Attorney General

By: Mary Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 12, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-2453
	)	
DERVICK L. PARKER, 334246,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher D. Lizzi, Esquire
Lizzi Law Firm, PC
2170 Ashley Phosphate Rd, Ste. 402
N. Charleston, SC 29406

DATED this 12th day of April, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

of STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Dervick L. Parker)

Applicant)

State of South Carolina)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2011-CP-18-2453

AMENDMENT TO
POST CONVICTION RELIEF
APPLICATION

CERTIFIED COPY
2014 APR 28 PM 1:55
Clerk of Court
DORCHESTER COUNTY

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief filed on September 10, 2012 as follows:

Applicant submits this amended application pertaining to his conviction and sentence based on prejudicial errors and omissions made by the Applicant's trial counsel during pre-trial and trial in violation of the Constitution of the State of South Carolina and the United States as well as the criminal laws of the State of South Carolina and the United States that require a trial attorney to present certain legal objections and defense during a criminal procedure.

Applicant further asserts through his assigned attorney and moves before this honorable court pursuant to the Uniform Act of Chapter 27 of Title s/s 17, seq. s/s 17-27-90 and SCRCP Rule 7131(d) to further amend additional litigation to question 10 (a), (b), (c) and question 11 (a), (b) (c), that are in support of Applicant's original PCR application that was filed and submitted to the Dorchester County Clerk of Court on December 7, 2011, in the body of Applicant's original PCR application in regards to question 10 (a), (b), (c), which reads as follows "state concisely the reason why you are being held in custody unlawfully".

Applicant asserted in question 10 (a), ineffective assistance of trial counsel, in violation of Fourth, Fifth, Sixth, and Fourteenth Amendments which support question 11 (a), (b), (c) of the Applicant's original PCR Application.

Applicant further submits, based on the deficiency in his original allegation asserted in question 10 (a) on the grounds of ineffective assistance of counsel to amend original PCR Application that was submitted on December 7, 2011.

AMENDED CLAIMS

Amended claim of allegation to clarify the deficiency to question 10 (a) and question 11 (a) on the grounds of omissions of ineffective assistance of trial counsel.

Applicant contends and claims of error of omission of ineffective assistance of trial counsel that he was denied due process clause of the Fourteenth Amendment of the United State Constitution, in a cumulative effect, Applicant's trial counsel representation fell below the normal objective standard of reasonableness as it was held in *Strickland v Washington* 104 S. ct 2055, when the trial counsel opened the door during cross examination concerning an alleged statement given to the police, see tr. Page 524, line 15, 16. This omission of trial counsel was unreasonable performance that prejudiced the applicant's defense clause of the Sixth Amendment and also rendered the applicant with ineffective assistance of counsel in violation of the Applicant's Sixth Amendment rights, in a cumulative effect, for failing to object to the prosecutor's incriminating lines of soliciting cross examination of the Applicant in regards to an alleged statement, see Tr. Page 526, line 1 and 2, also

Tr. Page 533, line 1; Tr. Page 533, line 14, 15, Tr. Page 533, line 21, Tr. Page 534,

line 4, 6. Trial counsel should have made a contemporaneous objection to the admission of this alleged incriminating statement and move for a suppressing hearing to challenge the voluntariness of this statement, as it was held in Jackson v Denno 84 S.ct 1784 (9) "a fair hearing in which both the underlying factual issues a voluntariness of his confession", also in support of State v Silver 431 S. E. 2d 251 held that a defendant need not show custody entitled to Jackson v Denno Hearing on voluntariness because of Applicant's trial counsel's failure to object to the admission of this incriminating testimonial statement and move for a Jackson v Denno suppression hearing to challenge the voluntariness of this statement rendered ineffective assistance of trial counsel and deprived the Applicant of due process clause of the Fourteenth Amendment right of the United States Constitution. By not moving for a suppression hearing to challenge the voluntariness of this statement where the Court could have made its own independent determination on the voluntariness of this statement, where the Court could have made its own independent determination on the voluntariness of this statement before allowing this type lines of soliciting incriminating statement testimony evidence be submitted to the jury through cross examination, Tr. Page 526, line 1, 2, Tr. Page 533, line 1, Tr. Page 533 line 14, 15, Tr. Page 533, line 21, Tr. Page 534 line 4, 6. Because of trial counsel's unreasonable performance for failing to object to the admission of this incriminating soliciting statement testimonial evidence and move for a Jackson v Denno suppressing hearing to challenge the voluntariness of this statement rendered trial counsel's performance to fall below the normal objective standards of reason through the omission described above prejudiced the applicant based on such deficient performance the

Applicant's conviction and sentence should be reversed and remanded for a new trial.

Applicant contends in his second amended claim of error of omission when applicant's trial counsel failed to object to the trial judge for failing to charge the jury on the mandated jury instruction on voluntariness of the statement that was proffered at trial as it was held in *State v Drayton* 337 S.E. 2d 216, also *Steverson v Boles* 331 F.2d 931 (1) deprived of due process by trial judge failure to instruct jury explicitly that before they could accept confession, they must believe beyond reasonable doubt that it was given on his own volition. Because the trial judge failed to give this mandated jury instruction in this case at the bar when a statement of the applicant has been proffered during trial proceeding through soliciting cross examination for the jury to consider. Such failure of the trial judge not giving the jury the voluntariness jury instruction denied applicant due process because this alleged statement was placed before the jury during cross examination, Tr. Page 526, line 2, Tr. Page 533, line 1, Tr. Page 533, line 14, 15, Tr. Page line 12, Tr. Page 534, line 4 and 5. Due to this highly prejudiced incriminating soliciting untested statement being injected to the applicant's jury for consideration as described, a voluntariness jury instruction should have been given in this case by the Court as it was held in *Steverson v Bole* 331 F. 2d 939 (1). Because the trial judge failed to give this mandated standard jury instruction, applicant's due process was denied as it was held in *State v Drayton* 337 S.E. 2d 216. The Supreme Court held that failure of trial court to instruct jury that it must find beyond a reasonable doubt that the statement was freely and voluntarily given

before it could consider it in its deliberation was error requiring reversal and new trial.

Applicant asserts due to trial counsel's unreasonable performance fell below the Norman objective standard of reasonableness, when applicant's trial counsel failed to object to the trial judge not charging the jury on voluntariness. Such unreasonable omission of trial counsel's performance clearly has satisfied both prong test of *Strickland v Washington* 104 S.ct 2055. Base on such performance, clearly prejudiced the applicant, applicant's conviction, and sentence must be reversed and remanded for a new trial because of the omission outlined.

Applicant contends in his third amended claim of error of omission of ineffective assistance of counsel occurred when trial counsel's performance fell below the Norman objective standard of reasonableness. Trial counsel's performance was unreasonable for failing to object to the chain of custody, custodian individual receipt certification of the conveyance of tag evidence, as South Carolina Rules of Criminal Procedure , Rule 6 (b) required and on the holding in *State v Sweet* 647 S.E. 2d 202, and in support of this contention in a cumulative effect, the applicant's trial counsel should objected to the admissibility of evidence based on the defect in the chain of custody custodian certification of the conveyance of evidence, especially when this evidence is being proffered at trial, Tr. Page 390, line 11, Tr. Pg. 394, line 6, Tr. Page 392 line 18, 15, Tr. Page 393, line 20. Also in support of this contention Tr. Page 57 line 19, 21 where the trial court asked trial counsel if he was going to object to the chain of custody, Tr. Page 57, line 19, 25, which trial counsel's response was "I'm not objecting to the chain of custody". Trial counsel's performance was unreasonable and prejudiced for failing

to object to the defect in the chain of custody custodian certification on the conveyance of the evidence in this case at bar as it was held in *State v Sweet* 647 S. E. 2d 202 and *State v Valentine* 689 S. E. 2d 608. Because trial counsel's unreasonable performance fell below the normal standard of reasonableness for failing to object to the defect in the chain of custody custodian conveyance of the tag evidence as South Carolina Rules of Criminal Procedure, Rule 6 (b) required, and in support of this contention the holding outlined in *supra State v Sweet*, when trial counsel failed to object to the admissibility of this chain of custody evidence when it was proffered at trial as it held in *supra State v Sweet*, such unreasonable representation of trial counsel's omission certainly have satisfied both prong test of *Strickland v Washington*, and the Applicant's conviction and sentence must be reversed and remanded for a new trial as a matter of law.

Applicant contends error of omission of ineffective assistance of counsel occurred when the applicant's trial counsel performance fell below the Norman objective standard of reasonableness failing to do a reasonable factual investigation in this case at bar, as it was held in *Ard v Cato* 642 S. E. 2d 590 (7,9). If trial counsel would have done a reasonable factual investigation in this case at bar then counsel would have discovered the eminent domain custodian illegal interrogation fear and threats that was employed during applicant's custodian interrogation to achieve the compelling incriminating statement. Based on the fear and threat custodian interrogation illegal tactic that was employed during the applicant's custodian interrogation to achieve a compelling incriminating statement, the custodian compelling illegal fear and threats eminent domain forceable tactic such as threatening the applicant if he did not give them a statement that they would

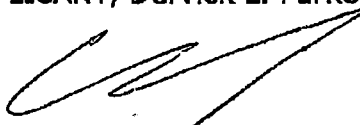
talk with the solicitor and judge to make sure applicant got a very high bond and the use of eminent domain custodian interrogation officers telling the applicant that if he did not give a statement they would make it very difficult for him, based on the factual circumstance surrounding the fear and threat custodian interrogation, the applicant trial counsel was ineffective for failing to do a factual investigation. If trial counsel would have discovered the illegal custodian interrogation fear and threats tactic that was employed by the eminent domain, trial counsel should have objected to any use of the applicant's custodian interrogation compelling statement and challenged this custodian interrogation statement based on the holding outlined in *Miranda v Arizona* 86 S.ct 1602 "whether statement obtained from an individual who is subject to custodian police interrogation, the court further held that without proper safeguards the process of custodian interrogation of person suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's and to compel him to speak" also in support of this claim *Steverson v Bole* 331 F 2d 939 "held where three police officers custodian interrogation tactic use of fear and threats and promise rendered the defendant confession was made involuntary and inadmissible".

Applicant submits that his trial counsel was ineffective for failing to make a pretrial preliminary suppressing hearing motion pursuant to *Miranda v Arizona* and *Steverson v Bole*, whereas the court could hold a preliminary hearing based on the safeguard procedure on the custodian interrogation to determine the threats and fear tactic employed by the eminent domain use in the applicant's case to compel a statement from the applicant. Such omission of trial counsel prejudiced the

applicant and rendered trial counsel representation to fall below the Norman objective standard of reasonableness as it was held in Strickland v Washington 104 S. ct 2052 which the applicant has certainly proven both of the two prong test of Strickland v Washington based on such unreasonable omission outlined above the applicant's conviction and sentence must be reversed and remanded for a new trial based on the holding outlined in Steverson v Bole supra, as a matter of law.

RESPECTFULLY SUBMITTED ON BEHALF OF

APPLICANT, Dervick L. Parker



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

April 24, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

DERVICK L. PARKER, #334246)

Applicant)

STATE OF SOUTH CAROLINA)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2011-CP-18-2453

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

CERTIFIED COPY
2011 MAY 22 AM 11:51
Clerk of Court
DORCHESTER COUNTY

The Applicant through undersigned Counsel wishes to Amend his Post Conviction Application filed on September 10, 2012, as follows:

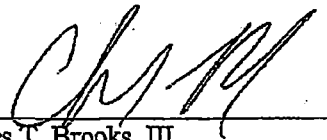
1. The Applicant is informed and believes that Attorney Mark Archer represented the Applicant with regards to his General Sessions charges in Dorchester County.
2. The Applicant is informed and believes that trial counsel, Archer, was ineffective as counsel for the Applicant specifically in allowing the violation of the Applicant's Sixth and Fourteenth Amendment Rights as outlined by the United States Constitution and also by the South Carolina Constitution Article 1 Section 14 and also the South Carolina Code of Laws, as amended, Section 17-23-60.
3. The Applicant is informed and believes that trial counsel's performance fell below the normal objective standard of reasonableness and thereby prejudiced the Applicant through the trial counsel's deficient performance, specifically when trial counsel failed to object to the Judge's erroneous jury charge instruction on the permissive inferred malice instruction.
4. The Applicant is informed and believes that he will submit this type of Judge Doctrine jury language infers malice instruction through the use of a deadly weapon is permissive and erroneous

and that such language is not in line with South Carolina jurisprudence modern malice instruction, as outlined in State v. Belcher, Opinion No.: 26729.

5. The Applicant is informed and believes that the deficiency of trial counsel's performance was unreasonable and prejudice and rendered the Applicant with an ineffective trial counsel.
6. The Applicant is informed and believes that the errors and omissions of trial counsel in the above-stated paragraphs has satisfied the prong test(s) of Strickland v. Washington, 104 S.Ct. 2052 based on the deficiency of trial counsel's performance as evidenced by his failure to object to the Judge's erroneous malice instructions to the jury.

WHEREFORE, having stated his case above, the Applicant offers that the above listed all constitute ineffective assistance of Counsel to the Applicant and asks that the Court grant his pending Post Conviction Relief in this matter as appropriate.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, DERVICK L. PARKER



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

May 19, 2014

1. STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2. COUNTY OF DORCHESTER 2011-CP-18-2453

3

4. DERVICK LAMONT PARKER) TRANSCRIPT OF RECORD

5. VS.)

6.) MAY 28, 2014

7. STATE OF SOUTH CAROLINA) ST. GEORGE, SC

8

9 B E F O R E:

10 HONORABLE MAITÉ MURPHY, JUDGE

11

12 A P P E A R A N C E S:

13 CHARLES T. BROOKS, III, ESQUIRE
Attorneys for the Applicant

14

15 MEGAN E. HARRIGAN, ESQUIRE
Attorneys for the State

16

17 Ruth L. Mott, RPR, CRR
Official Court Reporter

18

19

20

21

22

23

24

25

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

DERVICK PARKER

4 MR. BROOKS 5

MS. HARRIGAN 13

5

MARK ARCHER

6 MR. BROOKS 21

MS. HARRIGAN 34

7

CERTIFICATE OF REPORTER 47

8

9

10 E X H I B I T S

11 NO. DESCRIPTION ID EVD

12 (NONE MARKED)

13

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1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the next matter is Dervick

4 Parker versus the State of South Carolina, Docket No.

5 2011-CP-18-2453. Mr. Parker was indicted during the April

6 2008 term of the Dorchester County Grand Jury for assault and

7 battery with intent to kill. He was represented by Mark

8 Archer. On April 13th through 16th, 2009, Mr. Parker

9 proceeded to a jury trial before the Honorable Diane S.

10 Goodstein, where he was convicted as indicted. Judge

11 Goodstein sentenced him to 20 years imprisonment. Mr. Parker

12 filed a timely notice of appeal. The South Carolina Court of

13 Appeals affirmed the appeal in an opinion filed February

14 16th, 2011. The remittitur was sent on March 24th, 2011. On

15 December 7th, 2011, Mr. Parker filed a timely application for

16 post-conviction relief alleging he was being held in custody

17 unlawfully based on grounds of ineffective assistance of

18 counsel for allowing him to proceed to trial without proper

19 documentation of all the facts of his case and various due

20 process and other constitutional grounds against law

21 enforcement, the State, the judiciary and his officers. The

22 State made its return and partial motion to dismiss on April

23 12, 2012, moving to dismiss all the allegations regarding

24 trial court error and other error beyond ineffective

25 assistance of counsel and direct appeal issues that are

1 procedurally barred from post-conviction relief applications
2 in South Carolina. Thereafter, on February 18th, 2014,
3 Applicant, through his counsel, Charles T. Brooks, III, filed
4 an amendment listing ineffective assistance of appellate
5 counsel for fully failing to set forth any grounds or
6 supporting facts as required by the Uniform Post-Conviction
7 Relief Act. The State filed an amended return and motion to
8 dismiss in response to this allegation on April 10th, 2014,
9 seeking to dismiss this allegation for failure to provide any
10 specifics or facts as required by the Act. The Applicant
11 failed to provide any, so at this time the State would renew
12 our motion to dismiss that allegation. However, Applicant
13 did file a second amendment to his application on April 28th,
14 2014, listing additional grounds of ineffective assistance of
15 trial counsel. Those allegations are ineffective assistance
16 of counsel for opening the door during cross-examination
17 concerning his alleged statements given to police and for
18 failing to move to suppress such statements, ineffective
19 assistance of counsel for failing to object to the trial
20 court's failure to charge the jury on voluntariness of his
21 statement, and ineffective assistance of counsel for failing
22 to object to the chain of custody of certain items brought to
23 SLED for testing. He's represented in this action by Charles
24 T. Brooks, III.

25 THE COURT: Mr. Brooks.

1 MR. BROOKS: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. BROOKS: Judge, before we begin, I talked with my
4 client about the appellate counsel issue, and we basically
5 filed that to basically preserve it because we might have
6 come back and talked a little bit more about that, but we're
7 not going forward in regards to that.

8 THE COURT: Okay.

9 MR. BROOKS: With that being said, Judge, I'll go ahead
10 and call my client, Dervick Parker, to the stand.

11 THE COURT: All right, Mr. Parker.

12 THE CLERK: Please raise your right hand. State your
13 full name for the record.

14 THE WITNESS: Dervick Lamont Parker.

15 DERVICK LAMONT PARKER,
16 being first duly sworn, testified as follows:

17 THE COURT: Your witness, Mr. Brooks.

18 MR. BROOKS: Yes, ma'am.

19 DIRECT EXAMINATION BY MR. BROOKS:

20 Q. Ready, Dervick?

21 A. Yes, sir.

22 Q. Okay. And you've testified before, so you know you've
23 got to give a verbal response to the court reporter.

24 A. Yes, sir.

25 Q. Okay. Now, Dervick, start out by a little background.

1 How old are you?

2 A. 24 years old.

3 Q. At the time of this offense how old were you then?

4 A. 18.

5 Q. Okay. And in this particular situation you were at

6 somebody's house. Who was that?

7 A. Girlfriend at the time.

8 Q. Okay. You all were pretty close then?

9 A. Yes, sir.

10 Q. Okay. And basically what happened?

11 A. The night of the arrest?

12 Q. The whole incident.

13 A. The whole incident started February 28th, 2008, when a

14 female friend came back and said there was someone in the

15 neighborhood looking suspicious in all black, came out of a

16 apartment next door to us, and me and a friend came out and

17 see who it was. The time we go around the corner --

18 Q. Now that friend, that would have been Quinntavious?

19 A. Yes, sir.

20 Q. Okay. Go ahead.

21 A. The time we got around the corner, was talk between

22 Quinntavious Davis and the officer. They had a light

23 discussion. They took off, the officer took off running,

24 Quinntavious start shooting.

25 Q. Now, when you say officer, at the time you didn't know

1 this was an officer.

2 A. No, sir.

3 Q. This was actually an undercover police officer, that's
4 what it turned out to be, but at the time you didn't know
5 that and neither did Quinttavius.

6 A. No, sir.

7 Q. As a matter of fact, you weren't supposed to know that,
8 right?

9 A. Yes, sir.

10 Q. You thought he was just anybody else like you.

11 A. Yes, sir.

12 Q. Okay. And did you perceive this person as a threat?

13 A. Yes, sir.

14 Q. Okay. All right. And what happened after
15 Quinttavius -- you all confronted him. What happened then?

16 A. Quinttavius Davis walk up to him, start firing shots,
17 the officer fired shots back. He got around the corner, he
18 fired more shots. Later on that day I was arrested for
19 assault and battery, intent to kill.

20 Q. And he fired shots at you?

21 A. Yes, sir.

22 Q. Okay. Now, in this particular case you had Mr. Archer
23 representing you; is that correct?

24 A. Yes, sir.

25 Q. He was court-appointed to you?

1 A. Paid attorney.

2 Q. He was a paid attorney. Okay. Now, you had given some
3 statements or a statement to law enforcement; is that
4 correct?

5 A. Yes, sir.

6 Q. Okay. And do you recall at any time whether or not Mr.

7 Archer tried to suppress that statement?

8 A. No, sir.

9 Q. You didn't have what's commonly referred to as a Jackson
10 v. Denno hearing, where you get on the stand and the officer
11 gets on the stand and talk about the circumstances around the
12 statement and how it was given; you all didn't have that.

13 A. No, sir.

14 Q. Okay. And part way through your trial you testified in
15 your trial, correct?

16 A. Yes, sir.

17 Q. And you testified as to what happened, right?

18 A. Yes, sir.

19 Q. And then you admitted that you had had discussions with
20 law enforcement.

21 A. Yes, sir.

22 Q. Mr. Archer had asked you that.

23 A. Yes, sir.

24 Q. And you had said that you had given a statement to law

25 enforcement that might be inconsistent with what you had

1 testified to at the trial, correct?

2 A. I told Mr. Archer that was a lie at trial and signed my
3 statement.

4 Q. And then the prosecutor, on cross-examination, used that
5 statement to impeach you, right, in front of the jury?

6 A. Yes, sir.

7 Q. Okay. Went through that whole statement.

8 A. Yes, sir.

9 Q. Okay. And one of the allegations you raised on
10 post-conviction relief is that you feel that Mr. Archer
11 should have tried to suppress that statement so it would have
12 never been used against you; is that correct?

13 A. Yes, sir.

14 Q. Okay. Now, another thing was this person, Shawn
15 Gibbons, who turned out to be an undercover cop; but you
16 didn't know it at the time, correct?

17 A. Yes, sir.

18 Q. Nobody knew it at the time, correct?

19 A. Yes, sir.

20 Q. He actually fired shots at you?

21 A. I believe so, sir.

22 Q. And you had good reason to believe that, right?

23 A. Yes, sir.

24 Q. And you told all of this to Mr. Archer, correct?

25 A. Yes, sir.

1 Q. Okay. Did you talk about this potentially being a
2 self-defense issue?

3 A. Mr. Archer brought it up in trial and said it was a
4 self-defense.

5 Q. And this place that you were with with the girlfriend
6 when you were 18, did you spend the night with her on
7 occasion?

8 A. On multiple occasions.

9 Q. On multiple occasions. You had stuff there, correct?

10 A. Clothes items, shoes.

11 Q. Okay. And you all never explored anything, what's
12 commonly referred to as "stand your ground".

13 A. No, sir.

14 MS. HARRIGAN: Your Honor, I would object for the
15 record. This is not an allegation that was raised in his
16 post-conviction relief application. The State was not on
17 notice of it. We have not had an opportunity to discuss this
18 with Mr. Archer. Various amendments have been filed. This
19 is a new ground we're just hearing for the first time.

20 THE COURT: Let's stick to the filed grounds, okay, Mr.
21 Brooks?

22 MR. BROOKS: Your Honor, could I briefly respond?

23 THE COURT: Sure.

24 MR. BROOKS: We've illustrated there's a whole idea of
25 self-defense, and I really would ask the Court for some

1 latitude, and that's why we bring that up, and we probably
2 will try to delve into that more when Mr. Archer's on the
3 stand about Protection of Property and Persons Act, and
4 things of that nature, but I wanted the Court to know, in
5 regards to the self-defense and what this gentleman was going
6 through at the time and whether or not his lawyer should have
7 done something else in regards to ineffective assistance of
8 counsel.

9 THE COURT: I'll grant you that latitude.

10 MR. BROOKS: Thank you, Judge.

11 Q. Now, just so you know, you all never brought that up?

12 A. No, sir.

13 Q. And one of the other allegations you raised was a chain
14 of custody issue; is that correct?

15 A. Yes, sir.

16 Q. Specifically what item were you referring to when you
17 talked about chain of custody?

18 A. The firearms.

19 Q. Okay. And there was a situation where they took
20 firearms, and this was supposed to be the firearm that you
21 had and fired shots from and that sort of thing; is that
22 correct?

23 A. Yes, sir.

24 Q. Okay. And, specifically, what are you saying was a
25 problem with the chain of custody?

1 A. The problem was Mr. Archer never checked on the
2 convenience (sic) or the custodial receipt individual to see
3 it was properly handled or properly delivered.

4 Q. Okay. All right. Now, one other -- you had another
5 issue about the inferred malice.

6 A. Yes, sir.

7 Q. Okay. Can you tell the Court about that?

8 A. Mr. Archer didn't object to the judge's instruction on
9 inferred malice with a deadly weapon. Had Mr. Archer would
10 object to it, he would find out that a term no longer used in
11 the South Carolina, the language no longer used in South
12 Carolina, inferred malice.

13 Q. Okay. All right. And you think that obviously that's
14 something he should have objected to?

15 A. Yes, sir.

16 Q. Okay. And, also, you actually tried to work out a plea
17 in this case; is that correct?

18 A. Yes, sir.

19 Q. Can you tell the Court what happened with that?

20 A. When I gone in for a plea in April -- no, in January
21 2009, gone in front of Judge Williams, he denied the plea
22 based on, let me get it right, based on he feel that it
23 wasn't enough evidence convict me at the time, so he asked
24 the solicitor, Mr. Archer, and the officer to come with a
25 reasonable plea.

1 Q. Okay. And nothing ever else materialized about that?

2 A. No, sir.

3 Q. Did your attorney ever talk to you about what they call
4 an Alford plea?

5 A. No, sir.

6 Q. Do you recall what the offer was back then?

7 A. I don't know what Alford plea is, sir.

8 Q. No, the offer to plea, what the negotiation was.

9 A. Oh, the plea back then was for me to get ten years, ten
10 years, did five.

11 Q. And you would have taken that, if you had been able to
12 do it, right?

13 A. Yes, sir.

14 Q. All right. Is there anything else that we need to tell
15 the Judge here today that we hadn't covered?

16 A. Not really, sir.

17 Q. Sure? Just take a deep breath, now. This is your PCR.
18 I think we covered everything, but I want to be sure.

19 A. Yes, we got it.

20 MR. BROOKS: All right. Answer any question of the
21 Attorney General.

22 THE COURT: Ms. Harrigan.

23 CROSS-EXAMINATION BY MS. HARRIGAN:

24 Q. Good afternoon, Mr. Parker.

25 A. Good afternoon.

1 Q. You testified that Mr. Archer was retained to represent
2 you, correct?

3 A. Yes, ma'am.

4 Q. Who was he retained by?

5 A. My mother.

6 Q. Do you recall when he was retained to represent you?

7 A. In August 2008.

8 Q. And I think you testified before, but this incident
9 happened in February of 2008, so approximately five or six
10 months later he was retained?

11 A. Yes, ma'am.

12 Q. Did you have an original attorney before that?

13 A. John Loy.

14 Q. From the public defender's office?

15 A. Yes, ma'am.

16 Q. Did you receive discovery when you were represented by
17 Mr. Loy?

18 A. No, ma'am.

19 Q. Did you ever meet with Mr. Loy?

20 A. When I went to roll call.

21 Q. And then shortly thereafter you retained Mr. Archer?

22 A. Yes, ma'am.

23 Q. How many times did you meet with Mr. Archer before your
24 trial in April of 2009?

25 A. I could say three, four times.

1 Q. And were you in jail before your trial?

2 A. Yes, ma'am.

3 Q. Did he come to the jail to visit with you?

4 A. Yes, ma'am.

5 Q. How long were these visits, approximately?

6 A. 15 minutes, 20 minutes.

7 Q. So your testimony is you only met with Mr. Archer three
8 to four times, and those meetings were only 15 minutes
9 apiece?

10 A. Yes, ma'am.

11 Q. Did he review any discovery with you?

12 A. Not really.

13 Q. What do you mean when you say, "not really," what did he
14 show you?

15 A. I mean, he only showed me the statements, the statement
16 who all -- written statements on me.

17 Q. Did he ever play any recordings for you from the
18 officer's radio dispatch?

19 A. No, ma'am.

20 Q. What statements did he show you?

21 A. Statement from me, the statement from Shelby Herr, the
22 statement from Lakesha Duncan and the statement from Donnell
23 Campbel.

24 Q. Did he ever show you any statements from the police
25 officer?

1 A. No, ma'am.

2 Q. Did he ever show you any statements from your
3 codefendant, Davis?

4 A. No, ma'am.

5 Q. And your codefendant, Davis, testified against you at
6 trial, correct?

7 A. Yes, ma'am.

8 Q. And his testimony was that he never saw you with a
9 weapon but he saw you shooting, correct?

10 A. Yes, ma'am.

11 Q. Do you deny that you had a weapon?

12 A. No, ma'am.

13 Q. And your defense at trial was self-defense, correct?

14 A. Yes, ma'am.

15 Q. Did you discuss self-defense with Mr. Archer?

16 A. Did Mr. Archer discuss self-defense with me?

17 Q. Yes.

18 A. No, ma'am.

19 Q. So you had no idea that you were going to be putting
20 forth self-defense until you got to trial?

21 A. Until the day of the trial.

22 Q. Did you ever tell Mr. Archer you were acting in
23 self-defense?

24 A. I tell Mr. Archer -- I ain't tell him I was acting in

25 self-defense, but I told him, when me and Mr. Davis

1 approached the officer, I was -- I never drewed no weapon, I
2 never showed no weapon, so I was right there on mere
3 presence.

4 Q. And so your testimony today is that you did have a
5 weapon, you just never brandished it, you never fired it.

6 A. Yes, ma'am.

7 Q. Did you discuss your decision to testify with Mr.
8 Archer?

9 A. Yes, ma'am.

10 Q. Did he tell you that you would need to testify if you
11 wanted to present a self-defense theory to the jury?

12 A. No, ma'am.

13 Q. What did you discuss with him about your testimony?

14 A. He just discussed me in testifying, be truthful in your
15 testimony, and you getting on the stand to show that you --
16 that the statement was a lie.

17 Q. Did he ever tell you why he wanted you to testify?

18 A. No, ma'am.

19 Q. Did you want to testify?

20 A. No, ma'am.

21 Q. Why didn't you want to testify?

22 A. Because it ain't on me to prove my point. I'm the one
23 on trial.

24 Q. Did you give Mr. Archer any leads or potential witnesses
25 you wanted him to interview?

1 A. Yes, ma'am.

2 Q. Did he interview those witnesses for you?

3 A. I can't really say for sure he did.

4 Q. And I believe you testified on direct that Mr. Archer
5 did bring up self-defense at your trial, correct?

6 A. Yes, ma'am.

7 Q. And your testimony is that you had no idea that the
8 officer was actually a uniformed police officer because he
9 wasn't in uniform, he was under cover, correct?

10 A. Yes, ma'am.

11 Q. And you were 18 at the time this occurred, correct?

12 A. Yes, ma'am.

13 Q. And I believe you said you were visiting your girlfriend
14 who lived in the apartment complex?

15 A. Yes, ma'am.

16 Q. And you said you had clothing and shoes at her house,
17 correct?

18 A. Yes, ma'am.

19 Q. Where were you living at the time?

20 A. Back and forth from Lincolnville with my aunt to her
21 house in G-13.

22 Q. And can you explain again, your issue with chain of
23 custody is that Mr. Archer never checked the chain of custody
24 receipts to see who handled the firearms?

25 A. Yes, ma'am.

1 Q. How do you think that impacts your case?

2 A. Mr. Archer would see the deficiency inside the --
3 whatever was deficient inside the custodian receipt and the
4 convenience (sic) it might have been a way to see that the
5 DNA wasn't on -- excuse me, excuse me, to see the DNA wasn't
6 on the firearms because only one DNA showed up in one
7 firearm. But Mr. Donnell Campbel got on the stand and
8 testified, said he was the last person that obtained the
9 firearm; so I feel Mr. Archer, if he had checked and did a
10 convenience (sic) certification, he would already found more
11 DNA on it, on the firearms.

12 Q. And the firearm that you're talking about that had DNA
13 on it, your DNA as well as three other people were identified
14 on that gun, correct?

15 A. Yes, ma'am.

16 Q. So it wasn't just only your DNA, correct?

17 A. Yes, ma'am.

18 Q. Do you recall Mr. Archer cross-examining the State's
19 SLED DNA expert, Lilly Gallman, on that issue --

20 A. Yes, ma'am.

21 Q. -- that it wasn't just your DNA?

22 And your testimony is that you wanted to see if this
23 chain of custody issue would have made any difference,
24 correct?

25 A. Yes, ma'am.

1 Q. Have you done anything to see if it makes any
2 difference?

3 A. Example?

4 Q. You're alleging that he was deficient for not
5 challenging the chain of custody because there could have
6 possibly been an issue with tampering. Do you have any
7 evidence today that there was tampering?

8 A. No, ma'am.

9 Q. So it's just speculative; you just think that could have
10 been an issue.

11 A. Yes, ma'am.

12 MS. HARRIGAN: A moment's indulgence, Your Honor.

13 (Brief pause.)

14 Q. You testified that you appeared before Judge Williams
15 for a guilty plea, correct?

16 A. Yes, ma'am.

17 Q. Do you recall ever appearing before Judge Goodstein for
18 a guilty plea?

19 A. No, ma'am.

20 Q. And your testimony is that Judge Williams refused to
21 accept the plea because he didn't think there was enough
22 evidence against you.

23 A. Yes, ma'am.

24 Q. Do you recall any Court refusing the plea because they
25 heard the officer's testimony and couldn't go along with the

1 recommendation?

2 A. No, ma'am.

3 MS. HARRIGAN: No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. BROOKS: No, ma'am.

6 THE COURT: You may step down, sir. Thank you. You may
7 call your next witness.

8 MR. BROOKS: We'll call Mr. Mark Archer.

9 THE CLERK: Please raise your right hand. State your
10 full name for the record.

11 THE WITNESS: Mark L. Archer.

12 MARK L. ARCHER,
13 being first duly sworn, testified as follows:

14 THE COURT: Your witness.

15 DIRECT EXAMINATION BY MR. BROOKS:

16 Q. How are you doing today, Mr. Archer?

17 A. Pretty good.

18 Q. Now, you represented Mr. Parker in this matter; is that
19 correct?

20 A. I did.

21 Q. Okay. Now, can you summarize what the State's case was
22 against him?

23 A. Well, the State's case against him was, it was the
24 testimony of the police officer who got shot, essentially, all

25 right. The scenario was that he and a friend were out in

1 this apartment complex, which was a very dangerous location.
2 There had been prior murders there and such, and the police
3 officer was in there under cover, looking for drug deals. He
4 approaches Mr. Parker and his codefendant, this is in the
5 middle of the night, okay, and says -- testified, "As I
6 approached them, I saw that they were armed, and therefore I
7 drew my gun."

8 So here we have the scenario of a stranger in the
9 complex approaching these two fellows in the middle of the
10 night in a dangerous apartment complex, walk up to them and
11 pulls a gun out. And, you know, the basic defense we had
12 was, these guys didn't know whether he was coming to talk or
13 coming to blow them away, that that was essentially a
14 self-defense situation, when somebody approaches you in the
15 middle of the night and pulls out a gun. And it was at that
16 point that his codefendant apparently pulled out a gun and
17 started shooting at him. The fellow takes off and then he
18 gets chased and so forth. I don't know if that answers your
19 question, but that was the basic background so --

20 Q. Let me ask you this: Now, he gave -- Dervick had given
21 a statement to law enforcement.

22 A. Yes.

23 Q. And did you try to have that statement suppressed?

24 A. No, I did not. The statement -- first off, I didn't --

25 I had -- the statement was essentially exculpatory. -- The only -----

1 problem with the statement was he said that a different
2 individual was with him outside than the individual who was
3 eventually charged along with him, okay.

4 Q. Okay.

5 A. But the rest of the statement was exculpatory. I did
6 not move to suppress the statement. Harrison Bell, the
7 solicitor, had indicated that he did not intend to introduce
8 the statement in his case in chief, all right. The only
9 issue then became whether or not I was going to call Dervick
10 to the stand, okay. If I called him to the stand, my
11 understanding is even an inadmissible statement can be used
12 for impeachment purposes if someone lies from the stand.

13 Q. Okay.

14 A. I felt it was necessary to call Dervick in order to
15 establish, quote, a self-defense defense: You know, one,
16 this was a police officer, but I had no way of knowing that,
17 approaches me in the middle of the night, pulls a gun, we're
18 all afraid he's going to shoot us, we pull them and start
19 shooting back. But so that's why I had him -- when I decided
20 I was going to call him to the stand, I anticipated that the
21 statement would -- that Harrison Bell would then try to
22 impeach him with the statement, so I had him admit to the
23 fact that he had named the wrong fellow as being with him in
24 order to reduce that impact on the jury. Frankly, I think it
25 was error to admit the statement, not because of anything

1 that had to do with Miranda, but because my client had
2 admitted -- had testified truthfully, no, it wasn't this
3 fellow, it was this fellow; and, therefore, I don't think you
4 can impeach. The idea is to impeach him if he lies from the
5 stand. He had told the truth from the stand.

6 Q. So then what you're saying is there shouldn't have been
7 anything to impeach him with?

8 A. There wasn't anything to impeach. He lied in the
9 statement, but he told the truth from the stand. So how do
10 you get it in as impeachment when he's told the truth from
11 the stand? And I did object on that grounds about it coming
12 in.

13 Q. Now, but if -- even though you feel it was exculpatory,
14 if it had been rendered inadmissible, then perhaps that might
15 have made a stronger argument to keep the solicitor from
16 trying to impeach him once he had taken the stand with it.

17 MS. HARRIGAN: Your Honor, the state would object to Mr.
18 Brooks' testimonial leading of this witness. He's on direct.
19 The State allowed wide latitude while his client was on the
20 stand, but if he could stop making testimonial statements in
21 his leading questions.

22 THE COURT: Sustained.

23 Q. I'll try to rephrase the question. If Mr. Parker's
24 statement to the police were deemed inadmissible --

25 A. Yes.

1 Q. -- do you think it would have potentially changed the
2 outcome of your objection with Harrison Bell's
3 cross-examination?

4 A. Wait a minute, run that -- if it was deemed
5 inadmissible.

6 Q. Correct.

7 A. I'm not sure. I mean, depends on -- you know, if it's
8 deemed inadmissible and my client takes the stand and
9 testifies contrary to the statement --

10 Q. He testified -- let's assume he had testified to what he
11 testified at the trial truthfully.

12 A. If he testifies the way he testified at trial, then I
13 believe the statement comes in for impeachment purposes if --
14 in other words, it's damned if you do and damned if you
15 don't. You either -- if you put him up, he either sticks
16 with the statement, which at one point, really a collateral
17 point, there's a lie; and it's only on the collateral point.
18 It was who was with him, not what he did or didn't do. But I
19 believed at the time, if I put him up, then that made the
20 statement -- and he testifies contrary to the statement, that
21 makes it available for impeachment purposes. I don't know
22 what else to say.

23 Q. Let me ask you this: I think you've testified earlier
24 that you put him on the stand in order to try to get the
25 self-defense argument.

1 A. Right.

2 Q. Prior to trial you knew that Quinntavious was the other
3 gentleman there.

4 A. Right.

5 Q. And that Quinntavious had pulled out his gun and started
6 shooting this individual.

7 A. Correct.

8 Q. Who turned out to be an under cover cop.

9 A. Yes.

10 Q. Could you have put Quinntavious up on the stand in
11 Dervick's trial?

12 A. Well, he testified against him.

13 Q. Okay.

14 A. He turned a deal and ended up testifying against
15 Dervick, and I was hoping, in fact --

16 Q. Couldn't you have used his testimony off of the State's
17 witness to be able to get the self-defense charge?

18 MS. HARRIGAN: The State would again object to leading
19 and testimonial questions by Mr. Brooks.

20 MR. BROOKS: Judge, he can either say, yes, I can or,
21 no, I couldn't.

22 THE COURT: Just rephrase, please.

23 THE WITNESS: Here you were kind of on the horns of a
24 dilemma, okay. I think my client -- there was an issue as to
25 whether my client ever took a shot at the officer. The

1 officer testified he did, that he knew Dervick from previous
2 dealings, okay, and that he's the one that shot him, okay.
3 But I'm not sure that it's enough to get his codefendant to
4 say he was afraid, the codefendant was afraid -- if the jury
5 says, well, he took a shot, I'm not sure it's enough the
6 codefendant says he was afraid. My client has to be in
7 reasonable fear if there's an issue of him taking a shot at
8 the officer, and getting -- I did elicit some testimony from
9 the codefendant, I believe it was kind of a weak comment, but
10 that, yes, he thought he was afraid the guy was going to do
11 some shooting or something like that. But I did elicit some
12 of that, but I felt like I had to -- if I was going to argue
13 he may have acted -- if this took place, he acted in
14 self-defense, that he had to be in some sort of reasonable
15 fear, not just his codefendant.

16 Q. Okay. Was there ever a plea deal offered?

17 A. There was not a plea deal per se, okay. We went in
18 front of Judge Williams. There was an agreement we would go
19 back into the back and talk with him about the plea. We went
20 back, and he indicated -- we gave him sort of the facts and
21 circumstances. He indicated that based on those facts and
22 circumstances he would be inclined to give Dervick 10 to 12
23 years. That was acceptable.

24 Q. To Dervick?

25 A. To Dervick, yes, and it may have been acceptable, 10 to

1 12 years, this was the representation. So you go in with the
2 solicitor. You sit down with the Judge. The Judge says,
3 "Under the circumstances I'd be inclined to give 10 to 12
4 years." We get out in the courtroom, and the police officer,
5 in the middle of the plea, gets up and starts talking.

6 Q. The actual officer.

7 A. The actual officer who got shot. I think his name was
8 Gibbons or something like that. He starts talking. The
9 Judge looks up and says, Mr. Archer, I want to tell you, I
10 can't go along with what I told you back in my chambers. I'm
11 going to be inclined to give him considerably more.

12 Q. Okay.

13 A. Okay. At which point I said, well, Judge, I would ask
14 to be allowed to withdraw the plea.

15 Q. Okay.

16 A. And he permitted us to withdraw the plea. Now I'm
17 sitting there figuring, if he's going to give him
18 considerably more than 12, then we're probably talking about
19 17 to 20, and at 17 to 20 we might as well try this thing
20 because there is an issue of self-defense. But that was the
21 deal. There wasn't actually an offer so much as there was a
22 sit-down with me, the prosecutor and the Judge saying this is
23 what I'd be inclined to give, and then when he got in the
24 courtroom, he changed his mind, and he allowed me to withdraw
25 the plea.

1 Q. Is it fair to say that -- well, I'm asking basically for
2 your opinion, the fact of who it was that he actually shot or
3 who actually was the victim that made the difference in the
4 case?

5 A. I think it made a huge difference. Look, let me tell
6 you, I tried that case almost all week. The whole Dorchester
7 County Public Defender's Office kept coming -- was there, and
8 they kept coming to me and saying, "You're going to win this
9 case, you're going to win this case." And I kept saying,
10 "No, I'm not, I'm not going to win this case." And they'd
11 say, "Why?" And I said, "Because the victim was a cop. This
12 jury's not going to let a guy go entirely for shooting a cop,
13 no matter what the circumstances are."

14 Q. Even though it was an undercover cop.

15 A. Even if it was undercover and my guy had no knowledge of
16 it, he was still a cop that got shot. And what I had hoped
17 was, I didn't -- yes, I thought there was a good case put out
18 there and that if it had been anybody other than an
19 undercover cop, we may have won that case; but that it was
20 simply a jury wasn't going to let somebody go entirely if
21 they shot a cop. And I wanted them to do it, but my best
22 hope was they let the codefendant, who's the one that started
23 the shooting, plead to not assault and battery with intent to
24 kill but like assault with intent to kill. Okay? And that
25 the jury somewhere in their hearts would find, hey, wait a

1 minute, if this guy starts it all, and this is what he's
2 getting -- I brought it out on cross-examination, I think it
3 was max of ten years or something like that -- that they'd
4 cut the same deal back in the jury room for Dervick. I
5 thought the sentence he got was harsh under the
6 circumstances. You know, I mean, that -- what took place out
7 there that night was a recipe for disaster, just a -- you
8 know, you come up on somebody in the middle of a place
9 where -- you know, dangerous location, there's been murders,
10 you see guys who are armed, so what do you do, you pull your
11 gun out.

12 Q. So Gibbons in your opinion was -- he was the one that
13 had precipitated the whole thing?

14 A. Yes, I mean, I felt that the officer was as responsible
15 for what happened, not that he was asking to get shot, but he
16 made a bad judgment call, he made -- and the bad judgment
17 call was, I saw these two guys had guns on them, so I pulled
18 my weapon, so here he is walking towards them, and he pulls
19 the weapon, and as far as they know, he's coming to rob them,
20 shoot them or kill them, you know, so I do think -- I did
21 feel as though the officer, not intentionally, but
22 unintentionally had responsibility for what happened, that
23 the facts as they were, him pulling his gun was a recipe for
24 disaster to happen that night, and it did. You know,
25 fortunately, he didn't get killed, he got shot in the calf

1 and such.

2 Q. Now, one of the other things that came out was the whole
3 issue about the firearms having different DNA on them. Do
4 you recall the testimony about that and your
5 cross-examination?

6 A. At this point in time I don't recall the testimony and
7 the cross-examination, to be honest with you.

8 Q. But there was an issue about whether Dervick Parker's
9 DNA was on the weapon --

10 A. Mm-hmm.

11 Q. -- versus other people's DNA was on the weapons, does
12 that refresh your memory?

13 A. Not specifically. I mean, I'm afraid this is, what, six
14 years ago. I remember most parts of it but not -- I don't
15 remember that in particular.

16 Q. But there was a question about whether or not he had
17 actually shot the officer --

18 A. Right.

19 Q. -- whether or not he had fired the shot that ended up in
20 the officer's calf.

21 A. Right.

22 Q. And then there was an issue about whether or not he had
23 that gun that the bullet came from --

24 A. Mm-hmm.

25 Q. -- and whether or not other people had it, do you recall

1 that?

2 A. Well, I remember there were two guns out there that
3 night, and there was no question but the codefendant had
4 taken some shots at the officer. The only question was was
5 Dervick -- whether he had taken them and --

6 Q. Whether -- which guy had the gun that shot -- that

7 actually fired the shot that the bullet went into the
8 officer's calf?

9 A. Mm-hmm.

10 Q. Is that correct, sir, that was a disputed issue?

11 A. I don't remember it being disputed whose gun was whose,
12 you know, the question was -- the testimony of the officer
13 was they both shot at him, that the codefendant shot at him
14 as he was running away. It's sort of hard. There's this
15 string of apartments, okay, and the event takes place sort of
16 at the end of the apartments, starts off there. Shots are
17 fired. Officer runs down towards a fence that was at the end
18 of that, you know, thing, and then turns left and starts
19 heading to the left, okay. Codefendant chases him part way
20 down the -- when he first starts running down there. What
21 the officer testified to was, when he made the -- hung the
22 left-hand turn, I think he said he was headed for some
23 opening in the fence, that that's when Dervick started
24 shooting at him, that Dervick had come back around and was

25 then -- whereas his friend's at the end of these apartments,

1 that Dervick had come back around and was right in the middle
2 of them and that he was the one who was shooting at him when
3 he got hit.

4 MR. BROOKS: Beg the Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 (Brief pause.)

7 Q. Mr. Archer, do you recall the jury instruction in
8 regards to inferred malice?

9 A. I don't recall it offhand, no. I can look at it and
10 read it but --

11 Q. So if you didn't object to it, you wouldn't argue with
12 whatever's put into the record about it; is that correct?

13 A. I don't remember objecting to -- I remember asking for
14 some jury instructions, vaguely remember asking for some jury
15 instructions. I don't remember objecting to --

16 Q. And if you don't remember it, you would rely on --

17 A. I would rely on the record. Whatever the record says is
18 what happened.

19 MR. BROOKS: Beg the Court's indulgence one more time.

20 THE COURT: Yes, sir.

21 (Brief pause.)

22 Q. Mr. Archer, do you recall asking for a jury charge about
23 the voluntariness of his statement and objecting to it?

24 A. No, I don't recall asking for a jury charge on the
25 voluntariness.

1 Q. And again, you would rely on what's in the record?

2 A. Yes, you know --

3 MR. BROOKS: Okay. No other questions, Judge.

4 THE COURT: Thank you. Cross-examination.

5 MS. HARRIGAN: Yes, Your Honor.

6 CROSS-EXAMINATION BY MS. HARRIGAN:

7 Q. Mr. Archer, you've stated several times that you'd rely
8 on what's in the record and the transcript, correct?

9 A. That's correct.

10 Q. And when you were reviewing for the Court your summation
11 of what happened, you testified that Officer Gibbons actually
12 approached Mr. Parker and his codefendant, Mr. Davis, his
13 weapon brandished, correct?

14 A. That's correct.

15 Q. That's not what Officer Gibbons testified to at trial,
16 is it, at all?

17 A. Well, I don't know what he testified to, but that's --
18 that's the recollection I have, that he approached. I
19 remember him saying, "I saw they were armed, so I pulled my
20 weapon."

21 Q. You don't recall any testimony from Officer Gibbons that
22 he actually didn't approach them but that Mr. Parker and Mr.
23 Davis approached him, asked him what he was doing there, and
24 as he was trying to flee, repeatedly followed him with their
25 weapons out, you don't recall that?

1 A. Vaguely.

2 Q. Do you recall an audio clip from his radio being played
3 to the jury?

4 A. No, I don't recall that.

5 Q. If the record shows one was, would you dispute that?

6 A. I wouldn't dispute anything that's in the record.

7 Q. You testified that, after speaking with Mr. Parker, you
8 decided self-defense was the defense you'd set forth at
9 trial, correct?

10 A. Was what?

11 Q. Self-defense was the defense you'd set forth at trial?

12 A. Basically.

13 Q. Did you explain to him that he would need to testify if
14 you wanted to be successful on a self-defense claim at trial?

15 A. We would have discussed him testifying at some point in
16 time. I mean, I don't put anybody up to testify that I
17 hadn't talked to about it.

18 Q. Would you have specifically discussed the importance of
19 him testifying based on a self-defense theory?

20 A. I don't recall. I probably would have. That's all I
21 can tell you. Six years, seven years later, I can't remember
22 everything I discussed with him; but I would have discussed
23 his right to testify, and I know I would have said something,
24 there would have been discussions because if I had him admit

25 to the inaccuracy of his statement, we had discussed

1 testifying.

2 Q. Do you recall making a motion pretrial to suppress his
3 statement?

4 A. Did I make a motion?

5 Q. Or telling the Court you intended to make a motion, and
6 then you received some assurances from Solicitor Bell that he
7 wouldn't be using the statement, do you recall that?

8 A. I remember getting the assurances that he wasn't going
9 to be using it, whether we went on the record or not, it goes
10 on the record later when he does decide to pull it out and
11 use it, and that's when I objected on the fact that there was
12 nothing to impeach because my client had not testified
13 untruthfully.

14 Q. If the record reflects that you did bring that to the
15 Court's attention and stated that you were prepared for a
16 hearing on a motion to suppress and then you received those
17 assurances from Mr. Bell, you wouldn't dispute that if that's
18 on the record?

19 A. If it's on the record, no, I wouldn't dispute that.

20 Q. And I believe you testified before that you needed to
21 call Mr. Parker as a witness to set forth self-defense. I
22 think you said that you were -- the codefendant's testimony
23 wouldn't have been enough, you needed him to show that he was
24 in fear for his life.

25 A. Yes.

1 Q. And you testified that you decided to bring this
2 inconsistency, on what you've described as a collateral
3 matter, out to not lose credibility in front of the jury,
4 correct?

5 A. Yes.

6 Q. Would you say that was a strategic decision to do so?

7 A. It was a strategic decision when I knew that the
8 statement was going to be -- was potentially going to be used
9 against him, I wanted to be the one to break that news to the
10 jury, that yes, there was an inconsistency in the statement,
11 which -- you know, rather than have the prosecutor come drop
12 it on us like it was a bombshell; so, yes, I wanted to bring
13 it out first. That was strategic.

14 Q. And when the State did begin to use this statement to
15 impeach him, you objected, correct?

16 A. I objected.

17 Q. Do you recall --

18 A. Not necessarily on Miranda grounds or voluntariness
19 grounds but basically on the grounds that it was only -- one,
20 they had agreed they weren't going to put it in; two, there
21 was nothing to impeach because my client had told the truth.
22 To impeach somebody with a prior statement you have to have
23 an untruth, so if he had testified truthfully, there was no
24 need to bring in these prior inconsistent statements to

25 impeach him.

1 Q. And do you recall having an in-camera hearing, the jury
2 left the courtroom, and you actually had a motion to suppress
3 based on that statement at that time?

4 A. Yes, we had. There was a colloquy between me, Mr. Bell
5 and the Judge about it; and I think, you know, the Judge kept
6 saying, which is my understanding of the law, that a
7 statement can be used, even one that's inadmissible, can be
8 used to impeach someone if they take the stand and testify,
9 you know, contrary. But my argument at that point was, he's
10 testified truthfully; therefore, there's nothing to impeach.

11 Q. And I believe you testified on direct you thought this
12 was on a collateral issue, he was -- it still admitted what
13 he'd done, it was just which codefendant was with him, he
14 lied about that.

15 A. Right, yes. I mean, he didn't change the story about
16 who shot who and, you know, that sort of stuff. It was
17 simply what -- when they first took the statement, he
18 named -- there were three guys that were initially charged in
19 this thing. Two ended up testifying against him, okay.
20 There was Dervick, and then there was the fellow, I forget --
21 Campbel was the one who stayed at the house, and I forget the
22 name of the other fellow but -- what was the question again?
23 I got lost in trying to remember the names of the witnesses.

24 Q. That it wasn't impeachment on any substantive issue, it
25 was more collateral, whether it was Davis or Campbel who was

1 with him.

2 A. Right, was it this guy or this guy that was with him,
3 and I looked at that as being basically collateral.

4 Apparently he wanted to protect the other fellow, so he told
5 them one was with him when it was the other one.

6 Q. Do you recall highlighting that to the jury when you
7 were on redirect with Mr. Parker?

8 A. I don't recall that. Whatever is in the record's there.

9 Q. Regarding his allegation that you were ineffective for
10 failing to request a -- or failing to object to the jury
11 instruction on malice, this case was tried in 2009, correct?

12 A. I think it was tried in 2009, April, yes.

13 Q. Are you aware of the Supreme Court decision of Belcher?

14 A. Not specifically by name.

15 Q. At the time do you believe that the charge that was
16 given by Judge Goodstein regarding malice was the appropriate
17 law at the time?

18 A. I thought it was. Whatever charge she gave, I would
19 have -- I thought was appropriate at the time, or I would
20 have objected.

21 Q. Your standard practice is to object when a jury
22 instruction is objectionable?

23 A. Yes. I'm pretty heavy into protecting the record on
24 appeal. If I sense something wrong with the charge, I'm
25 going to object to it.

1 Q. In regards to his allegation that you were infective for
2 failing to request an instruction on the voluntariness of his
3 statement, is that a request you typically make for jury
4 instructions?

5 A. Well, it depends, okay. If I had challenged the
6 statement, I may have asked for that instruction, okay, for
7 the jury; but we never got to that point, and that was based
8 on my assumption that legally, illegal -- first off, I had no
9 notice in advance of anything that would make the statement
10 illegal, okay, or a violation of Miranda. I would -- I did
11 draw up a motion to have it suppressed, as I would -- I mean,
12 I would do that as a matter of form in any case where there
13 was a statement, all right, file a motion to suppress; but I
14 had no real basis for it, it would have simply been an
15 exercise in, yes, we got him in, we gave him this right, this
16 right, this right, we had him there for two hours, blah,
17 blah, blah, yes, the statement is admitted. Okay? But
18 we never got to that point because when we got to trial,
19 Harrison said, well, I don't plan on using it in my case in
20 chief anyway so --

21 Q. So it sounds like, based on your testimony from a moment
22 ago, you don't think there was a high likelihood that the
23 statement would have been suppressed had you made such a
24 motion.

25 A. I don't think there was any likelihood suppression would

1 have been granted. I didn't have any facts that I can recall
2 which indicated that it was beaten out of him or intimidated
3 out of him or whatever and nothing to indicate the Miranda
4 rights weren't given and so forth. I didn't -- I would make
5 the motion as a matter of form if the prosecution said, we're
6 going to introduce it in our case in chief; but I didn't have
7 any real anticipation of a successful motion.

8 Q. Regarding his issue on chain of custody with the
9 firearms that were brought to SLED, do you recall how many
10 different individuals' DNA was found on the weapons?

11 A. No, but I don't recall -- I mean, I don't recall a
12 specific -- seeing or knowing or being aware of a chain of
13 custody problem, you know. Chain of custody is, we seized
14 this, okay, Joe gives it to -- Officer Dan gives it to
15 Officer Jim who gives it to officer so-and-so, and then it's
16 tested, and it comes back down the chain. I'm not aware of
17 there being any problems in that chain itself where the chain
18 was broken and could not be -- the evidence could not be
19 accounted for, so unless I -- unless I saw a specific chain
20 of custody issue, you know, a problem in the chain, I would
21 not normally require proof of a chain of custody. If I saw a
22 problem in the chain, yes.

23 Q. That's your standard practice?

24 A. That's my standard practice, but if I don't see a

25 ~~problem with the chain, I'm not going to make either the~~

1 solicitor, the Court or the jury sit through three hours of,
2 "I took it from Joe, I gave it to John, John gave it to
3 Henry, Henry gave it to so and so, then mailed it off to
4 Columbia, we got it, we opened it up, we mailed it back."
5 I'm not going to do that. If I see a problem, I'll challenge
6 it; but I don't, as a matter of course, challenge chain of
7 custody or require proof of it.

8 Q. Are you aware of the differences required for fungible
9 versus non-fungible items when it comes to chain of custody
10 under South Carolina case law?

11 A. I'm not aware of that. Guns would not be fungible items
12 so --

13 Q. So you would categorize a gun as non-fungible?

14 A. That's not a fungible item. Maybe cocaine is fungible,
15 an ounce of cocaine versus, you know, whatever, but not a
16 gun.

17 MS. HARRIGAN: No further questions, Your Honor. Thank
18 you.

19 THE COURT: Any further redirect?

20 MR. BROOKS: Beg the Court's indulgence one moment.

21 (Brief pause.)

22 MR. BROOKS: No other questions, Judge.

23 THE COURT: You may step down, Mr. Archer. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Anything further?

1 MR. BROOKS: Judge, that's the Applicant's case.

2 THE COURT: Thank you. Anything further from the State?

3 MS. HARRIGAN: State has no witnesses to call but would
4 like to make a brief summation.

5 THE COURT: All right. You may proceed, Mr. Brooks.

6 MR. BROOKS: Judge, we think in this situation my
7 client, Dervick Parker, is entitled to a new trial; his PCR
8 should be granted. We think it's critical in regards to the
9 statement should have been attempted to be suppressed. My
10 client has testified to it. Mr. Archer has testified. We
11 think that obviously the self-defense, even though we didn't
12 amend to talk about the stand your ground, we think that this
13 situation exemplifies some of that because of just what Mr.
14 Archer testified to, that here you had a guy, nobody knew he
15 was a drug -- an undercover drug cop, he pulls up on these
16 guys, he testifies that he sees these two guys in what
17 they -- Mr. Archer says was an admitted dangerous area, sees
18 them with guns, and he whips out his gun. He basically
19 precipitated the whole gun exchange, the actual officer,
20 which nobody knew he was an officer, wasn't supposed to know
21 he was an officer, hence him being an undercover cop. And
22 all my client did was, you know, basically out of fear for
23 his life, and we think that that should have been explored
24 and that should have put him in a situation where, if it had
25 been, perhaps would have changed the outcome of the case.

1 And we think for these reasons, along with all the other
2 reasons that we've illustrated here, my client's testimony as
3 well as Mr. Archer's testimony, that a post-conviction relief
4 should be granted and that Mr. Parker should be granted a new
5 trial.

6 THE COURT: Thank you, Mr. Brooks. Ms. Harrigan.

7 MS. HARRIGAN: Your Honor, briefly in reply, in regards
8 to-- the State would submit that Mr. Parker has not met his
9 burden as required under Strickland v. Washington in regards
10 to any of the allegations. I'll go through them one by one
11 with Your Honor. In regards to his allegations regarding his
12 statement and counsel's failure to suppress it and for
13 opening the door to cross-examination on the statement, the
14 State would ask Your Honor for a deficiency to rely on the
15 record showing that Mr. Archer did try to move to suppress
16 the statement. He received reliances from Assistant
17 Solicitor Harrison Bell that he did not intend to use the
18 statement in his case in chief, however it would be brought
19 up for impeachment reasons. We have testimony from Mr.
20 Archer that he was aware of that and he made a strategic
21 decision to bring the statement out on his own to not lose
22 credibility in front of the jury. I think when you have a
23 strategic reason such as that, counsel can't be found
24 insufficient, and there's caselaw to support that assertion.
25 Additionally, no prejudice can be shown in regards to these

1 first issues regarding the statement because we have
2 testimony from Mr. Archer that it would not have been
3 suppressed. If such a motion had been made, he said he
4 couldn't envision any reason why it would have been
5 suppressed. Additionally, it really only deals with the
6 collateral issue as to whether or not he was with Codefendant
7 Davis or this other third party, Campbel; so the State would
8 submit that, in regards to the first issues, Strickland v.
9 Washington has not been met. In regards to the second set of
10 issues dealing with failing to object to the jury charge on
11 malice, the State would submit there's no deficiency. Since
12 the time of the trial Belcher has come down and changed some
13 of the law when it comes to inferred malice; however, Belcher
14 was not good law at the time of the trial. Counsel is not
15 required to be clairvoyant, therefore there was no deficiency
16 at the time. Additionally, in regards to the allegation that
17 counsel was ineffective for failing to request a
18 voluntariness of his statement charge, counsel testified
19 that's not something he would normally request in a situation
20 such as this. The statement was not brought in for the truth
21 of the matter asserted, it was only brought in for
22 impeachment purposes, and when you look at the jury charge
23 given by Judge Goodstein as a whole, it covers and
24 encompasses that sentiment; so the State would argue there's
25 no deficiency and prejudice in regards to those allegations.

1 Thirdly, regarding the allegations for chain of custody for
2 the weapons brought to SLED, we have testimony from Mr.
3 Archer that he saw no reason to challenge such chain of
4 custody. There was no error that was noticeable to him.
5 Additionally, the State would submit and Mr. Archer testified
6 that the weapons that are subject to this allegation are
7 non-fungible, and, as they are non-fungible, not every step
8 in the chain of custody needs to be shown by the State, and
9 the State would rely on State v. Herring in support of that
10 proposition that for non-fungible items not every step needs
11 to be shown, so therefore no deficiency or prejudice is shown
12 in regards to those, and the State would overall submit that
13 this application needs to be denied in full. Thank you.

14 THE COURT: Thank you. I'll take the time to review the
15 record and issue a written ruling to both parties.

16 MR. BROOKS: Thank you, ma'am.

17 MS. HARRIGAN: Thank you, Your Honor.

18 --- END OF TRANSCRIPT OF RECORD ---
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 28th of May, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 December 18, 2014

16

17 /s/ *Ruth L. Mott*

18 Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Dervick L. Parker, #334246,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No: 2011-CP-18-0243

ORDER OF DISMISSAL

2014 SEP 16 PM 2:28
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed December 7, 2011, alleging ineffective assistance of counsel and various other due process claims. The State made its Return and Partial Motion to Dismiss on April 12, 2012, requesting an evidentiary hearing be held on Applicant's ineffective assistance of counsel claims and requesting summary dismissal of the remaining claims. Thereafter, Applicant amended his Application on April 10, 2014 and again on April 28, 2014. An evidentiary hearing into the matter was convened on May 28, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted during the April 2008 term of the Dorchester County Grand Jury for Assault and Battery with Intent to Kill (2008-GS-18-0481). Mark L. Archer, Esquire, represented him. On April 13-16, 2009, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein, where he was convicted as indicted. Judge Goodstein sentenced Applicant to twenty years imprisonment.

A notice of appeal was filed and an appeal perfected on Applicant's behalf by Deputy Chief Appellate Defender Wanda H. Carter. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion, State v. Parker, Op. No. 2011-UP-060 (S.C. Ct. App. filed February 16, 2011). The Remittitur was sent March 24, 2011.

At the evidentiary hearing, Applicant proceeded forward on the following allegations as set forth in his most recent amended application, filed on April 28, 2014:

1. Ineffective assistance of counsel for opening the door to Applicant's prior statement to law enforcement and for failure to move to suppress this statement;
2. Ineffective assistance of counsel for failure to object to the trial court's failure to charge the jury on the mandatory jury instruction on the voluntariness of his statement; and
3. Ineffective assistance of counsel for failing to object to the chain of custody of the firearm introduced at trial.

Applicant failed to present any testimony or other evidence regarding his original allegations of due process violations, trial court errors, and other claims, such as ineffective assistance of appellate counsel. Respondent has moved to dismiss these for failure to state a claim on which

relief can be granted pursuant to S.C. Code Ann. § 17-27-10 through -160. This Court grants Respondent's motion to dismiss all claims beyond the three specific claims listed above.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsel Mark Archer, Esquire (hereafter "Counsel"). This Court also had before it Applicant's trial transcript, the records from the Dorchester County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that the incident involved the shooting of an undercover police officer when he was eighteen years old. He testified that he was at his girlfriend's home when he was advised by a female friend that a suspicious male was wondering around the apartment complex. He testified that he did not know at the time that this person was an undercover police officer and perceived him as a threat. He acknowledged that he and a friend approached the officer, which resulted in an exchange of gun fire. He testified that he learned after the shooting that an undercover officer had been shot. He testified that he was arrested thereafter and charged with Assault and Battery with Intent to Kill. He testified that he attempted to plead guilty in January 2009 before Judge Williams, but Judge Williams refused to accept the State's recommendation after hearing a victim impact statement from the officer. He testified that Judge Williams allowed him to stand down.

He testified that Counsel was retained to represent him by family members in August 2008. He testified that he met with Counsel three or four times for approximately fifteen

minutes before his trial. He testified that he did "not really" review discovery with Counsel, but conceded that he did review numerous statements with Counsel, including a statement he gave to law enforcement following his arrest. He testified that Counsel should have moved to suppress his statement in a pre-trial Jackson v. Denno hearing. He acknowledged that the State agreed that his statement would not be admitted as substantive evidence and would only be introduced for impeachment purposes if he testified inconsistently. He testified that Counsel explained this to him and he decided to testify knowing the statement would likely come in because he wanted to show the jury he was acting in self-defense and that his previous statement was a lie given to law enforcement immediately after the shooting while he was scared. He testified that during his trial testimony, his testimony was inconsistent with his statement to law enforcement and he was impeached with his prior statement. He acknowledged that Counsel objected at this time and an *in camera* hearing was held to determine if the statement was admissible, after which the court concluded the statement was admissible for impeachment purposes. He testified that Counsel also should have requested a jury instruction requiring the jury to determine the voluntariness of his statement and objected to the charge as given.

Applicant testified that Counsel also should have objected to the admission of the firearm on chain of custody issues. He elaborated that Counsel never checked the chain of custody receipts to see if the weapon had been handled properly or to insure that all necessary witnesses were present to testify at trial.

Following Applicant's testimony, Counsel was called to testify by Applicant. Counsel testified that he was retained to represent Applicant by Applicant's family and that he met with

Applicant numerous times. He testified that the charges arose out of the shooting of an undercover police officer in a very dangerous apartment complex notorious for violence and drug activity. He testified that Applicant and his co-defendant approached the undercover officer and acknowledged that Applicant and his co-defendant repeatedly followed the officer while he was trying to flee the complex. He testified that the State's case centered on the officer's testimony, but there was also a recording from the officer's radio that encompassed the encounter and shooting. He testified that he attempted to broker a plea offer on Applicant's behalf, but that Judge Williams refused to accept the State's offer for ten to twelve years imprisonment after hearing the victim impact statement from the officer. He testified that after this failed plea attempt, he was fully prepared for trial, with a defense of self-defense.

He testified that Applicant had given a statement to law enforcement before he was retained. He testified that this statement was exculpatory and therefore would not be used in the State's case in chief. He testified that he wanted to insure that the record was protected, so he addressed the issue pre-trial and had prepared a written motion to suppress in case the State attempted to introduce the statement. However, he testified that the State did plan to use the statement for impeachment purposes if Applicant took the stand and testified inconsistently, which was likely because the statement falsely indicated that different individuals were with Applicant during the shooting. He testified that he advised Applicant of this and the danger of having the statement used for impeachment purposes. However, he testified that both he and Applicant were in agreement that Applicant would have to testify to explain to the jury that he was acting in self-defense. He testified that based on this, he made a strategic decision to bring

this inconsistency out during Applicant's direct testimony to reduce its impact on the jury. He testified that he thought it was in error for the statement to be introduced as a whole as Applicant's testimony already admitted to giving a prior inconsistent statement and that he objected to the statement's introduction resulting in an *in camera* hearing. He testified that despite the risk of any possible, albeit minimal, negative effect from Applicant's prior statement, he made the strategic decision to call Applicant because it was absolutely essential for the jury to hear his story for his self-defense claim.

Counsel testified that three total guns were involved in the incident, including the officer's weapon. He testified that the officer testified that both suspects (Applicant and his co-defendant) had weapons and shot during the encounter. He testified that he recalled there being a possible issue regarding different DNA on the two other weapons, but that this was not exculpatory because the weapons were not found on Applicant. He testified that there was no reason to challenge the chain of custody for the firearms and conceded that because firearms are non-fungible items, the entire chain of custody does not need to be accounted for before introduction into evidence. He testified that there is "no way" the firearms would have been suppressed if he had made such a motion.

Counsel testified that he requested several specific jury instructions, including one of the voluntariness of Applicant's statement. He testified that he recalled the charging conference taking place off the record. However, he testified that since the statement was not admitted as probative evidence, but rather, admitted for impeachment purposes, such a jury charge was not required. Additionally, he testified that he believed the jury charge as a whole conveyed this to

the jury without any need for a specific instruction. He testified that he thought this was an excellent case for self-defense and that he likely would have won if it had not been a law enforcement officer as the victim. He elaborated that once the jury heard that an officer was shot during the line of duty, it would be an uphill battle to secure an acquittal, but that he was fully prepared for trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight; conversely, this Court finds that Applicant's testimony lacks credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are the specific findings as to Applicant's allegations of ineffective assistance of counsel:

Allegation that counsel was ineffective for opening the door to Applicant's prior statement to law enforcement and for failure to move to suppress this statement

Applicant alleges that Counsel was ineffective for opening the door to the admission of his prior inconsistent statement and for bringing the inconsistencies out during his direct examination. See Tr. p. 524-25. The uncontroverted testimony and the record reveal that.

following this testimony regarding Applicant's inconsistencies, Counsel moved to suppress the introduction of Applicant's statement for impeachment purposes. See Tr. p. 526-532. This was after a pre-trial hearing took place, where the State conceded the statement would not be used in its case in chief and would only possibly be used for impeachment purposes if Applicant testified differently than his statement. See Tr. p. 52-53. Counsel testified that he made a strategic decision to bring out the inconsistency in Applicant's statement to lessen the impact on the jury and reduce any possible tarnishing to Applicant's credibility. Additionally, Counsel testified that Applicant's statement to law enforcement was no exculpatory, but rather innocuous and the inconsistency dealt with who was present alongside Applicant. Additionally, he testified it was absolutely essential to call Applicant as a witness to present his theory of self-defense.

"There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (citing Strickland, 466 U.S. at 689). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (citing Strickland, 466 U.S. at 689). Therefore, courts must be wary of second-guessing trial counsel's tactics. Edwards, supra (citing Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)).

Accordingly, this Court finds that Counsel's performance was reasonable based on professional standards. See Cherry, supra. This Court finds that Counsel's strategic decision to address the inconsistencies in Applicant's statement during his direct examination to lessen the potential effects was reasonable based on the circumstances of this case. As this Court finds no deficiency exists, this allegation must be denied and dismissed with prejudice.

Allegation that counsel was ineffective for failing to object to the trial court's failure to charge the jury on the mandatory jury instruction on the voluntariness of his statement

Applicant alleges that Counsel was ineffective for failing to request a specific jury instruction on the voluntariness of Applicant's statement. Counsel testified that he believes he requested such a charge, but that such a charge was not required because the statement was admitted for impeachment purposes only. Furthermore, he testified that the jury instructions, taken as a whole, conveyed this to the jury without the need for a particular instruction. This Court agrees and finds that Counsel's performance was not deficient. South Carolina law dictates that jury instructions, when analyzed, must be considered in their entirety. See Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003). This Court finds that not specific instruction on the voluntariness of Applicant's statement was necessary, as the statement was offered for the limited purpose of impeachment. Furthermore, the trial court's instruction, when viewed as a whole, convey this to the jury. Therefore, this Court finds Counsel's performance to be reasonable and in accordance with professional norms. As this Court finds no deficiency exists, this allegation must be denied and dismissed with prejudice.

Allegation that counsel was ineffective for failing to object to the chain of custody of the firearm introduced at trial

Applicant alleges that counsel was ineffective for failing to object to the chain of custody for the firearms introduced at trial. In support of this allegation, Applicant cites to Counsel's statement during pre-trial hearings that he was not objecting to the introduction based on chain of custody. See Amended Application; Tr. p. 57 lines 19-25. However, Applicant failed to establish what the particular defect in custody was or how it would have made the evidence in question inadmissible. Counsel testified that he did not object to the admission of the firearm based on chain of custody because there was no defect in the chain. Furthermore, Counsel noted that because the evidence in question – a firearm – is non-fungible evidence, testimony from every piece of the chain is not required for introduction.

A party offering into evidence of fungible items, such as drugs or blood, must establish a complete chain of custody as far as practicable. State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 752 (2011). "Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007) (internal citations omitted). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id.

In contrast, "[w]hile the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required: if the

offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition." State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741-42 (2005) (citing State v. Glenn, 328 S.C. 300, 305-306, 492 S.E.2d 393, 395 (Ct.App.1997)).

In the present case, the evidence in question, a firearm, is non-fungible, as it is "fairly unique and readily identifiable." Freiburger, supra. As a non-fungible item, admission of the firearm into evidence did not require a strict chain of custody, but rather, only testimony that the weapon is the firearm in question and in a substantially unchanged condition. Here, these requirements were satisfied. As the State fulfilled its chain of custody requirements in regards to this non-fungible evidence, this Court finds that trial counsel was not deficient for not objecting to its admission based on purported chain of custody defects. As this Court finds no deficiency exists, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

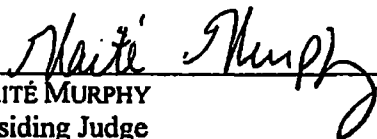
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

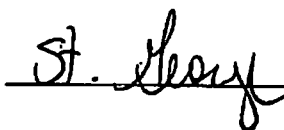
appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 8 day of Sept., 2014.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

 St. Henry, South Carolina.

WITNESSES

Garrison, John

DCSO

ARREST WARRANT NUMBER

M115581

Arrested: Feb 29, 2008

ACTION OF GRAND JURY

DATE 4/15/08

Foreperson of Grand Jury
Date: April 15, 2008**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2008GS18-0481****The State of South Carolina**

County of

DORCHESTER**COURT OF GENERAL SESSIONS**

April 21, 2008 TERM

THE STATE

vs.

Dervick Lamont Parker

Indictment for

**ASSAULT AND BATTERY WITH INTENT
TO KILL**

SC Code: 16-3-620

Class: FEL-C

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

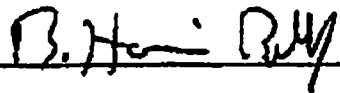
INDICTMENT
2008GS18-0481

At a Court of General Sessions, convened on April 21, 2008 the Grand Jurors of
Dorchester County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The defendant, Dervick Lamont Parker, did in Dorchester County on or about February
28, 2008, with malice aforethought did commit an assault and battery upon the victim,
Det. Sgt. Shawn Gibbons, by shooting the victim. This offense being a violation of
Section 16-3-620 of the South Carolina Code of Laws, as amended.

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


B. Harrison Bell Jr., Solicitor