

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2014-000594

The State, ... Respondent,

v.

Devatee Tymar Clinton, ... Petitioner.

**APPENDIX
VOLUME II**

Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

Attorneys for Petitioner

Alan Wilson
John W. McIntosh
Donald J. Zelenka
William E. Salter, III
**OFFICE OF THE
ATTORNEY GENERAL**
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Randy E. Newman, Jr.
**SOLICITOR
SIXTH JUDICIAL CIRCUIT**
Post Office Box 607
Lancaster, South Carolina 29721
(803) 416-9367

Attorneys for Respondent

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1 A Initially he didn't know Pomp Blackmon.

2 Q Did that change somewhere during the conversation?

3 A It did.

4 Q How did it change and tell the jury what Clinton told
5 you by way of a change to that response?

6 A Well, later he indicated that he did know Pomp
7 Blackmon. He had seen him around in various places throughout
8 the county and he that knew what type of vehicle Mr. Blackmon
9 own.

10 Q Did he indicate anything about whether he knew where
11 Mr. Blackmon lived, generally.

12 A In the Newtown area. He knew he lived in the Newtown
13 area.

14 Q Are you familiar with Pomp Blackmon's address?

15 A Yes, sir, I am.

16 Q And what area of Lancaster is that in?

17 A It is in the Newtown area.

18 Q Was there ever specific discussion with Mr. Clinton
19 that day about white Cadillac with a rag top?

20 A Yes, sir, there was.

21 Q What was the initial discussion about a white Cadillac
22 with a rag top?

23 A Initially he indicated that he didn't -- he had not
24 seen a vehicle matching that description. Didn't know of anyone
25 that owned one.

1 Q Did his response to that line of discussion change?

2 A Yes, sir, it did.

3 Q How did it change?

4 A Later he came to realize that he knew that Pomp
5 Blackmon owed a white Cadillac matching that description.

6 Q Did you at some point ask Mr. Clinton whether he had
7 ever been in or driven that Cadillac?

8 A I did.

9 Q What was his response?

10 A Initially he indicated that he never been in the
11 vehicle. He had never driven the vehicle.

12 Q Was there some discussion during this interview about
13 DNA connected with perhaps a blue jumpsuit or a white Cadillac?

14 A Yes, sir, there was.

15 Q Did Clinton have any response to any inquires you made
16 concerning his DNA maybe being on either each one of those two
17 items?

18 A Say it one more time.

19 Q Let me just ask you this point blank. Did you ever ask
20 Clinton whether there was any possibility his DNA would be on
21 the blue jumpsuit or the white Cadillac.

22 A Yes, sir I did.

23 Q Did he have some response as to questions first as to
24 the blue jumpsuit?

25 A Yes, sir.

1 Q What was his response to that?

2 Q He told me that he touched the jumpsuit several times
3 as he moved it throughout the house, or as well as when he
4 loaned it out to other people. So he indicated that his DNA
5 should be on the jumpsuit.

6 Q How about the Cadillac? Did he have any response to
7 your query about whether he might have some DNA on that
8 Cadillac?

9 A He did.

10 Q What was his response to that?

11 A That he leaned on the car to talk to a female that we
12 can only assume was in the car.

13 Q And did he say when and where that occurred?

14 A It happened at the Hole in the Wall on the night that
15 Jenika was killed.

16 Q Did you have occasion to met with Tate Clinton a third
17 time on 3-9 of '12?

18 A Yes, sir, I did.

19 Q Where did that meeting occur?

20 A In our detention center.

21 Q Was Mr. Clinton still arrested and in custody?

22 A Yes, sir, he was.

23 Q On that date did you again go over Mr. Children's
24 Miranda warnings and the waiver with him?

25 A No, sir, I did not. At that time I did not.

- 1 Q Okay. At any time that day did you?
- 2 A Yes, sir, I did later that day.
- 3 Q Can you identify that piece of paper?
- 4 A Yes, sir, I can.
- 5 Q And what is that piece of paper generally?
- 6 A This is an another copy of Miranda warning.
- 7 Q Related to what person?
- 8 A Devantee Clinton.
- 9 Q And what date?
- 10 A March 9, 2012.
- 11 Q Is the form the identical form for State's Exhibit
- 12 Number 61 which you identified as 2-23 Miranda warnings?
- 13 A Yes, this is identical.
- 14 Q Same piece of paper?
- 15 A Yes.
- 16 Q Did you follow the same process on 3-9 of '12?
- 17 A Yes, sir, we did.
- 18 Q Anything different about the process meaning how you
- 19 went through the form and how you asked him the questions and
- 20 how he responded?
- 21 A The only thing we probably spent more time on was just,
- 22 you know, the forth warning indicating again that if he can not
- 23 afford to hire a lawyer one would be appointed to represent him.
- 24 That was the only thing we spent more time on then before.
- 25 Q Did he still have a lawyer, Mr. Frick, on 3-19 of '12?

1 A He did.

2 Q And did you know that?

3 A Yes, I did.

4 Q Nothing had changed about that as far as you know?

5 A No, sir.

6 Q Generally, you hold on to the form. Did you read him
7 all his rights that day?

8 A I did.

9 Q Did he indicate whether or not he understood each one
10 of them?

11 A He indicated he did understand.

12 Q How did he indicate that to you?

13 A By putting his initial on each line next to the warning
14 or the right.

15 Q Did he sign the form?

16 A He did.

17 Q Did he provide some information to you that day?

18 A He did.

19 MR. BARFIELD: Your Honor, at this time I offer
20 this Miranda warning associated with the 3-9 of '12
21 interview as State's 62.

22 MR. FRICK: No objection.

23 MS. RANEY: No objection.

24 THE COURT: State's 62 is in evidence without
25 objection.

1 (state's Exhibit 62, Miranda warning, received in
2 evidence as of this date.)

3 Q Mr. Thompson, generally speaking, who initiated -- as
4 between you and Devatee Clinton on 3-9 of '12 who initiated
5 discussion about anything?

6 A Mr. Clinton initiated the conversation.

7 Q And was there some discussion again about the Jenika
8 Jones investigation?

9 A Yes, sir.

10 Q As far as you know had anything changed about -- stupid
11 question -- his age or education between 2-23 and 3-9?

12 A As far as I know nothing had changed.

13 Q On that date did he say or do anything to make you
14 think that he did not understand what his rights were?

15 A He did not.

16 Q Did he appear to be under any physical or emotional
17 distress that day?

18 A No, sir.

19 Q Did you have any problems communicating with him that
20 day?

21 A No, sir.

22 Q Did he say or do anything to make you think that he
23 didn't understand what his rights were?

24 A He did not.

25 Q How long were you all together that day?

1 A That interview was probably less than an hour.

2 Q And where did that interview occur?

3 A In the sheriff's office. We actually brought him up to
4 the sheriff's office.

5 Q Who else was present that day, if anybody?

6 A Captain Craig Bailey was actually in on that interview.

7 Q Were the circumstances of the location any different
8 that day?

9 A No, sir.

10 Q Was Mr. Clinton's restraint circumstances any different
11 that you remember that day?

12 A No, sir.

13 Q At any time that day did he make any requests that were
14 denied; creature comfort type things?

15 A No, sir, not that I remember.

16 Q On that day did anybody promise him, make him any
17 promises to get him to provide information?

18 A We did not.

19 Q Make any threats to him to get him to talk?

20 A No, sir.

21 Q Try to coerce him in any way?

22 A No, sir.

23 Q Did he give you a little bit of information?

24 A He did.

25 Q Specifically was there any discussion between you and

1 he -- you and him concerning Wayne Blakeney?

2 A We did.

3 Q What did he say about Wayne Blakeney?

4 A That he saw Blakeney.

5 Q Where?

6 A At the Hole in the Wall.

7 Q And traveling how?

8 A In the white Cadillac.

9 MR. BARFIELD: Thank you. Answer anything Mr.
10 Frick or Miss Raney has.

11 THE COURT: Thank you, solicitor. Mr. Frick.

12 MR. FRICK: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. FRICK:

15 Q Mr. Tompson, when you spoke to Mr. Clinton the first
16 time, January 27th, was he brought over to you or did you go
17 over to him?

18 A I went over to him.

19 Q And you spoke to him in a holding cell at the detention
20 center?

21 A Yes, sir.

22 Q Was he behind a door or was a door open?

23 A He was behind a door. We actually spoke through a
24 flap.

25 Q Okay. Now, you and I have both have idea about this

1 door did, but this is a solid door?

2 A Yes.

3 Q Metal door?

4 A Yes.

5 Q It has got a small window in it?

6 A Yes.

7 Q Can't really see in that window, and then there is a
8 flap that items go in and out of?

9 Q Yes, sir.

10 Q About knee level?

11 A Higher than knee level about two or three --

12 Q You got to bend over to talk?

13 A Yes.

14 Q You were bending over to talk through?

15 A Yes, sir.

16 Q Were you making eye contact with Mr. Clinton?

17 A Yes, sir.

18 Q As far as a law enforcement person, not jail personnel,
19 were you the only police officer that was standing there at the
20 time or do you recall?

21 A I believe that I was the only one, but -- I believe I
22 was the only one. If someone were with me I probably would have
23 documented it.

24 Q That's fine. Do you watch cop shows?

25 A Now, no, sir.

1 Q I don't watch Law and Order. On TV shows and on movies
2 and stuff you always see some police officer say read him his
3 rights. The Miranda that you and solicitor went over is that
4 what common referred to as the rights we are talking about?

5 A Yes. Yes.

6 Q You didn't read him his rights that day, did you?

7 A No, sir.

8 Q He spoke to you?

9 A Yes.

10 Q All right. And he told you that he had been over to
11 the Hole in the Wall?

12 A He did.

13 Q And he told you that he was brought over there by his
14 cousin?

15 A Yes, sir.

16 Q He also told what he was wearing, didn't he?

17 A Yes, sir, he did.

18 Q What did he say?

19 A He said he was wearing a camouflage jumpsuit.

20 Q All right. Let's skip ahead to the 23rd. The 23rd
21 there was an arranged meeting. This was not a happenstance
22 meeting, correct?

23 A That's correct.

24 Q You and I communicated on that didn't we?

25 A Yes, we did.

1 Q Mr. Clinton had made you aware you had an attorney and
2 you contacted me so we could set up a meeting on this day,
3 correct?

4 A Yes.

5 Q And that's the meeting that occurred, right?

6 A Yes, sir.

7 Q Okay. He was Mirandized at that time, obviously we see
8 the form, right?

9 A Yes, sir.

10 Q And that time he said that he was wearing what? In
11 that statement what does he say he is wearing?

12 A Again, he indicated he was wearing a camouflage
13 jumpsuit.

14 Q Okay. He is wearing the camouflage and I started at
15 the middle of it. He was at the Hole in the Wall?

16 A He was.

17 Q He talked about this blue jumpsuit but said it had been
18 lent out?

19 A Yes, sir, he did.

20 Q So, I am guessing Mr. Stover is like a roommate. Were
21 you able to determine who that is?

22 A I really don't know. I hate to assume, but this person
23 he indicated lived with him.

24 Q Okay. And then some guy name Wayne?

25 A Yes.

1 Q Don't know anything --

2 A He didn't give us a last name.

3 Q Okay. Any indication where Wayne stayed at or anything
4 like that?

5 A He didn't provide any additional information about the
6 identity of who Wayne is.

7 Q Okay. All right. Then we get to Mr. Pomp Blackmon?

8 A Yes, sir.

9 Q Now, is it common when you are talking to somebody in
10 the case that they are not necessarily forthright with
11 everything at the very beginning?

12 A Yes, that is common.

13 Q So initially he tells you I don't know who Pomp
14 Blackmon is, right?

15 A Yes.

16 Q But he does as the conversation goes on tell you, yeah,
17 I know who Pomp Blackmon is?

18 A Yes.

19 Q I know what kind of car he has?

20 A Yes.

21 Q And it is the white Cadillac?

22 A Yes.

23 Q Do you recall about how long it took him for him to
24 change his tune?

25 A I really can't. I don't know if it was 15 or 20

1 minutes or half an hour. I can't remember how long it took us
2 to get to the point where he began acknowledge knowing him.

3 Q Do you recall how long this whole interview was?

4 A I am pretty certain it was well over an hour. It was a
5 rather lengthy interview.

6 Q All right. But at some point in there he goes from
7 saying, yeah, I do know who he is, right?

8 A Yes. Yes, he does.

9 Q All right. Talk about March 9th. Well, let me ask you
10 this before we get to talk to him on March 9th. Had Mr. Clinton
11 made any contact or attempted contact with you wanting to speak
12 any further?

13 A No, sir.

14 Q Okay. Between January 27th and February the 23rd had
15 he made any contact or attempted contact to talk with you
16 further?

17 A No, sir.

18 Q Other than you and I communicating about setting up
19 that meeting?

20 A That's correct.

21 Q So between February 23rd and March 9th he doesn't write
22 you letter, you don't get word?

23 A No. No contact at all.

24 Q Only from me?

25 A No, sir.

1 Q He is still over at the detention center. Do you go
2 see him or does he come see you?

3 A I actually go over to see him.

4 Q Later he gets brought over, right? I think that is
5 what you said.

6 A Well, while we were there is when I bring him back over
7 to our facility.

8 Q Okay. All chat a little bit. What makes you decide
9 you need to bring him over to sheriff's department?

10 A He indicated that he wanted to see me without you.

11 Q Okay. All right. Now, you all had a conversation
12 about that, didn't you?

13 A Yes.

14 Q You had me present on another interview. You knew he
15 had an attorney. We had communication prior to that other
16 conversation. You didn't make any contact on this one, correct?

17 A That's correct.

18 Q You took him on over then and then had a conversation
19 with him?

20 A Yes.

21 Q Okay. And I think he was Mirandized on that one as
22 well. He was read his rights?

23 A Yes, he was.

24 Q And on that one does he indicate he -- you were
25 obviously asking him about the night in question, right?

1 A Yes. Yes, sir.

2 Q And he indicates that he was still consistent saying he
3 was at the Hole in the Wall?

4 A Yes, that is correct.

5 Q And he did see this white Cadillac?

6 A Yes, that is correct.

7 Q He did not say he was in the white Cadillac?

8 A He did not say that.

9 Q And he says that he sees Mr. Blakeney in the Cadillac?

10 A Yes.

11 Q Were you present this morning?

12 A I was.

13 Q You saw Mr. Blakeney testify?

14 A Yes.

15 Q Is that the guy we are talking about?

16 A I never interviewed Mr. Blakeney.

17 Q Okay. All right. Well, do you know the Blakeney that
18 he was talking about when he saw Blakeney. Did he say Wayne
19 Blakeney?

20 A Yes, in my report it has Wayne Blakeney.

21 MR. FRICK: Okay. Thank you, sir, that is all the
22 questions I have.

23 THE COURT: Miss Raney.

24 CROSS EXAMINATION

25 BY MS. RANEY:

1 Q Investigator Thomas -- Thompson. I am sorry. When
2 were you speaking with Solicitor Barfield earlier this afternoon
3 you mentioned that you were unable to locate this alleged gun at
4 March Barnes. Was it at his residence?

5 A Yes, I believe it was his residence.

6 Q Does Marcus Barnes live with his mama?

7 A That is my understanding he lived with her.

8 Q Okay. Did you actually perform a search of the
9 residence?

10 A We did not have enough to actually get a search warrant
11 for the residence. If my memory serves me correctly there was
12 so much time had elapsed between the incident and the time we
13 received the information we just don't believe we could have
14 gotten enough for a search warrant.

15 Q Okay, so when we are talking about the time that
16 elapsed are you speaking of the time period when Miss Jones was
17 killed up until the time period that you learned Mr. Barnes may
18 have the gun?

19 A Yes.

20 Q I wanted to be sure we were talking about the same
21 thing. And can you explain to the jury just the general process
22 -- not specific to this case about what a search warrant is and
23 how police go about getting them?

24 A Well, a search warrant to me is almost like writing any
25 type of anything. You have to answer five questions; who, what,

1 when, where and how.

2 First of all the location. How you know that what you are
3 looking for is in this location. Often times when we are doing
4 things we have to determine the credibility of the person that
5 we receive the information from. If we've had a long working
6 relationship with someone it would be pretty easy to write a
7 search warrant based off of what someone has provided to us.
8 But if you just met someone today and they tell you they sold
9 something forever ago, I just don't think a judge would give you
10 a warrant.

11 You have you to make sure you have the location. Where you
12 are going to search within our jurisdiction. When. I guess how
13 you now it is there, when was it brought there. How do you know
14 it's not gone. It is not as easy as just going to a judge -- I
15 guess as Mr. Frick said watching television, I will call get a
16 warrant. It is not that easy. It is a long detailed narrative
17 of who you interviewed and how you know for certain that this
18 information is there.

19 Q Right. So in this particular case you said you
20 yourself did not apply to get a search warrant, correct?

21 A That's correct.

22 Q And you are not aware of any other police officer
23 employed with the sheriff's office that may have tried to get a
24 search warrant for Mr. Barnes's residence, are you?

25 A No, ma'am.

1 Q And going by the general description you gave of the
2 search warrant process, if an officer had gone to a judge trying
3 to get a search warrant in this case is one of the things that
4 would have been included in that request the information you all
5 received from Mr. Wayne Blakeney?

6 A Yes, we would have to to provide that information.

7 MS. RANEY: Thank you. I don't have any further
8 questions.

9 THE COURT: Solicitor.

10 MR. BARFIELD: Nothing further.

11 THE COURT: Thank you. That you Mr. Johnson.

12 All right, you may call your next witnees.

13 MR. BARFIELD: Call Captain Michael Green.

14 MICHAEL GREENE, called as a witness, having been
15 duly sworn by the clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. BARFIELD:

19 Q Tell us your name, please sir.

20 A Michael C. Greene.

21 Q And Captain Greene by whom are you employed?

22 A South Carolina Law Enforcement Division.

23 Q How long have you been employed by SLED?

24 A 14 years.

25 Q Did you work in law enforcement before going to work

1 for SLED?

2 A Yes, sir, I worked at Lancaster Police Department prior
3 to that for about ten years.

4 Q And what is your current job at SLED?

5 A I am captain over the special victims unit at SLED.

6 Q What was your rank and job description at SLED in
7 January of 2012?

8 A I was an agent. I worked in the Midlines Investigative
9 Regions and I assist local law enforcement with investing crime
10 such as the one we are here for today.

11 Q And are you a Lancaster residence?

12 A Yes, sir.

13 Q Been for how long?

14 A About thirty five years.

15 Q Most of your adult life?

16 A Most of my life, yes.

17 Q Did you participate and assist is the Lancaster County
18 Sheriff's office in the Jenika Jones homicide investigation?

19 A Yes, sir, I did.

20 Q And specifically on January 25th of 2012 did you meet
21 somebody known as Al Martinez Green?

22 A Yes, sir.

23 Q Where did you meet Mr. Green?

24 A At the Lancaster County Sheriff's Office.

25 Q Was Mr. Green arrested and in custody when you met him?

1 A Yes, sir.

2 Q And did you meet him actually in the sheriff's office
3 or out in the jail?

4 A Inside the sheriff's office in Captain Bailey's office.

5 Q I will show you a document and ask you if you can
6 identify it for me please sir.

7 A Yes, this is a Miranda warning rights form.

8 Q Is it a SLED form or is the Lancaster County Sheriff's
9 form?

10 A Lancaster County Sheriff's Office form.

11 Q Did you get that from somebody at the sheriff's office
12 that day?

13 A Yes, sir.

14 Q Do you know -- tell me is it identical form except for
15 the writing on it that Fred Thompson just described for us
16 concerning Tate Clinton?

17 A Yes, same form.

18 Q Did you on that date read Mr. Green his Miranda
19 warnings?

20 A Yes, sir, I did.

21 Q Verbatim from that form?

22 A Yes, sir.

23 Q I am not going to ask you to read the entire warnings
24 but let me just ask you some general questions about what you
25 did first.

1 Did you determine how old Mr. Green was or date of birth?

2 A Yes, he was 19 at the time.

3 Q Did he -- I will jump way a head. Did he give a
4 written statement that day?

5 A He did.

6 Q And did you record his birthday on the written
7 statement itself?

8 A Yes, sir, I did.

9 Q Did you determine how much education Mr. Green had?

10 A Yes, sir, I did.

11 Q And how far had he gone in school?

12 A He had completed the 9th grade.

13 Q Did you determine whether he had been drinking or doing
14 drugs that caused him not to understand what was going on?

15 A He said he had not. Did not not appear to have been
16 also.

17 Q Did you determine whether he could read and write the
18 English language?

19 A Yes, he could.

20 Q What time was it that you were reviewing the Miranda
21 warnings with Mr. Green?

22 A About 12 minutes after 12 noon.

23 Q I am not going to get you to read them all, but did you
24 read every one of the warnings on that form that you have in
25 your hand to Mr. Green that day?

1 A What I would have done is read it to him and then hand
2 it over to him. Tell him to read it to himself. Make sure he
3 understood each and every one of those rights and then initial
4 beside each.

5 Q And did you do that with Mr. Green?

6 A I did.

7 Q And did he -- first of all, did he indicate that he
8 understood each of those rights?

9 A He did.

10 Q Did he initial to indicate that he understood?

11 A Yes, sir, he did.

12 Q Did you go over the waiver portion of the Miranda
13 process with Mr. Green?

14 A Yes, sir, I did that all at one time and he reviewed
15 the entire form himself and then he signed at the bottom.

16 Q Okay. Did he waive his rights and discuss with you
17 matters related to the death of Jenika Jones?

18 A Yes, sir, he did.

19 MR. BARFIELD: Your Honor, at this time I offer
20 the Miranda warning waiver form from 1-25 of '12 as
21 State's Exhibit Number 63, I believe.

22 MR. FRICK: No objection.

23 MS. RANEY: No objection.

24 THE COURT: States 63 in evidence without
25 objection.

1 (State's Exhibit 63, Miranda form, received in
2 evidence as of this date.)

3 Q Did you have any trouble communicating with Mr. Green?

4 A No, sir.

5 Q Did he appear to have any trouble communicating with
6 you?

7 A No, sir.

8 Q Did he say or do anything to make you think he didn't
9 understand what his rights were and what you all were engaged in
10 at the time?

11 A He did not.

12 Q Did anybody participate with you?

13 A Captain Bailey with the sheriff's office.

14 Q And where in the sheriff's office was this going on?

15 A In Captain Bailey's office.

16 Q Was Mr. Green dressed out in the attire of the
17 Lancaster County Detention Center do you recall?

18 A I believe he had street clothes at the time.

19 Q All right. Do you recall whether he was restrained in
20 any you fashion?

21 A I don't recall him being restrained at all.

22 Q About how long did this interview process last with Mr.
23 Green?

24 A It was a little over three hours from the time when I
25 read him his rights until we completed the written statement.

1 Q All right. Other than you and Captain Bailey, did any
2 other officers directly participate?

3 A No, sir.

4 Q At any time during this process do you recall whether
5 Mr. Green asked for anything like a pee break, a smoke break,
6 something to drink, something to eat, call mama, or anything
7 like that?

8 A I don't think that he did. Certainly if he would have
9 I would have obliged.

10 Q Anything or within reason?

11 A If he wanted a hamburger from Burger King we probably
12 wouldn't have supplied that, but a cup of water, a drink, go to
13 bathroom of course we would have.

14 Q Anybody promise Mr. Green anything to get him to talk
15 to you all that day?

16 A No, sir.

17 Q Anybody in law enforcement promise him anything to get
18 him to talk to you?

19 A No, sir.

20 Q Anybody in law enforcement threaten in any way to get
21 him to talk?

22 A No.

23 Q Anybody in law enforcement do anything of a coercive
24 nature to get him to talk?

25 A No, sir.

1 Q Do you recall the demeanor of the conversation on both
2 sides?

3 A Yeah, I recall it being calm. You know, we challenged
4 him on some things that we didn't agree with.

5 Q Okay.

6 A But it went well.

7 Q Anybody slamming on the tables or turning over chairs
8 or slamming doors or anything?

9 A No, sir.

10 Q Okay. And did Mr. Green waive his rights and talk to
11 you and give you a written statement?

12 A He did.

13 Q I will ask you just a couple real specific questions.
14 At some point did you discuss with Mr. Green his whereabouts
15 about the night of Thursday, January 19th 2012?

16 A Yes, sir, we did.

17 Q And did he indicate where he had been?

18 A He did.

19 Q What did he say?

20 A He said he had been at the Hole in the Wall somewhere
21 around between 11:30 and 11:45 is when he got there.

22 Q Okay. Thank you sir. Answer anything Mr. Frick or
23 Miss Raney has?

24 THE COURT: Mr. Frick.

25 MR. FRICK: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. FRICK:

3 Q Agent Greene you as SLED agent you come in to assist
4 law enforcement when they call you, in correct?

5 A Yes, sir.

6 Q And that's what your role was in this case?

7 A Correct.

8 Q You assisted on many different things in this case
9 didn't you?

10 A Several different things, yes.

11 Q Okay. Do you recall participating in an interview with
12 with an Apipany Kirk?

13 A You know, if I saw her I might, but not right off the
14 top of my head.

15 A I will show you what I think is part of an incident
16 report. Glance through there and see if that refreshes your
17 memory.

18 A I see my name on the report. I am sure it is correct,
19 but I can't say today I have independent memory of that to be
20 honest with you.

21 Q That's fine. I think it indicates you were present.
22 It doesn't say that participation.

23 A We conducted quite a few interviews in this case as we
24 do a lot of cases.

25 MR. FRICK: Okay. Thank you, sir. That is all the

1 questions I have.

2 THE COURT: Ms Raney.

3 CROSS EXAMINATION

4 BY MS. RANEY:

5 Q Special Agent Greene, when you met with my client Al
6 Green was I there with you at all that day?

7 A No, ma'am.

8 Q Because Mr. Green did not ask to have his attorney
9 present before he answered your questions?

10 A That is correct.

11 Q Okay.

12 Q Do you remember what day you first got involved in the
13 investigation of this case?

14 A If I am not mistaken we would gotten a call the night
15 it actually happened.

16 Q The night it actually happened.

17 A If it wasn't then it was the next morning. One of the
18 two.

19 Q Do you recall actually being on scene at all either on
20 the late hours of January 19th or wee morning hours of January
21 20th at Roseanna Lane?

22 A I don't recall if I was there the night that it
23 happened or the next morning maybe we went back to look at
24 something. It was one of the two, but I don't recall which.

25 Q So fairly soon after the incident happened?

1 A Yes, ma'am.

2 Q And you mentioned when speaking with Mr. Frick you
3 talked to a couple of people throughout the investigation of
4 this case?

5 A Yes.

6 Q Do you remember talking to the father of Miss Jones
7 children Antonio Truesdale?

8 A I do not. If you got a document it might refresh my
9 memory but right off the top of my head I do not.

10 Q I sure do.

11 MS. RANEY: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, ma'am.

14 Q If you just want to take your time and read over that
15 and let me know if that helps at all.

16 A Ma'am, I can honestly say I do not have an independent
17 memory of this, but certainly I see the report. And let me
18 explain briefly why that may be the case.

19 Investigator Crump typed this statement. I hand wrote Mr.
20 Green's statement which obviously I had at lot more time and
21 involvement in this statement then would I have something that
22 maybe me and Investigator Crump did for ten minutes and then on
23 to something else.

24 Q And over two years ago?

25 A Yeah, and then again if I saw this gentleman that might

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000594

The State, ...Respondent,

v.

Devatee Tymar Clinton, ...Appellant.

RECORD ON APPEAL
VOLUME II

Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

Attorneys for Appellant

Alan Wilson
John W. McIntosh
Donald J. Zelenka
William E. Salter, III
**OFFICE OF THE
ATTORNEY GENERAL**
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Randy E. Newman, Jr.
**SOLICITOR
SIXTH JUDICIAL CIRCUIT**
Post Office Box 607
Lancaster, South Carolina 29721
(803) 416-9367

Attorneys for Respondent

1 help and you know, things like that, but just right off the top
2 of my head I don't recall this statement.

3 Q That is completely all right. If you don't remember
4 that is the answer I want to hear.

5 Just one last question for you then, I will hand you up
6 another report to see if you remember speaking with a Rashad
7 Johnson at all on January 23rd of 2012?

8 A I do remember dealing with Mr. Johnson because I
9 vaguely know his mother, so I do remember dealing with him and
10 his mother with Investigator Crump.

11 Q Okay. Do you recall speaking with his mother as part
12 of the investigation as well?

13 A We did talk to her at some point, but it was in
14 relation to her son.

15 Q To her son Rashad Johnson?

16 A Right. Right.

17 Q Were you speaking with Rasha Johnson in this case
18 because he was a person of interest at this time?

19 MR. BARFIELD: Objection.

20 THE COURT: That is hearsay. Let me see that
21 statement.

22 (WHEREUPON, document handed to the Court.)

23 THE COURT: What is your objection, solicitor?

24 MR. BARFIELD: Technically I probably don't have a
25 proper objection to the current question, but I think

1 Q Would you like me to repeat the question?

2 A Absolutely, yes, sir.

3 Q Special Agent Green you had a chance to look over a
4 document that I handed you an about an investigation you
5 participate on January 23rd of 2012, correct?

6 A Correct.

7 Q And reviewing that document help refresh your memory
8 about the investigation you participated in on that date?

9 A I remember talking to Mr. Johnson and his mother
10 briefly in the investigation, you know, as far as details or
11 what they said I don't recall that.

12 Q Do you recall if one of the reasons you were talking to
13 Mr. Johnson was that he was a person of interest at that time in
14 the course of the investigation?

15 A He was one of a number of people that we looked at
16 during that time, yes, ma'am.

17 Q Okay. And since that time do you recall whether or not
18 he had been ruled out as person of interest?

19 A Has he been ruled out as a person of interest as of
20 today?

21 Q Well since any time since January 23rd of 2012?

22 A He was not charged with a crime in this case.

23 Q Okay.

24 MS. RANEY: Thank you. I no further questions.

25 THE COURT: Anything in redirect solicitor?

1 MR. BARFIELD: No, sir.

2 THE COURT: Mr. Frick?

3 MR. FRICK: No, sir.

4 THE COURT: All right. Thank you. Thank you, very
5 very Captain, you may stand down.

6 All right, solicitor you may call your next
7 witness.

8 MR. BARFIELD: Your Honor at the risk of in and
9 out, I think I am a point where I need to kind of do a
10 quick inventory.

11 THE COURT: All right.

12 MR. BARFIELD: We may be done, if that is okay.

13 THE COURT: All right. Mr. Foreman and ladies and
14 gentleman of the jury, we will take a 15 minute
15 recess. Do not discuss the case during this brief
16 recess.

17 Thank you very much.

18 (WHEREUPON, there was a brief recess.)

19 THE COURT: All right. You had enough time
20 solicitor?

21 MR. BARFIELD: Yes, the State intends to rest when
22 the jury comes back out.

23 THE COURT: All right. So the State is going to
24 rest. All right. Then the defense have a motion as
25 far as the defendant Green, Mr. Frick?

1 MR. FRICK: Do you want Clinton or Green?

2 THE COURT: I am sorry, defendant Clinton, Mr.
3 Frick.

4 MR. FRICK: Your Honor, at this time the defense
5 would make a motion for a directed verdict. Taking
6 the evidence in the light most favorable to the State
7 I do not believe there is enough evidence for the jury
8 to consider it. It can be decided as matter of law by
9 you. I think you heard, seen, there is obviously a
10 lot of stuff in evidence. However, I think what the
11 State has got against Mr. Clinton is a circumstantial
12 case and merely a circumstantial case, not even a
13 substantial circumstantial.

14 You got to have more than merely circumstantial
15 for it to be decided by the jury and therefore I would
16 ask you to direct a verdict in his favor.

17 THE COURT: Thank you. Thank you, very much Mr.
18 Frick. Miss Raney.

19 MS. RANEY: Thank you, Your Honor.

20 With respect to Mr. Green based on all the
21 evidence that the State has presented I have heard no
22 evidence whatsoever pointing to him as the triggerman
23 in this case. Therefore I am assuming the State is
24 proceeding against him under an accomplice liability
25 or hand of one hand, hand of all theory. Bearing that

1 in mind, Your Honor, from all of the evidence we've
2 heard from the State over the last couple of days I
3 have heard no direct evidence whatsoever against my
4 client. The closest we have come to it would be the
5 testimony of Mr. Blakeney who can not even state
6 whether or not my client actually ever went inside of
7 Miss Jones's trailer that night. He was unable to see
8 him. He was out of his sight line.

9 Mr. Blakeney testifies -- I mean, he never sees my
10 client with a gun. Never hears him have any
11 discussion with either this co-defendant or any of the
12 other could co-defendants in this case about going to
13 do a robbery, intending to aid and assist in any way
14 in hurting Miss Jones, or performing any type of lick.
15 In fact all of Mr. Blakeney's discussions appear to
16 have been with Mr. Tate, Mr. Tate Clinton and Mr.
17 Clinton is just saying hey I need to go pick up some
18 money. There is no suggestion made that Mr. Clinton
19 had a different conversation with my client at any
20 time during the night of January 19th, 2012 indicating
21 they had some other plan. Whenever all four of them,
22 according to Mr. Blakeney's testimony, get back inside
23 the vehicle its just Mr. Clinton that is saying things
24 like chill, chill and my client allegedly along with
25 Mr. McDow allegedly are just saying go, go. Get out

1 of there. There is nothing put forth either at that
2 point that my client came out of the house with the
3 gun, with any spoils of any robbery from the Jenika
4 Jones's house, much less that he even knew what
5 happened inside the house that night or was doing
6 anything to further aid and abet any crime that Mr.
7 Clinton may or may not have committed.

8 The other evidence pointing that the State is
9 using against my client would be all the
10 circumstantial evidence whirling around what happened
11 the day before, on January 18th.

12 We heard testimony from Jamal Twitty and Dominique
13 Davis and both of there testimony was that it was
14 Tate that was speaking of doing a lick. They never
15 heard my client initiate any conversation about doing
16 any type of lick. But from my notes from Miss Davis's
17 testimony she is saying Mr. Green was present when Mr.
18 Tate Clinton was suggesting doing a lick and she never
19 heard my client agree to it. She never heard any
20 details given about who we were speaking about. Just
21 that simply my client was there and did nothing more
22 than at best ask for clarification as to who Mr.
23 Clinton was even talking about. Someone with a black
24 car and the evidence that the State has put forth is
25 that Miss Jones doesn't even have a quote, unquote

1 car, she has a jeep.

2 Mr. Twitty's testimony also very circumstantial.
3 And again it is Mr. Clinton that is is initiating
4 conversation about doing a crime and he throws out
5 there first with my client not even there. Hey, I
6 want to do a lick Mr. Twitty. Can you get a ride. Do
7 you want to come along and Mr. Twitt's response is,
8 yeah, whatever. Mr. Twitty then says Al rolls up on
9 their conversation and gives the exact same response
10 that Mr. Twitty did; yeah, whatever. Kind of a
11 brush-off. In fact when Mr. Twitty says Mr. Clinton
12 is saying, yeah, let's go do this tonight my client
13 refuses.

14 My client's own sister was called as a State's
15 witness, Your Honor, in this case. By her testimony
16 she is saying that my client actually lived with
17 Jenika Jones. Miss Latoya Green is friends with
18 Jenika Jones. Has known her since childhood. Has
19 been with her for quite some time. She had a close
20 enough relationship with her that she was named
21 actually the godmother of Jenika Jones three children.
22 Now, I would suggest to the Court that certainly if
23 these children lived with my client, you know, they
24 should be able to recognize him, at least the
25 four-year-old.

1 There is has been no testimony put forth that any
2 one that was present or could have been present inside
3 the home ever saw my client inside of the home. There
4 was no testimony by Latoya Green there was any bad
5 blood between Miss Jones and my client.

6 So Your Honor, coupled with all I had mentioned on
7 top of the fact there is not one piece of DNA or
8 forensic evidence linking my client either to the car
9 or to the home we would put forward that the murder
10 charge should be -- a directed verdict should be
11 granted for my client on that charge.

12 THE COURT: All right. Thank you. Thank you,
13 very much. Solicitor.

14 MR. BARFIELD: Your Honor, I submit as to both
15 defendants there is sufficient evidence, both direct
16 and circumstantial for the case to go to the jury. I
17 specifically asked Mr. Clinton, I think if you look at
18 only -- and I am not suggesting that the jury should,
19 but if you look at the statement of Mr. Blakeney and
20 the activities of Mr. Clinton which are verified by
21 other witnesses, he is clearly in the middle of this.
22 He is the initiator of this. There were -- let me
23 just address it as to both of them.

24 The day before there were two conversations
25 reported and testified to by witnesses saying that

1 Clinton and Green were discussing doing a lick or a
2 robbery. The very day before, the very night before
3 Miss Jenika Jones was killed we got Jamal Twitty who
4 got in to much more detail concerning the conversation
5 that occurred in Carolina Court the night before the
6 night of Jenika Jones's murder. He indicates that
7 Tate Clinton says do you want to go do a whatever.
8 He says that Al Green walks up, Tate Clinton asks Al
9 Green if he wants to do it. Al Green says he is up
10 for it, yeah, whatever. There is discussion about not
11 doing it that night. The difference between Jamal
12 Twitty and Al Green is Jamal Twitty there's no
13 evidence in this case that Jamal Twitty followed
14 through with any request that he provide assistance
15 and participate in this robbery. Whereas there is
16 ample evidence in this case that Al Green was in fact
17 present in the white Cadillac along within Clinton,
18 along with McDow, along with Blakeney. It is clear
19 that they -- of course the jury has got to believe all
20 this evidence -- it is clear that they went to
21 Roseanna Lane. It's clear that three people got out
22 of the car, ran back to the car a few minutes later.
23 It is clear that there was a gun present in the car
24 before and after. It is clear that Clinton said take
25 me out there to get some money. The jury can decide

1 whatever they want to about what "gets some money"
2 means. The gun is in the car after the robbery. The
3 car is recovered. It is clear that's the car that was
4 used in the robbery. The molding I submit is clearly
5 the molding that came off that car found just up the
6 creek from where Miss Jones lived.

7 There is some forensic evidence. Not a whole
8 bunch. The DNA is not real good. There is evidence
9 that the jury can consider. It is admitted evidence
10 and they can take it for what it is worth and it is
11 does to some degree tie Mr. Clinton to again to some
12 degree to items recovered in this case, specifically
13 the blue coveralls.

14 I just submit there is enough evidence as to both
15 defendants for the case to go forward at this point
16 and the jury can do what they think they should do
17 with the evidence that has been presented

18 THE COURT: Thank you, thank you solicitor.

19 All right. Well, as I review the evidence and the
20 standard that I must apply at this stage it appears
21 there have been 22 witnesses presented, or actually
22 21. One of those twice. That being Mr. Thompson.

23 If you start with the analysis of the testimony of
24 Dominique Davis hearing the conversation on 1-18-12
25 that Green and Clinton were talking about doing a

1 lick. That Clinton said he still had Taz's gun and
2 was not going to give it back. That was on the a.m.
3 of the 18th. And then on the p.m. of the 18th there's
4 multiple individuals outside of these same apartments;
5 Mr. Twitty, Mr. Clinton, having a conversation. There
6 is others around also -- about Clinton recruiting
7 someone to do a lick. He asked Twitty. He did
8 responds, yeah whatever, and then when Al Green came
9 up he asked Al Green and Twitty's indication was he
10 said yeah, whatever. That he was down for it.

11 There's a multiple witnesses that talk about the
12 relationship between Clinton and Green. So within 24
13 hours, 36 hours of the homicide you have two separate
14 and distinct individuals. One hearing a conversation
15 between Green and Clinton about doing the lick.
16 Another having that conversation with Clinton about
17 doing a lick and then hearing Clinton ask Green and
18 Green being down for it in that regard.

19 Now, you also have then I guess as you progress in
20 time, you have different testimony from the -- one of
21 the -- one of the individuals about the neighborhood
22 of Newtown and that two individuals, black males go to
23 Newtown and borrow a vehicle from Pomp Blackmon; a
24 white ragtop Caddy that they are going to bring back
25 within an hour and a half, two hours.

1 Now, you have witnesses circumstantially, not only
2 circumstantially and by more direct witnesses placing
3 that Cadillac on Rosanna. That would be the testimony
4 of Shakela Montgomery and her cousin Tameca Nelson
5 that was coming home from Applebees and saw the
6 vehicle coming out being driven in a fast, reckless
7 manner, a white ragtop caddy. Both of them describe
8 it as a white caddy and then Tameca Nelson further
9 goes to say she saw that same car the next day over at
10 the Piggly Wiggly. They further state that when they
11 drive in there that night and they see that car coming
12 out that they don't see police. They don't see EMS.
13 They don't see a crowd. They don't see parties in
14 there where something had potentially already
15 occurred. When that car is both reported to Lancaster
16 police and then recovered by Mr. Pomp Blackmon he
17 testified he kept his car clean. Its got some red
18 clay mud-type on it, it's kind of messy inside and
19 further it was missing a piece of molding. I think
20 that's by the 23rd when Detective Thomspson is out
21 there at his house -- out there at Pomp Blackmon's
22 house, and on that same day on the 23rd, Detective
23 Thomspson goes out and locates the what appears to be
24 molding off of the Cadillac on Roseanna Lane. So, you
25 got witnesses identifying it out there at particular

1 time saying they saw it the next day -- one of them
2 saying they saw it the next day at Piggly Wiggly.
3 Then you have a piece of a car I would say, or at
4 least just it's jury issue as to whether it is a piece
5 of the car or not found on Roseanna.

6 Going all the way back to Pomp Blackmon too, he
7 did not identify anyone in this case however he does
8 say four black males; one in the driver, one passenger
9 and two in the back. That is the same indication that
10 Mr. Blakeney testifies to that he is driving. Mr.
11 Clinton is in the front. He is saying what he done
12 earlier that day. Mr. Green and a person that he does
13 not know at that time who is later identified as being
14 identified as Mr. McDow is in the back seat. So, they
15 got mode of transportation. They got the planning in
16 mind to do a lick. They got tools in which to do a
17 lick and I submit not only are the tools to do a lick
18 but also the fact that they wear -- or at least one of
19 them is wearing a jumpsuit. When the car is recovered
20 by Mr. Blackmon and the police go out there and they
21 find the -- he has already found the jumpsuit and you
22 think there is the ID also from Tyson. Now, when you
23 get to that jumpsuit and you get to the DNA analysis
24 perhaps some of the numbers aren't very great, but
25 there is some corroboration of Mr. Blakeney in the DNA

1 analysis. DNA profile developed from item two is
2 mixture of at least three individuals; Jenika Jones
3 and Delrico McDow can not be excluded as a possible
4 contributor to the mixture. That is swabs from the
5 under side of the storm door handle exterior. That
6 corroborates -- regardless of what the numbers are
7 that corroborates Blakeney.

8 Item three profile -- item three swab from
9 doorknob, DNA profile developed from item three is a
10 mixture of at least two individuals. No conclusive
11 statement can be made regarding the inclusion or
12 exclusion of Jenika Jones and Devatee Clinton as
13 possible contributors. Exclude Pomp Blackmon, Wayne
14 Blakeney, Delrico McDow and Al Martinez Green can be
15 excluded.

16 Item 6.1 which is a cutting from the jumpsuit
17 excludes all parties. Item 6.2 is an unidentified
18 male individual. Item 6.3 -- and I will note 6.2 is
19 an unidentified individual. I do not see that Reggie
20 the roommate that they got buccal swabs from him,
21 unless I am incorrect in that regard. Item 6.3
22 Clinton can't be excused as a contributor. All this
23 is coming from the jump suit. Item 6.4 is mixture of
24 four individuals. Clinton can't be excluded. No
25 statements can be made about inclusion or exclusion of

1 Jones, McDow -- I should say Miss Jones, McDow, and
2 Green in that mixture. That is a corroborating
3 testimony as to Mr. Blakeney, where you have this
4 mixture of individuals, again I say regardless of the
5 numbers. Further from the statements given Green,
6 Clinton and Blakeney were at the Hole in the Wall on
7 the 19th.

8 Testimony of Miss Stradford that she was at -- I
9 keep wanting to call her Chinos. Whatever the name of
10 it is. I don't know how to spell it.

11 MR. BARFIELD: Crenshaw Oil Company, Crenco.

12 THE COURT: Crenco. And she was approach by
13 Clinton wanting cigarettes and he was wearing that
14 blue jumpsuit. The blue jumpsuit in evidence. Her
15 testimony is he was wearing that blue jumpsuit is the
16 testimony given. She told him oh, this friend of mine
17 did you hear what happened to Jenika and he is not --
18 he is not interested. Well, he is not interested in
19 this Court's opinion because he already knows what has
20 had to Jenika or that can be an inference that could
21 be drawn from the -- from the evidence.

22 Y'eisha Tinsley also testified concerning the Hole
23 in the Wall on the 19th. Again Mr. Clinton gives
24 conflicting statements. Mr. Frick wants out on the
25 cross examination of Mr. Thomspon, but it is not usual

1 for someone not to tell the truth, the whole truth and
2 nothing but the truth on there first statement to the
3 police. The cross examination of Mr. Blakeney well,
4 why didn't you tell him the truth on the first
5 statement. So you have all this corroborating
6 circumstantial evidence, and I would further add
7 whether there is blood, whether there is fingerprints,
8 whether there is hair, whether there is fiber, whether
9 there is someone's driver's license at the scene, the
10 absence of evidence is not evidence of absence. You
11 have the testimony of Mr. Blakeney that says he was
12 driving. Two individuals that he knew he identified.
13 Three of them got out of the car, went in down there
14 on the Roseanna, came back in a hurry within ten
15 minutes. The one with the gun appeared to be cool,
16 calm and collected. He says chill. The other ones,
17 lets go, lets go, lets go. I think that shows his
18 manner in which he is driving that I don't know if he
19 skimmed something, hit a rut or what, and that molding
20 comes off. But I think there is both direct and
21 substantial circumstantial evidence as to both Mr.
22 Clinton and Mr. Green and I would be remiss if I
23 didn't point out also the direct statement by Mr.
24 Clinton to Mr. Blakeney that I killed that individual.
25 Not by name but by expletive.

1 All right. Anything further before we bring in our
2 jury from the State?

3 MR. BARFIELD: No, sir.

4 THE COURT: All right, Mr. Clinton and Mr. Green
5 and your attorney will you come around please.

6 MR. BARFIELD: I know what you are fixing to do.
7 We did update the rap sheets and there is additional
8 matters with the rap sheets that I shared with the
9 lawyers.

10 THE COURT: All right. Mr. Clinton, Mr. Green I am
11 going to back over not entirely, but what we started
12 talking about yesterday concerning your right to
13 testify or not testify. All right, solicitor what is
14 the criminal history that would be subjected to cross
15 examine of Mr. Clinton.

16 MR. BARFIELD: I believe as to Mr. Clinton is a
17 2005 assault and battery of high aggravated nature.
18 That is the year of the conviction. Then in 2012 he
19 was convicted of four offenses, three of which I think
20 are useable for impeachment. You have assault and
21 battery of high and aggravated nature, possession of
22 pistol by a person convicted of a crime of violence,
23 pointing and presenting a firearm and burglary 2nd
24 degree, violent. He also had at the same time
25 carrying a pistol which I concede would not be

1 useable.

2 That's it for him.

3 THE COURT: All right. Do you agree with that Mr.
4 Frick?

5 MR. FRICK: Your Honor, I agree that is his
6 record. We might spar a little bit over whether they
7 will be admissible. I would contend that the assault
8 of offenses might be too close in nature to what we
9 are in trial here for and would argue that would be
10 not be admissible.

11 Regarding the burglary -- and I don't have the case
12 in front of me, but I have argued before in other
13 cases that the burglary is not probative for
14 truthfulness in and of itself, of course that is the
15 reason why we have the record.

16 Now, in all candor to the Court, I do not believe I
17 would win those arguments, but would I put them on the
18 record to preserve my client's transcript.

19 However, in discussing it with my client I think
20 that is going to be a moot issue.

21 THE COURT: All right. All right. Well, of
22 course I would think the burglary would be admissible
23 under 609(A), punishable by imprisonment in excess of
24 one year, that evidence accused has been convicted of
25 such crime shall be admitted. If the Court determines

1 that the probative value admitting this evidence
2 outweighs prejudicial effect to the accused -- and I
3 will define the burglary second here. You know,
4 that's a thin line on the assault and battery of high
5 and aggravated nature. Is it a misdemeanor?

6 MR. BARFIELD: Both of those were under the old
7 misdemeanor statute, the ten-year statute.

8 THE COURT: But you say that is going to be moot?

9 MR. FRICK: I believe it is going to be Your
10 Honor. If that changes I will be glad to argue
11 further.

12 THE COURT: Let me ask you this then Mr. Clinton,
13 did you have opportunity to think about your right to
14 testify or not testify?

15 DEFENDANT CLINTON: Yes, sir.

16 THE COURT: Have you made a decision about whether
17 you are going to testify or not testify?

18 DEFENDANT CLINTON: Yes, sir.

19 THE COURT: And what is your decision?

20 DEFENDANT CLINTON: I ain't going to testify.

21 THE COURT: You are not?

22 DEFENDANT CLINTON: No, sir.

23 THE COURT: All right. You understand if you were
24 to testify whatever charges you had that carry more
25 than a year I would allow the prosecutor to ask you

1 about those charges only as it went to the
2 credibility, believability of your testimony. Do you
3 understand that?

4 DEFENDANT CLINTON: Yes, sir.

5 THE COURT: Do you have any questions you would
6 like to ask me about your right to testify or not
7 testify?

8 DEFENDANT CLINTON: No, sir.

9 THE COURT: And that is your decision?

10 DEFENDANT CLINTON: Yes, sir.

11 THE COURT: Made of your own free will and accord.

12 DEFENDANT CLINTON: No, sir.

13 THE COURT: Do you need any more time to talk to
14 your lawyer about that?

15 DEFENDANT CLINTON: No, sir.

16 THE COURT: Thank you. Thank you, very much.

17 Now what about Mr. Green, solicitor?

18 MR. BARFIELD: He has no convictions as an adult.
19 He has two adjudications as a juvenile which I think
20 under the rule would be useable for impeachment
21 purposes. I think the rule says they would be usable
22 for adult convictions juvenile adjudications come in.
23 They are 2004 caring a weapon on school property,
24 which I believe was a five year offense. And 2011
25 assault on a correctional facility employee.

1 I think both of those relate -- I think the later
2 relates to while he was incarcerated at DJJ. I think.

3 THE COURT: All right. I will be glad to hear
4 from you on those Miss Raney.

5 MS. RANEY: Your Honor, I think we would have
6 similar argument to Mr. Frick given the nature of the
7 prior assault and weapons charge being to closely
8 related to the allegations in this case, however also
9 like Mr. Frick mentioned in speaking about his client
10 I believe that will be also be a moot issue here.

11 THE COURT: Well, of course I would allow them to
12 come in to evidence. I would tell the jury if he were
13 to testify and he was be cross-examined I would give
14 them the instruction that they can be used, if at all,
15 only as it goes to the issue of his credibility.

16 All right, Mr. Green, have you made your decision
17 about whether or not you are going to testify.

18 DEFENDANT GREEN: Yes, sir.

19 THE COURT: What is your decision.

20 DEFENDANT GREEN: I ain't going to testify.

21 THE COURT: That is your decision?

22 DEFENDANT GREEN: Yes, sir.

23 THE COURT: Made of your own free will and accord?

24 DEFENDANT GREEN: Yes, sir.

25 THE COURT: Did you have time to talk with your

1 attorney further about it.

2 DEFENDANT GREEN: Yes, sir.

3 THE COURT: Do you need any more time to talk with
4 her?

5 DEFENDANT GREEN: No, sir.

6 THE COURT: Do you have any questions you would
7 like to ask me about your decision?

8 DEFENDANT GREEN: No, sir.

9 THE COURT: All right. Thank you. Thank you, very
10 much.

11 I find both Mr. Clinton and Mr. Green understand
12 their right to testify or not to testify and they have
13 voluntarily freely and knowingly waive their right to
14 testify and I will certainly charge the jury that
15 shall not be held against them and can not even be
16 discussed in the jury room.

17 Thank you very much Mr. Clinton. Thank you, Mr.
18 Green.

19 Let me ask you this, Mr. Frick, does the defendant
20 Clinton intend to present any evidence or testimony?

21 MR. FRICK: No, Your Honor, the defense would
22 rest.

23 THE COURT: Miss Raney, does Green intend to
24 present any evidence or testimony?

25 MS. RANEY: No, Your Honor, we intend to rest as

1 well.

2 THE COURT: All right. Well, why don't we do
3 this. Why don't you all step up here.

4 (WHEREUPON, there was an off the record
5 discussion.)

6 THE COURT: All right. Bring in the jury in
7 please.

8 (Jury enters the courtroom.)

9 THE COURT: All right. Welcome back, ladies and
10 gentleman.

11 You may call your next witness.

12 MR. BARFIELD: Your Honor, that is the case for
13 the State of South Carolina and the State rests.

14 THE COURT: Thank you. Thank you, very much,
15 solicitor.

16 Mr. Foreman, ladies and gentleman of the jury, you
17 have heard all the evidence and all the testimony you
18 are going to hear from the State in its case in chief.
19 The defendant's motion were noted for the record, Mr.
20 Frick, Miss Raney.

21 The defendants, Mr. Clinton and Mr. Green may
22 present evidence and testimony if either or both
23 chooses to do so. Neither or both have to do so. As
24 you recall as I told you in the opening, my opening
25 remark, the State has the burden of proving its case

1 beyond a reasonable doubt. A criminal defendant in
2 South Carolina regardless of the seriousness of these
3 charges is always presumed to be innocent and has no
4 burden of proving himself or herself innocent of the
5 crime charged.

6 However, we will now turn out attention to first
7 Mr. Frick and ask Mr. Frick, does the defendant
8 Clinton intend to present any evidence or testimony?

9 MR. FRICK: Thank you, Your Honor. On behalf of
10 Mr. Devantee Clinton the defense rests.

11 THE COURT: Thank you. Thank you, very much Mr.
12 Frick.

13 Miss Raney, does the defendant Green intend to
14 present any evidence or testimony.

15 MS. RANEY: On behalf of defendant Al Green, Your
16 Honor, we rest.

17 THE COURT: Thank you. Thank you, very much, Miss
18 Raney.

19 You have now heard ladies and gentleman all the
20 evidence and all the testimony you are going to hear
21 in the trial of this case. Our courts -- I don't want
22 you to think I timed it this way -- but our courts
23 frown upon us beginning closing arguments and charges
24 in front of a jury after four o'clock in the
25 afternoon. It would probably take -- I haven't really

1 asked the attorneys how long they are going to need to
2 argue, but I can tell you this good trial attorneys
3 can't tell time any better than trial judges, whether
4 you consider a judge good or not. It would be a
5 several hour long process probably before I even got
6 the case to you this evening. So I will release you
7 for the remainder of the day.

8 I would ask you again follow my instructions. Do
9 not talk with anyone about the case. Do not watch,
10 listen to, read any news accounts of the case, do not
11 do any independent investigation or any investigation
12 on the internet.

13 The procedure we follow tomorrow is the solicitor
14 will close first on behalf of the State, followed then
15 by Mr. Frick, followed then by Miss Raney. After the
16 three closing arguments by the attorneys I will then
17 instruct you on the law that you are to apply to the
18 facts of the case as you find them to be and then
19 after I have instructed you on the law the case will
20 be submitted to you for your deliberations and for
21 your verdict.

22 With that being said I realize it has already been
23 a long week for you and it is not over yet, but I do
24 appreciate your continued focus and attention and
25 patience that you have shown all the parties and the

1 Court throughout the trial of this case.

2 If you please be back promptly at ten o'clock in
3 the morning. Thank you, very much. I hope you all
4 have a pleasant evening.

5 (Jury leaves the courtroom.)

6 THE COURT: Anything further, Mr. Frick?

7 MR. FRICK: Nothing at this time, Your Honor.

8 THE COURT: Renew motions?

9 MR. FRICK: Yes, at this time the defendant would
10 renew its motion for a directed verdict on the same
11 grounds as previously noted regarding the
12 circumstantial notice.

13 THE COURT: Thank you. Thank you, Mr. Frick. Miss
14 Raney.

15 MS. RANEY: At this time Your Honor on behalf of
16 defendant Green I would renew all previously motions
17 made on his behalf in this case.

18 THE COURT: Thank you and I will renew all my
19 trial rulings and rulings on the directed verdict.
20 You all have any specific requests to charge?

21 MR. BARFIELD: The State does not.

22 MR. FRICK: I will let Miss Raney go ahead.

23 MS. RANEY: May I approach, Your Honor.

24 THE COURT: Certainly.

25 MS. RANEY: And some of these certainly maybe

1 duplicative of the language that is already in some of
2 your instructions.

3 Your Honor, could I give a copy to the court
4 reporter to mark as a Court's exhibit to reflect that
5 these were the ones requested on behalf of defendant
6 Green.

7 (Court's Exhibit 8, charge request, marked for
8 identification as of this date.)

9 THE COURT: I was looking for that case earlier,
10 I know Judge Young's case out of Charleston. I didn't
11 quite make it back to it. This is the one that the defense
12 requested. This is a request you want to go along with the
13 circumstantial evidence charge?

14 MS. RANEY: Yes, please, Your Honor.

15 THE COURT: All right, and if I charge aiding and
16 abetting I do also charge mere presence. I don't not
17 charge that. This looks like my charges. I need to
18 study over the first one a little bit. I usually kind
19 of blend I think it is Madison and another case I
20 can't remember, but I probably got a copy of hand of
21 one, hand of all charge.

22 MS. RANEY: I have an extra copy of Madison if
23 Your Honor would like one.

24 THE COURT: Yes, please.

25 MS. RANEY: I have one that I can give to the

1 solicitor also.

2 Honestly, Your Honor, Madison was part of where I
3 pulled the language from as well I believe it was June
4 of 2013 when they posted proposed jury instructions on
5 the South Carolina Judicial Website. It was a
6 combination.

7 THE COURT: Can you make a copy of that madame
8 clerk?

9 THE CLERK: Yes, sir.

10 THE COURT: That's my standard charge of hand of
11 one, hand of all.

12 So, I will look at that. Did you find Madison to
13 be confusing Miss Raney?

14 MS. RANEY: I certainly would never criticize
15 someone that has been at this way longer than me.

16 THE COURT: I didn't mean it like that. Anybody
17 can look and tell I have been at it way longer than
18 you Miss Raney.

19 MS. RANEY: I felt like this was a kind of trick
20 question. Like when a woman asks do I look fat in
21 this dress. Which way do I go?

22 THE COURT: I know which way I'm going. That is
23 the only request and circumstantial evidence charge as
24 I understand it if it's requested I charge it.

25 MR. BARFIELD: Yes.

1 THE COURT: I will read Logan tonight, but I think
2 I will charge this also, circumstantial evidence
3 charge.

4 MR. BARFIELD: Yes, sir.

5 THE COURT: All right. Do you have any
6 objections?

7 MR. BARFIELD: I don't think I do. I will read
8 over them tonight and let you know if there is
9 anything about it.

10 THE COURT: Make a copy for him.

11 Okay. We will be in recess until ten o'clock
12 tomorrow morning.

13 MS: RANEY: Thank you, Your Honor.

14 (WHEREUPON, we recessed for the day.)
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(WHEREUPON, the trial continued on 3-14-14).

THE BAILIFF: All rise, court is now in session.

THE COURT: Thank you. Please remain seated.

I will you charge the language of Logan, Miss Raney. It appears in reading Logan, the last paragraph of Chief Justice's opinion it says our Grippon, G-r-i-p-p-o-n and Cherry decision commendably sought to remove confusion from the jury's consideration regarding the weight and value afforded to circumstantial evidence. However, at times, a separate framework is necessary to the jury's analysis of circumstantial evidence. Thus, we modify Grippon and Cherry to allow the additional language provided above if requested by a defendant.

So I take that to mean I still charge Grippon and add this language also. Is that what you requesting?

1 MS. RANEY: Yes, Your Honor, that would be fine
2 with me.

3 THE COURT: All right. I wanted to make sure I
4 was reading that correctly. I think my hand of one
5 hand of of all charge -- did you get the opportunity
6 to review that.

7 MS. RANEY: I did, Your Honor.

8 THE COURT: I have mere presence in there. Also
9 your request on aiding and abetting and accomplice
10 liability specific to Mr. Green, I think that becomes
11 a comment on the facts. Not only to Mr. Green, but
12 more specifically to Mr. Clinton. In other words, you
13 know, a gun can be a moving object obviously, and
14 although the testimony is that he, Mr. Clinton, was
15 seen within a gun and Mr. Green wasn't. When Mr.
16 Clinton and Mr. Green and Mr. McDow get out of the
17 vehicle and Mr. Clinton has the gun, that is not
18 conclusive that Mr. Clinton had the gun when the fatal
19 round was fired in Miss Jones. So, I think that is
20 kind of comment on the facts both ways.

21 MR. FRICK: I agree with with that, Your Honor,
22 and obviously it was late when I was typing that.

23 THE COURT: All right.

24 MS. RANEY: I would certainly be all right with
25 general -- just generally not referring to specific

1 defendant, accomplice liability charge.

2 THE COURT: And that's what I give, the hand of
3 one, hand of all, accomplice liability. And I usually
4 give an example and obviously when I give an example
5 it is not fact specific.

6 In a murder case I usually give an example of like
7 a burglary. Although only one person goes in the
8 house two can be guilty of the burglary. If the one
9 that goes in the house is handing the stolen items out
10 the window or if there is a lookout driver or
11 something like that. I always give it, but not
12 specific to the facts of the case that are before the
13 jury.

14 MS. RANEY: That is fine.

15 THE COURT: In other words I don't say two people
16 can be guilty of a murder when only one fired the shot
17 in a murder case. I may say that in burglary case.
18 All right.

19 All right, solicitor, anything further?

20 MR. BARFIELD: No, sir. That would have been my
21 only objection to what Miss Raney was requesting, just
22 delete references to Green specifically.

23 THE COURT: All right.

24 MS. RANEY: And I apologize for that Your Honor.

25 THE COURT: No. No, that is quite all right.

1 MS. RANEY: I did forget to submit in your
2 standard jury charge I sure it will be fine, obviously
3 since we have co-defendants here I am assuming you
4 would instruct the jury as part of the charge to
5 consider each one separately.

6 THE COURT: I think I did that in my opening to
7 them.

8 MS. RANEY: You did.

9 THE COURT: That you consider the evidence
10 separately and distinctly as to each -- as to each
11 defendant. Yes, ma'am.

12 MS. RANEY: So I just ask that be included in the
13 end.

14 THE COURT: Yes, ma'am.

15 MS. RANEY: Thank you.

16 THE COURT: Yes, ma'am.

17 MR. BARFIELD: Your Honor, one additional thing
18 from me. Miss Raney I think during her presentation
19 marked several envelopes which are the cigarette butts
20 as court's exhibits for identification, I think, and I
21 am not sure what the rule is, but it would be my
22 argument that she should not now be allowed to pick
23 those up and banter them around in the presence of the
24 jury.

25 THE COURT: I think she can argue it.

1 MS. RANEY: I have no attention of touching those
2 envelopes or showing them to the jury.

3 THE COURT: I think she can argue it. It is in
4 the testimony, but they can't be shown to the jury.

5 All right. Just give me a general idea how long
6 you think you need only because I am not a clock
7 watcher, but if we need to take a break we will take a
8 break.

9 MR. BARFIELD: I am guessing 30 to 45 minutes. I
10 never know.

11 MR. FRICK: I didn't time myself and some times I
12 get excited when I get up there, but I would imagine
13 about the same thing.

14 THE COURT: Miss Raney.

15 MS. RANEY: I will try and be as short as
16 possible, Your Honor. The more Mr. Frick covers that
17 I was planning to say obviously the more I can cut. I
18 say thirty minutes max.

19 THE COURT: I use to say anything after 27 minutes
20 might not be the truth.

21 MR. BARFIELD: Will you tell me when I get to 27
22 minutes?

23 THE COURT: All right. Anything before we bring
24 in our jury.

25 MR. BARFIELD: Nothing from the State.

1 MR. FRICK: No, sir. I just want to look at one
2 thing first.

3 MR. FRICK: Nothing from us Your Honor.

4 THE COURT: All bring the jury in.

5 (WHEREUPON, the jury enters the courtroom.)

6 THE COURT: Mr. Foreman, ladies and gentleman of
7 the jury, good morning. I hope you all had a pleasant
8 evening. As I told you yesterday the point where in
9 the trial of the case is closing arguments by the
10 attorneys. The procedure we follow in a case such as
11 this is the solicitor closes first on behalf of the
12 State being the party bearing the burden of proof
13 beyond a reasonable doubt, followed by Mr. Frick on
14 behalf of his client, Mr. Clinton, followed by Miss
15 Raney on behalf of her client, Mr. Green.

16 I don't hold attorneys to particular time
17 restraints, timeframes 30 minutes, 45 minutes. I
18 don't hold them to timeframes. I allow the parties to
19 make a full and complete closing arguments on behalf
20 of their clients. If after a certain time I feel like
21 you or I or both need a break we will take a break
22 after one or two closing arguments perhaps, or after
23 three before I instruct the jury. My instruction will
24 probably take 30, 35 minutes to you and again, if any
25 time any of you need a break I will prefer it be done

1 between the argument but if any time anyone needs a
2 breaks please raise your hand and I will certainly
3 take one at time.

4 I advice those in the courtroom, the spectators I
5 do not allow movement in or out of the courtroom
6 during the time in which an attorney is addressing the
7 jury, you may certainly leave between arguments, you
8 may certainly leave after the argument before I
9 instruct the jury, but I don't allow movement in and
10 out during the time an attorney is addressing the jury
11 panel. I think it is distracting to the jury. It is
12 distracting to me. That admonishment does not apply
13 to the staff, the attorneys. If someone needs to
14 leave for a particular purpose in that regard. Please
15 keep that in mind.

16 Ladies and gentleman, I told you before what the
17 attorneys tell you is not evidence, but these are
18 closing arguments. These are true arguments. Not
19 like opening statements. They can comments on the
20 law. They can comment on the facts. They can comment
21 on the inferences that you may properly draw from the
22 facts and they can comment on how the facts apply to
23 the law in the case that I will charge you. But you
24 are the fact finder. You ladies and gentleman of the
25 jury will find the facts and judge the facts in this

1 case and compare them to the law as I will tell you
2 the law is and reach a true and just verdicts.

3 Please remember that although there are two
4 individuals being tried that you consider the evidence
5 separately and distinct as to Mr. Clinton and as to
6 Mr. Green in this trial.

7 With that being said if you please give the parties
8 your complete and undivided attention. Solicitor you
9 may address the jury.

10 MR. BARFIELD: If the Court please, Mr. Frick,
11 Miss Raney.

12 A year or two ago before I started doing this when
13 I sit in church on Sunday morning I just could not
14 imagine how the preacher could talk for a thirty
15 minutes and I was trying a case down there in
16 Winnsboro a few years ago and sat down after making my
17 closing argument and my investigator that was sitting
18 beside me tapped me on the shoulder and said, do you
19 realize you have been up therefore an hour and forty
20 minutes. I ain't going to do that this morning. But
21 I guess you understand from hearing the judge kind of
22 give you an idea of what is going to happen this
23 morning day that you probably feel like you are going
24 to sit through four sermons this morning. It's has
25 been a long week for you all. Don worry about us, but

1 it's been a long week for you all and it is not quite
2 over for you yet, but it is getting closer to being
3 over. So what I ask you to do right now is just kind
4 of hang with us for a little bit. What we are going
5 to do now is we are going to summarize what we think
6 this case is about. My perceptive on behalf of the
7 State and Mr. Frick and Miss Raney on behalf of their
8 clients. And we are going to argue to you. We are
9 going to try to convince you of things based on what
10 you heard in this courtroom this week. And although
11 what we do not say is -- what we are going to say is
12 not evidence, we want you to pay attention and we want
13 you to follow as we discussed things tie things
14 together. As I told you when I got up here Tuesday
15 morning you, didn't know anything about this case when
16 you came in here and I told you I got a whole bucket
17 full of stuff on this case over there. I kind of
18 boiled it down to a few pages here, but you all are
19 still sitting there kind of empty handed. What you
20 got is only what you have seen and heard in this
21 courtroom. So we are going to try and review some of
22 that with you this morning.

23 Let me tell you first, Tate Clinton sitting right
24 here and Al Green sitting right there murdered Jenika
25 Jones. That is what this is all about. Keep that

1 foremost in your mind as we conclude this trial.

2 What this case is not about, what your role has
3 nothing to do with from this point forward and never
4 has during this trial is to decide anything about
5 Wayne Blakeney or Delrico McDow. This is not the day
6 that any decision is made about the responsibility of
7 Wayne Blakeney and Delrico McDow concerning the murder
8 of Jenika Jones. Remember that too.

9 I go first and when I sit down that is it for me,
10 and then you will hear from Mr. Frick and Miss Raney
11 and it is kind of up to me to sort of anticipate what
12 they might talk about and I am not going to talk much
13 about what I think they are going to talk about, but I
14 am going to give you a hint about what they are going
15 to talk about. They are going to get up here and talk
16 about all kinds of things that they say the State did
17 not do in this case. They are going to talk about
18 stuff that didn't get collected or didn't get sent to
19 SLED or telephones that maybe didn't get examined or
20 guns that didn't get found. Things like that. They
21 are going to talk about stuff like that and I tell you
22 now, listen to what they have to say because it is
23 important. Everything about this case is important.
24 So listen to it. But don't let them get up here and
25 convince you to just disregard everything that has

1 been proven in this case. And there is a lot of stuff
2 that has been proven in this case that tells you that
3 Tate Clinton and Al Green murdered Jenika Jones. So
4 listen to what they have to say. Listen to their
5 criticism of the investigation. Listen to their
6 criticism of the presentation of the State's case.
7 Whatever they got to say. But don't let them dupe you
8 into disregarding what has been proven in this case
9 beyond a reasonable doubt. Which I submit to you is
10 that these two fellows murdered Jenika Jones.

11 They are going to talk to you a lot about forensics
12 and they are going to say there is the absence of
13 forensics in this case. I will talk about forensics
14 after a while. Lets talk a little bit about forensics
15 right now. First of all this ain't TV. If you watch
16 CSI and stuff like that on TV it is entertainment.
17 But you cut the TV on at nine o'clock and you start
18 watching one of those shows between nine o'clock and
19 ten o'clock with a whole butt load of commercials in a
20 middle, you see a crime. You know a crime is
21 committed. You see them investigate. You see them
22 arrest somebody and in some of the shows it includes
23 the court part. You see somebody go to trial and the
24 case get over with in an hour. It doesn't happen that
25 way here. Some times you even see a video of the

1 crime being committed. It doesn't happen that way
2 hear. Forensics is science, but forensics is
3 complicated and difficult and it gets more complicated
4 and difficult when many people are involved in an
5 event; when many people are in a house, when many
6 people are in a car, when many people are perhaps
7 handling the same item it gets real complicated and
8 you heard that from Miss Boehm when she testified from
9 SLED the other day when she talked about DNA samples
10 being a mixture of at least three people or at least
11 four people. That's what happens in forensic science
12 cases. They would have you believe that the Lancaster
13 County Sheriff's Office should have put wheels under
14 Jenika Jones's mobile home and towed the whole dang on
15 thing down to SLED and swab ever square inch of the
16 hard surfaces and make cuttings from every square inch
17 of the soft surfaces and loaded up Pomp Blackmon's
18 Cadillac on to a rollback and taken it down there to
19 SLED and done the same thing with it to cover
20 everything that might have been covered in this case
21 and that is just not realistic and it is just not
22 practical.

23 They would also have you believe that Ken Taylor
24 could walk in this courtroom this morning with sterile
25 swabs and swab all of our cheeks and swab all their

1 cheeks and swab all the tabletops and send all that to
2 SLED and then in a little while SLED would send us
3 back a seating chart for this courtroom saying who
4 everybody was in here and where everybody was in here
5 at a particular time and that is just not realistic
6 either. Forensic science has its place and forensic
7 science has a place in this case. But witnesses have
8 a place in this case too and witnesses prove to you in
9 this case that Clinton and Green killed Jenika Jones.
10 Keep that in mind as we go through this.

11 The judge is going to tell you in a little bit what
12 murder is and he is going to define it with some legal
13 terms and I am going to tell you from the outset that
14 if ever there is a case of murder this is a case of
15 murder based on the way this thing happened. This is
16 murder. It is nothing but murder. The judge is going
17 to tell you that murder is the unlawful killing of
18 another person with malice aforethought, either
19 expressed or implied or inferred. Killing, we all
20 know what killing is. What is malice? He will give
21 you some legal terms that define malice, but basically
22 it means the intent to kill somebody or the intent to
23 inflict grievous bodily injury on somebody or extreme
24 indifference to the value of human life or a heart
25 regardless of social duty and fatally bent on

1 mischief. What does all that mean? It just means
2 badness basically. Malice has to occur before the
3 death occurs, but it doesn't have to be two weeks
4 before the death occurs. It doesn't have to be two
5 hours before the death occurs. It can be two minutes
6 before the death occurs, or two seconds before the
7 death. But there has to be that malice formed before
8 the actual act is committed and in this case I submit
9 to you that the malice started getting formed at least
10 the morning of January 18th of 2012 when Clinton and
11 Green are in Y'eisha Tinsley's apartment talking about
12 doing a lick, which I submit to you is what happened
13 at Jenika Jones's house on the 19th. We got malice
14 and we got it occurring before Jenika Jones was
15 killed. We also got malice by inference in this case
16 because the law says if you commit a murder using a
17 deadly weapon that malice can be inferred from the use
18 of that deadly weapon and it is very clear in this
19 case, I say without any doubt that Jenika Jones was
20 shot and killed with a 380 caliber bullet fired from a
21 pistol. And that's malice.

22 I said to you also Tuesday morning that between the
23 two of them it doesn't matter who pulled the trigger
24 and I stand by that today just as I did Tuesday
25 morning. The law -- the judge is going to charge you

1 on the law which says the hand of one is the hand of
2 all. The act of one is the act of all. And he might
3 give you example or two. I am going to give you an
4 example. Let me tell you what the law says first.
5 The law says first of all for this principal to apply
6 there has to be two or more people, obviously. They
7 have to be acting together. They have to be acting
8 upon a common screen or plan or design or intent.
9 They have to be aiding abetting and assisting each
10 other in the carrying out of this act. And of course
11 there has to be prior knowledge by all of them that
12 this act is going to occur in one form or another and
13 there has to be prior arrangements. Again not
14 necessarily two months or two weeks before but there
15 has to be some prior arrangements made to set in
16 motion the events that lead to this death. And if
17 those things occur then the law says that the hand of
18 one is the hand of all and in a case like this when
19 you have one gun, one bullet, one shot, one gunshot
20 wound, one death, then they are not both holding the
21 gun. There is no question about that, but they are
22 both responsible for it if they are both present
23 together acting together with this common scheme and
24 plan and design and intent to commit this criminal
25 act. Each one is responsible for the acts of the

1 other that are the natural and probable consequences
2 of what is going on. If you go do a robbery and it
3 ends up in a killing then if you are in for the
4 robbery you are in for the killing whether you pulled
5 the trigger or not. And it applies in any case, not
6 just a murder case. If two guys are going to go to a
7 convenience store and only one has got the gun and he
8 is going to go in and take the money from the clerk
9 and the other one is going to stand there at the door
10 and keep the door open so the guy with the gun can run
11 out real quick and they can get gone, the guy with the
12 door handle in his hand is just as guilty of the
13 robbery as the guy with the pistol in his hand who
14 took the money from the clerk. And if things go bad
15 and the guy with the pistol shoots and kills the clerk
16 the guy with the door handle in his hand is just as
17 responsible for the murder as the guy with the pistol
18 who shot and killed the clerk.

19 You have to put -- and I am going to tell you in
20 this case we contend that Tate Clinton shot and killed
21 Jenika Jones. That clearly is what I am telling you
22 this morning. But I am also telling you that Al Green
23 is there when this event is going on and when this
24 house gets ransacked and then whatever they are
25 looking for gets found or doesn't get found Al Green

1 is right there in the middle of it and he is just
2 responsible. You have to put Al Green in Tate
3 Clinton's shoes. You have to put Al Green in Tate
4 Clinton's clothes. You have to put Al Green in Tate
5 Clinton's skin because they essentially become one and
6 the same when they are out there at Jenika Jones's
7 house to do whatever it is they are going to do, which
8 we contend is a robbery and whatever happens happens
9 to make it end up being a murder. Al Green in for a
10 penny in for a pound. He is there and he is just as
11 responsible for Jenika Jones's death as Tate Clinton
12 is.

13 Let's start talking about what we have proved and
14 what we know. This was to be a robbery. Maybe it was
15 maybe it wasn't. We didn't prove to you what, if
16 anything, was taken, but I submit to you there is a
17 tons of evidence in this case to tell you that this
18 was to be a robbery. What do we know about it that
19 tells us it was a robbery. Clinton and Green are at
20 Y'eisha Tinsley's house talking about a lick and what
21 is a lick? You heard it over and over and over again
22 in this trial, a robbery. You are going to do a lick
23 you are going to rob somebody. They are telling that
24 at Y'eisha Tinsley's house on morning of Wednesday,
25 January 18th. They are telling that again the night

1 of January 18th out in the complex to Jamal Twitty.
2 Again talking about a lick. A robbery. Planning it
3 the day before. They see Wayne Blakeney some time the
4 night of January 19th when it happens. The night this
5 happens, and they tell Blakeney we are going to pick
6 up some money. They didn't say a lick to Blakeney.
7 But they said going to get some money. That supports
8 the State's contention that this was a planned
9 robbery. And then you also have the pictures and I'm
10 probably not going to show you pictures now. You will
11 have them in the jury room. You'll also have pictures
12 of Jenika Jones's mobile home and you'll have pictures
13 of that back bedroom. Which I submit to you these
14 guys thought must have contained some money or
15 valuables or something they wanted because they tore
16 that bedroom up. Flipped the mattress, pulled the
17 drawers out, had a chest leaned over. I believe the
18 pictures show stuff thrown all about in that room.
19 They weren't in there cleaning the room. They were in
20 there looking for something in that room to take out
21 of there with them. This was a robbery, or a planned
22 robbery which got kicked off at least the day before.
23 There were three sessions to plan this robbery. Three
24 different times these guys started planning this
25 robbery. The first was Wednesday, January 18th in the

1 morning at Y'eisha Tinsley and Dominique Davis heard
2 Clinton talking about a lick. She heard Clinton
3 talking about the girl works and she is not home too
4 much. She heard Green talking about wherever this
5 location was that they were going to go to and talking
6 about whether the girl owed the black car, planning
7 session number one. Planning session number two,
8 Wednesday night January 18th with Jamal Twitty outside
9 the apartments at Carolina Court, Tate Clinton walks
10 up and says to Twitty you want to go do a lick and
11 Twitty says whereabouts and Clinton says not far. And
12 then Al Green walks up and Tate Clinton starts to talk
13 up again about doing a lick and asks Al Green if he
14 wants to do a lick and Al Green says, yeah, whatever.
15 I am down for it. And Clinton wants to go do it that
16 night and I think Twitty testified that he was talking
17 to him about not doing it that night, putting it off.
18 That is planning session number two.

19 Planning session number three is at the Hole in the
20 Wall or somewhere in Newtown, or at the it Hole in the
21 Wall, one of the other, when Wayne Blakeney got
22 involved in this thing and they talked to Wayne
23 Blakeney and the talk is take us to go get some money.
24 Of course Tate Clinton ain't got driver's license.
25 Tate Clinton ain't got a car and Wayne Blakeney is

1 somebody that can drive them somewhere and they talk
2 Wayne Blakeney into taking them somewhere to pick up
3 money. That is planning session number three.

4 All right. If you are going to do a robbery what
5 is next. Well, you have to be able to get there. We
6 are talking about being in the Hole in Wall down there
7 at South Market Street and you got to get out 200.
8 Way out 200 below Piggly Wiggly. Well, you ain't
9 going to walk out there. You got to get there
10 somehow. You got to get transportation. Two
11 different times tried to get transportation. The
12 first time is with Jamal Twitty on the night before
13 January 18th down at Carolina Court. Talked to Jamal
14 Twitty. Go do a lick with us. Go get your
15 girlfriend's Honda. Take us out there in your
16 girlfriend's Honda. And Twitty to his credit has got
17 sense enough to try and get them off this with him.
18 He says the Honda is up for the night. Can't get the
19 Honda and Twitty doesn't participate in this. But
20 that is effort number one to get a car to get out
21 there. Effort number two to get a car, Thursday --
22 Thursday night about seven o'clock, Newtown, Pomp
23 Blackmon Cadillac. They talk Pomp Blackmon into --
24 Clinton talks to Pomp Blackmon into loaning him the
25 Cadillac, '91 Cadillac Seville with a rag top, white.

1 Effort number two is successful. They now got a car.
2 They got a plan. They got a car. How do you do a
3 robbery. Well, if it's an armed robbery you got to be
4 armed. You got to have a gun. What do we know about
5 a gun? Wednesday January 18th, the day before, at
6 Y'eisha Tinsley lease house Dominique Davis hears Tate
7 Clinton said I got Taz's gun and I ain't giving it
8 back. He's armed. Thursday, January 19th, Blakeney,
9 Wayne Blakeney, sees that in fact Tate Clinton is
10 armed. He sees a pistol in Tate Clinton's waistband
11 in the Cadillac on the way to Roseanna Lane and he
12 describes it either as 9 millimeter or 380. Blakeney
13 also tells you that he knew Clinton carried a gun
14 around. So now we got a plan. We got a car. We got
15 a driver with a driver's license apparently and we got
16 a gun and we got a destination and a victim, and we
17 are on our way and we know that a pistol was used. It
18 kind of goes without saying that we got a fired
19 cartridge case which Maryann Boehm of SLED said had
20 Jenika Jones's blood on it. Had Jenika Jones DNA on
21 it and we have a fired bullet from Jones's brain which
22 Suzanne Cromer said was a 380 bullet which could have
23 been fired from a 380 or could have also been fired
24 from a nine millimeter pistol. She described the
25 bullet and the diameter of a 380 and nine millimeter

1 as being the same. Link is different bullet, but you
2 can shoot a 380 through a nine millimeter.

3 What else has the State proved to you. The State
4 has proved to you that these two; Clinton and Green
5 and Blakeney and McDow rafted up together. Had
6 connections, had associations and were together at
7 various times and specifically on the night of January
8 19th of 2012. What do we know about that. Well
9 again, we got Dominique Davis and on Wednesday the
10 18th put Clinton and Green together talking about
11 doing a like. We got Jamal Twitty January 18th,
12 Wednesday night, putting Clinton and Green together
13 talking about doing a lick. We got Pomp Blackmon on
14 Thursday night, January 19th, at about seven o'clock,
15 putting four people coming to his house to borrow his
16 car. Four people. Two got in the car at his house.
17 The car pulled off to the corner, two more got in at
18 the stop sign and the person that borrowed the car,
19 that talked to him about the car, did bit have a
20 driver's license. Pomp Blackmon has got four people
21 in it; Latoya Green, Al Green's sister, she told you
22 that Al Green, her brother, and Tate Clinton ran
23 together. Hung out together. Latoya Green also -- Al
24 Green also lived with his sister, Latoya Green. Who
25 else lived with Latoya Green in Azalea Apartments

1 before she moved out to Roseanna Lane, Jenika Jones.
2 So Al Green knows who Jenika Jones is. We got that
3 connection. Y'eisha Tinsley who was Green's
4 girlfriend at the time and the mother of his child
5 said she saw Green the day after the killing. And
6 what did she tell you Green said, that he had been at
7 the Hole in the Wall with Tate Clinton the night of
8 the murder. We got them together at the Hole in the
9 Wall, those two. What do we have from Tate Clinton
10 himself, he told Fred Thompson on January 27th when he
11 was interviewed that he had been at the Hole in the
12 Wall the night of the murder. He told Fred Thompson
13 on the February 23rd when he was interviewed again
14 that he had been in the Hole in the Wall the night on
15 the murder. He told Fred Thompson on March 9th when
16 he interviewed that he saw Wayne Blakeney at the Hole
17 in the Wall in Pomp Blackmon's Cadillac the night of
18 the murder. We now got the three of them there. Al
19 Green told Captain Michael Green with SLED on January
20 25th that he had been at the Hole in the wall on the
21 night of the murder. Wayne Blakeney obviously in his
22 testimony puts all four of them together; him, and
23 McDow and Tate Clinton and Al Green together at the
24 Hole in the Wall in Newtown going out to Rosanna. At
25 Rosanna, he has got them all four together. What did

1 David Belk testify about on cross examination. David
2 Belk told you that the call was and the information on
3 the scene was three males were seen running from
4 Jenika Jones's house when this incident occurred and I
5 tell you that that is consistent with Wayne Blakeney
6 sitting in the car when this is going on and Tate
7 Clinton and Al Green and Delrico McDow being the guys
8 in the car who got out, disappeared into the darkness,
9 went to Jenika Jones and came running back to the car
10 before they took off out of there after the killing.
11 It matches up. It is consistent and it puts them
12 together when all of this is going on.

13 How do we know that State's Exhibit Number 16, that
14 car, is the car that was used to transport these four
15 folks out to Roseanna Lane to kill Jenika Jones. Lets
16 talk about that for a minute. Pomp Blackmon told you
17 that on Thursday, January 19th, the night this
18 happened at about seven o'clock he loaned his car out
19 for a couple of hours for some beer and cigarettes to
20 a guy who had no driver's license. We know that
21 Clinton had not no driver's license and we no from
22 Wayne Blakeney also that he had no car and loaned his
23 car out to a guy who was wearing a blue jumpsuit.
24 That was Devantee Clinton. Tate Clinton was wearing
25 that blue jumpsuit. He reported his Cadillac missing

1 to the police department when it didn't get returned
2 after a couple of hours and it didn't get returned
3 overnight. He reported to the police department that
4 he had loaned his car out to somebody whose name he
5 didn't no and it was missing. Shakela Montgomery
6 Thursday night between 9:30 and 10:30, the night of
7 the murder, is coming back from Applebees with her
8 friend, Tenika Nelson and driving to the trailer park
9 on Roseanna Lane and turns off 200 into -- onto
10 Roseanna Lane into the trailer park and sees -- almost
11 gets run over by an older white car which she
12 describes as a Buick or Oldsmobile. She is off a
13 little bit, but she ain't far off. It's a Cadillac.
14 It had it was coming out of Roseanna Lane. It had no
15 lights on. It was flying and that all occurred I
16 submit to you just after the murder she observed the
17 flight of these four guys from the scene of this
18 murder before it had gotten reported, before police or
19 EMS got there. The dispatch time on this case was
20 10:06 p.m.. The sheriff's office got the call at
21 10:06. She pulled in there right before the sheriff's
22 office was notified and right after the killing
23 happened and she saw Pomp Blackmon's Cadillac. Tameca
24 Nelson, white Cadillac with a rag top. She saw it
25 coming out. No lights, driving fast and what is also

1 significant about Tameca Nelson, she saw it the next
2 day at the Piggly Wiggly with the flat tire which is
3 exactly where Pomp Blackmon found it. No lights,
4 coming out fast what does that tell you. They were
5 fleeing the scene of this murder that had occurred in
6 Roseanna Lane. Blakeney told you when these guys came
7 running back to the car he said Tate said chill or
8 something but he said they were saying go, go, go.
9 That means, get the heck out of here. That means
10 something good has not gone on in here and we don't
11 need to be here any more. Lets get out of here. And
12 I submit to you Wayne Blakeney was hauling butt when
13 he drove out of Roseanna Lane trying to get away from
14 that scene although he didn't know at that point
15 exactly what had happened in there.

16 Pomp Blackmon found this Cadillac the next day,
17 Friday, in the Piggly Wiggly parking lot with a flat
18 tire, missing a piece of molding. I don't know if
19 they are going to argue this or not, maybe they will.
20 I submit State's exhibit number 21, which was
21 identified as Pomp Blackmon's car shows where a piece
22 of molding is missing from that car. Here is the
23 other side of the car, State's Exhibit Number 22 which
24 shows what the or side looks like and what the piece
25 of molding is suppose to look like. His car was also

1 muddy. What is the significance of that? I don't
2 know, but there is mud on his car which wasn't on the
3 car when it got loaned out because he kept his car
4 clean.

5 How else do we know this is the Cadillac that Pomp
6 Blackmon's Cadillac was used in this crime. Wayne
7 Blakeney told you Thursday night the four of them,
8 the four of them, borrowed the Cadillac from a light
9 skinned guy in Newtown. Who is that, that is Pomp
10 Blackmon. You saw him. You know where he lives.
11 Pomp Blackmon is who they borrowed that car from. He
12 also identified a photograph that I put on the reader
13 of the car as the car that they borrowed and that he
14 drove because he is the one that had a driver's
15 license. When he got done with that car after he was
16 the only one left in it Wayne Blakeney said I left it
17 at the Piggly Wiggly parking lot out there on Airport
18 Road, near Airport Crossroads and he also told you it
19 had a flat tire. There is no doubt in this case that
20 that's the car. Tate Clinton talking to Fred Thompson
21 on February 23rd, what did he say? He talked to about
22 this case several times and is confronted with things
23 that law enforcement knows and is sitting there, you
24 can see the wheels turning. He's saying, how am I
25 going to explain all this. Fred Thompson talks to him

1 and he denies nothing Pomp Blackmon first. He denies
2 knowing Pomp Blackmon and then he admits knowing Pomp
3 Blackmon and knowing that Pomp Blackmon lives in
4 Newtown. He denied to Fred Thompspon in that same
5 interview knowing anything about a white Cadillac with
6 a rag top and later in the discussion admits that he
7 knows Pomp Blackmon drove the white Cadillac with the
8 rag top. He is trying to hide information and then he
9 is confronted with with information and then he is
10 admitting information which connects him to this case,
11 to that car, to Pomp Blackmon. He denied ever driving
12 or riding in Pomp Blackmon car to Fred Thompspon on
13 February 23rd. Then on February -- excuse me, March
14 9th when Clinton is talking to Fred Thompspon they
15 start talking about the Cadillac again and Clinton
16 admits to Fred Thompspon then that he saw Wayne
17 Blakeney in the Cadillac at the Hole in the Wall club
18 the night of Jenika Jones's murder. He is getting
19 himself tied closer and closer to that Cadillac. And
20 then Fred Thompspon starts talking to Tate Clinton
21 about DNA and Tate Clinton has got to find some way
22 again to explain why his DNA might be on that car. Of
23 course the sheriff's office didn't know whose DNA was
24 on the car at that point, but Fred Thompspon starts
25 talking Tate Clinton about DNA and well, he has got to

1 come up with some explanation just in case they find
2 his DNA on that car and what's his explanation. I
3 leaned on the car talking to some girl at the Hole in
4 the Wall club the night of Jenika Jones's murder. It
5 is pretty weak, but that's what he has given as his
6 explanation in case DNA gets found on that car. So he
7 is tying himself to that car, but not really. But he
8 is hooking himself up to that car in a sense.

9 How about this blue jumpsuit, monkey suit,
10 coveralls, it has been called a whole bunch of
11 different things. It is in that box. (Indicating) You
12 can see it. When we pulled it out the other day it's
13 got holes cut out of it where SLED cut stuff out to
14 test it. What do we know about that blue monkey suit?
15 Whose blue monkey suit is that? That's Tate Clinton's
16 blue monkey suit. And Tate Clinton was wearing that
17 blue monkey suit the night Jenika Jones was killed.
18 How do we know that? Pomp Blackmon told you he loaned
19 his car to a guy wearing blue coveralls. Pomp
20 Blackmon also told you he found his car at the Piggly
21 Wiggly parking lot Friday morning after the killing.
22 He couldn't get it then because it had a flat tire and
23 he had to go get a key for it so he got it Saturday.
24 When he got it home Saturday or some time after he
25 recovered it he finds this unknown pair of blue

1 coveralls in his car which are not his. He doesn't
2 have any explanation for them being there. But he is
3 finding blue overalls in his car which are consistent
4 with the guy who borrowed the car the night -- two
5 nights before wearing blue overalls and that's Tate
6 Clinton. Tate Clinton told Fred Thomspon both on
7 January 23rd and on February 23rd that he was wearing
8 overalls. He said camo overalls, but he said he was
9 wearing overalls the night of the murder.

10 Tate Clinton told Fred Thompson on February 23rd --
11 talked to Fred Thomspon February 23rd despite the fact
12 of having said that he was wearing camo overalls the
13 night that Jenika Jones got murdered. Tate Clinton
14 brings up the topic of blue overalls with Fred
15 Thomspon on February 23rd and he then admitted, yeah,
16 I own some blue overalls. He denied he ever wore
17 them, which doesn't make any sense. He conveniently
18 says I loaned them out to people, one of the people he
19 said he loaned them out too I think was a guy name
20 Reggie Stover and then Fred Thomspon and Tate Clinton
21 start talking about DNA what about your DNA. Is it
22 going be on those overalls and just like the Cadillac
23 Tate Clinton has got to come up with some explanation
24 as to why his DNA might later be found to be on those
25 over overalls and he says, well, they are mine, but I

1 didn't wear them. But I did move them around from
2 time to time at my grandmama's house is what he say.
3 He said he handled them which is his way of explaining
4 maybe why his DNA could be found on those overalls.
5 Vivian Stradford, Vivian Stradford knows Jenika Jones
6 and finds out Thursday night that Jenika Jones has
7 been killed and goes to one relative's house and moves
8 there to another relative's house and by about 11
9 o'clock based on her description of how long it took
10 her to go to one place or another she ends up at
11 Crenco which is the convenience store on South Main
12 Street, not too far from the Hole in the Wall and lo
13 and behold who does she see at Crenco, Tate Clinton.
14 After the murder, Tate Clinton, and what does she say
15 Tate Clinton is wearing; she didn't say he was wearing
16 coveralls, she didn't say he was wearing blue
17 coveralls, she said he was wearing these blue
18 coveralls (indicating). I showed them to her. He was
19 wearing them that night. DNA, Maryann Boehm got the
20 coveralls. Got cuttings -- or got the cuttings from
21 the coveralls and did DNA testing on coveralls and DNA
22 standards from Clinton, from Green, from Blakeney,
23 from McDow, from Pomp Blackmon. I think maybe that is
24 all -- and Jenika Jones blood standard, so she can
25 determine if she could tell us anything about those

1 cover always and who might have had contact with those
2 coveralls. And the numbers are the numbers. She
3 didn't say one in a gazillion Tate Clinton is all over
4 these coveralls, but she told us some information that
5 you should consider and can consider in determining
6 whether those coveralls are tied to Tate Clinton.
7 What did she tell you about the coveralls. First of
8 all what Clinton say about the coveralls. Let's back
9 and talk about forensic and about DNA in particular.
10 Miss Boehm told you this. She said the mere fact that
11 you touch something or handle something doesn't mean
12 that you are necessary going to leave DNA on it and I
13 think you can gleam from the testimony concerning DNA
14 that if something is handled by a whole bunch of
15 people things can get complicated. And DNA profiles
16 that get developed by Miss Boehm will end up being
17 mixtures of a whole bunch of people. Mixture of at
18 least two people. Mixture of at least three people,
19 and that gets complicated, but she did tell us some
20 things that are instructional concerning Tate Clinton
21 and his connection to those blue coveralls. SLED item
22 6.3 was a cutting from the blue coveralls and it was a
23 mixture of at least three people and Clinton was not
24 excluded from that DNA profile, from that cutting from
25 those blue coveralls, and the probability was one in

1 580. Well, again that is not a terribly high number
2 but it's a number and it's a connection of Tate
3 Clinton to those coveralls. The other three people
4 that were in that Cadillac that night; Green, and
5 Blakeney and McDow on that sample were excluded as
6 contributors to that DNA profile. Item 6.4 from SLED
7 was a cutting from the blue coveralls and it was a
8 mixture of four people, a mixture of at least four
9 people, and on that cutting again Tate Clinton was not
10 excluded and the probability was one in 12 which again
11 is not terribly high but it's a connection of Tate
12 Clinton to those coveralls.

13 What have we proved to you to show a connection
14 between any of these four guys to Jenika Jones and to
15 Jenika Jones's house out there on Roseanna Lane. Tate
16 Clinton's grandmother lived in the trailer park on
17 Roseanna Lane and in fact Tate Clinton's grandmother
18 lived in that trailer park next door to Jenika Jones.
19 Jenika Jones is 1963. I am showing you State's
20 exhibit 54, and the next trailer down here is 1969
21 which is Tate Clinton's grandmother next door. Tate
22 Clinton has a connection and lives himself at least
23 part of the time from the testimony you have heard
24 lived himself next door to Jenika Jones. We know that
25 from several sources but we know it from Clinton

1 because when Clinton was talking to Fred Thompsen on
2 February 23rd, Reggie Stover is one of the guys he
3 says he loaned the coveralls to and he said Reggie
4 Stover lived with him at [REDACTED] Roseanna Lane and when
5 confront apparently with the information that the
6 victim lived next door to his grandmother he said I
7 didn't even know she lived next door to me. So he is
8 tying himself to that victim, to that victim's home,
9 to that trailer park on Roseanna Lane.

10 Blakeney is the driver when this event occurred.
11 He has got no idea about anything other than we are
12 going to get some money and I am going to drive
13 because I got the driver's license and Tate Clinton
14 borrowed a car for me to drive. He has got no clue in
15 the world where he is going until they are on the way
16 and how does he get to Roseanna Lane. He is directed
17 to Roseanna Lane by Tate Clinton. Tate is the one who
18 tells him to go to Roseanna trailer park and once they
19 get in to the trailer letter park on Roseanna Lane
20 Blakeney has got know idea where he is going, but Tate
21 tells him where to go and where to park to get that
22 Cadillac close enough to Jenika Jones's house for them
23 to get there in and out quick, but not right there in
24 front of it so maybe they won't be seen and Tate
25 Clinton tells Wayne Blakeney where to park that

1 Cadillac for them to get in and get out and get this
2 robbery gone bad to a murder done.

3 What about DNA from the scene. Again Maryann Boehm
4 tells you some information that is instructional and
5 helpful. Two swabs from -- SLED item number two were
6 swabs from the storm door handle at Jenika Jones
7 house. It was a mixture of at least three people. It
8 doesn't have anything about Tate on it. It doesn't
9 have anything about Green on it, but it does say that
10 Delrico McDow could not be excluded and the
11 probability was one in 27. That is a connection of
12 one of these four people to Jenika Jones's house.

13 Item number three from SLED was swabs from the
14 door lock -- doorknob, excuse me, and it was mixture
15 picture of at least two people and her conclusion
16 about that among other things was that Tate Clinton no
17 conclusion could be reached about Tate Clinton's
18 inclusion or exclusion from the DNA in that profile.
19 Credibility is something that you have to consider
20 when you determine whether you believe somebody and
21 you heard I think from two dozen witnesses in this
22 case. As to each one of them they testified and they
23 told you information, and you got to decide do I
24 believe it or do I not believe it and you can decide
25 do you believe some answers a witness gave and don't

1 believe some other answers a witness gave. That is
2 entirely up to you. But you do a lot of things to
3 determine the credibility of a witness. What was the
4 witness's opportunity to observe the things he or she
5 told you about. What is the witness's connection to
6 the case or any people involved in the case. What is
7 the witness -- how does the witness appear on the
8 witness stand. Does he look to you like he or she is
9 telling you the truth. Is he squirming around and
10 appearing to be evasive or is he straight up honest,
11 sincere sounding, believable. You got to determine
12 that as to each of these witnesses and you certainly
13 got to determine that as to Wayne Blakeney. And we
14 are going to talk now a little bit about Wayne
15 Blakeney.

16 Wayne Anthony Blakeney Jr. came in here and got on
17 this witness stand and told you what happened that
18 night. It took us way into Wednesday, Wednesday or
19 yesterday to get Wayne Blakeney on the witness stand
20 and you finally find out what happened to Jenika Jones
21 in a lot more detail than you knew at any point prior
22 to Wayne Blakeney getting on the witness stand. What
23 about Wayne Blakeney? Do you believe Wayne Blakeney?
24 I submit to you you should certainly believe Wayne
25 Blakeney. A couple of things about Wayne Blakeney.

1 What did Wayne Blakeney get out of this. Well, first
2 of all he got some beer for being the driver that
3 night. He expected to be paid to drive them out
4 there. He knew they were going to pick up money.
5 That's all he said he knew. He expected to be paid.
6 He got some beer out of it. What else did he get out
7 of it. Well, he got arrested and charged with the
8 murder of Jenika Jones, just like these two fellows
9 over here. He did get a bonds. No doubt about it.
10 We agreed to bond him out. He got arrested on March
11 8th of 2012. He gave a statement to the police and at
12 some point after that the State agreed to bond him
13 out. Beyond that what did he get, absolutely nothing.
14 He got on the witness stand charged with murder just
15 like Tate Clinton and Al Green are charged with and
16 incriminated himself by telling you what happened and
17 what his part of it was without any deal. Does he
18 expect some favorable consideration? Absolutely.
19 Absolutely, I am sure he expects favorable
20 consideration for giving a statement back on March 8th
21 and coming in here in this courtroom this week and
22 testifying about what he told the police when they
23 investigated this case. But does he have a deal, he
24 does not. Has he been promised some lesser charge, he
25 has not. Has he been promised some lesser sentence,

1 he has not. He put himself in great jeopardy getting
2 on the witness stand without a deal and told you what
3 happened the night of January 19th of 2012 and he told
4 you the truth. He didn't tell the police the truth
5 initially and he admitted that. He admitted he didn't
6 tell them everything at first and he admitted even
7 after the written statement was complete that he had
8 not told them about Delrico McDow, he also told you
9 that later on after he had given that written
10 statement he did tell them about Delrico McDow. He
11 told you that he was scared. That he didn't tell
12 everything at first because he was scared because he
13 is kin to Tate Clinton, because he didn't want to be a
14 rat and I submit to you from watching him on that
15 witness stand you see how messed up he got himself in
16 this situation and how it affected him and how he
17 would be reluctant initially not to be completely
18 forthcoming about everything that happened that night.
19 But you think about him and when he was on this
20 witness stand the other date, you think about what he
21 said, you think about how he said it, you think about
22 how he appeared and I submit to you you will conclude
23 that is truthful testimony, sincere testimony,
24 testimony about matters that he absolutely regrets,
25 but it's the truth and you decide whether you believe

1 him or not and I submit that you should. And what did
2 he tell you. He told you that he gets up with these;
3 Tate Clinton and Al Green and Delrico McDiw in the
4 Newtown area and they borrow a car from Pomp Blackmon.
5 And he tells you that Tate Clinton went to Pomp
6 himself and made arrangements to borrow the car and
7 Tate Clinton didn't have a driver's license and Wayne
8 Blakeney did and Wayne Blakeney would be the driver
9 for the crew for the night. He told you that he
10 borrowed it again from the light skinned fellow who
11 lived in Newtown who was Pomp Blackmon. He told they
12 ended up at the Hole in the Wall and that the
13 discussion was we need to go pick up some money and
14 they wanted Wayne Blakeney to drive him. So he agreed
15 to drive. He told you that they went out Roseanna --
16 went out 200 towards Roseanna Lane and that he drove
17 at the direction to that area by Tate Clinton and that
18 on the way out there he sees that Tate Clinton has a
19 pistol and he knows that Tate Clinton normally often
20 times is carrying go a gun. He told you that he
21 didn't anticipate anything at all like what really
22 happened would have happened. And certainly in
23 retrospec he probably wishes he had stopped that car
24 and got out and let somebody else dealt with it at
25 that time, but he didn't.

1 He told you they pulled in and Tate Clinton showed
2 him where to park the car and he stopped and stayed in
3 the car. And he told you that Tate Clinton and Al
4 Green and Delrico McDow got out of the car and
5 disappeared off to his left out of his sight and were
6 gone for about ten minutes. And after about ten
7 minutes he told you that the three of them hurried
8 back to the car. I can't recall how he described them
9 motivating back to the car, but they get back to the
10 car and they hopped in the car and Clinton is telling
11 Blakeney to chill. Why is he telling him to chill? I
12 submit to you that Clinton is telling Blakeney to
13 chill because maybe everybody is kind of excited over
14 what has just happened and he doesn't want Blakeney to
15 freak out. But somebody in that car tells Blakeney
16 go, go, go and Blakeney takes off in that car headed
17 out Roseanna back toward 200 and about runs over Miss
18 Montgomery and Miss Nelson getting out of there and
19 takes off back to the Hole in the Wall. And obviously
20 Wayne Blakeney has got it figured by that point
21 something has gone on out there that wasn't too good,
22 but he still doesn't know. He doesn't know until much
23 later in the night, almost morning time, what really
24 happened. Go back to the Hole in the Wall at some
25 point ends up back in the car with one or two other

1 people that he doesn't know and Blakeney is still
2 behind the wheel of that car and he starts letting
3 people out. He goes back to Newtown and everybody
4 gets out of the car but him and Tate Clinton. Tate
5 Clinton is suppose to be back out at Roseanna where he
6 lives and that's the plan. Is for Tate Clinton to get
7 taken back out to Roseanna. And at some point while
8 they are riding back out to Roseanna Tate Clinton says
9 to Wayne Blakeney, can you keep a secret? And
10 Blakeney says yes, and Tate Clinton says I killed the
11 bitch. And you saw when Wayne Blakeney was on the
12 witness stand as he described those events what effect
13 that had on him when it happened and when he told you
14 about it. Tate Clinton told Wayne Blakeney I killed
15 the bitch. Blakeney says I didn't know what to think.
16 I was in shock. I didn't really believe him. He
17 takes Blakeney -- Clinton back out the Roseanna.

18 Now, you are probably going to hear this so I will
19 address it now. You will probably hear it when these
20 two get up in a minute. Why in the world would the
21 Cadillac go back out to Roseanna and return to the
22 scene of the crime because it was after everything had
23 cleared up on Roseanna. Lieutenant Christi Rogers of
24 the sheriff's office said we cleared from Jenika
25 Jones's house at 5:29 in the morning on January 20th

1 of 2012. Wayne Blakeney said I am taking Tate Clinton
2 back out there between five and six and obviously when
3 he wheels in out there there aren't any police, EMS,
4 anybody out there anymore. That is completely
5 consistent time wise based on what Christi Rogers said
6 the time was when law enforcement cleared up out
7 there.

8 Tate Clinton gets dropped off. Wayne Blakeney --
9 Wayne Blakeney, you know, he's a mess. Tate Clinton
10 gets dropped off and Clinton says hold this pistol for
11 me and that was stupid of Wayne Blakeney but Tate
12 Clinton puts the pistol in the glove box and Wayne
13 Blakeney assumes possession and control of the pistol
14 at that time. And Wayne Blakeney is in a heck of a
15 mess at this point because number 1, he's participated
16 in what he has been told is a killing. He is in
17 possession of the car that was used in the killing and
18 I forgot something. State's Exhibit Number 23. Fred
19 Thompsen found that I think on January 23rd about four
20 days after the killing and this arrow is not intended
21 to be put there because that is where he found it, but
22 he found it right here coming out Roseanna Lane and it
23 came off that Cadillac and it came off that Cadillac
24 because if you see in the picture the Cadillac going
25 fast and flying that piece of molding fell off it and

1 that piece of molding fell off it because this is
2 where it was found, State's Exhibit Number 25, and
3 just before where it was found is a speed bump. The
4 car is flying out of there. A piece of crappy molding
5 barely holding on Pomp Blackmon's car pops off when
6 Wayne Blakeney hits that speed bump. Get back to my
7 point. Wayne Blakeney is a mess. He has got the
8 Cadillac that was used in the crime. He has now got
9 the gun that was used in the crime. He ditches the
10 Cadillac at the Piggly Wiggly and its got a flat tire.
11 He takes the gun and he starts walking and he gets rid
12 of the gun with his cousin and the sheriff did what
13 they could do to find the gun and they didn't find the
14 gun. That's the story. That's the best story you got
15 about the events which is supported by other
16 witnesses, other evidence and other testimony.

17 Some time about ten o'clock, three people rushed
18 into Jenika Jones's house. One of them had a gun.
19 Tate Clinton is the last person that had the gun when
20 they got out of the car before this murder occurred.
21 But somebody has got a gun and we don't know exactly
22 what happened inside that house, but my argument to
23 you is this, probably Tate Clinton based on what he
24 told Wayne Blakeney. Pulls that gun up and marches
25 Jenika Jones on to that couch somehow. We don't know

1 know if she was shot standing, sitting, lying down or
2 what. We do know is Tate Clinton put that gun muzzle
3 against the side of her head and pulled the trigger
4 and shot a bullet up in to her brain and lacerated her
5 brain and killed her and that's murder. That is
6 murder against Tate Clinton and it's murder against Al
7 Green because they are all there together to get what
8 they can get and the result of all that is Jenika
9 Jones got shot and killed in her own house.

10 Thank you for your time. Thank you for your
11 attention. Give them the same attention you gave me.
12 We all got one thing, which is probably the most
13 important thing any of us and any of you can possess
14 in this case and it is common sense. You consider it
15 all. You consider what I said. You consider what all
16 the evidence that was presented. You consider what
17 they are going to say and when you start boiling it
18 down back there in a little bit later on today use
19 your common sense and your common sense and the law
20 and the facts in this case will tell you that Tate
21 Clinton and Al Green are guilty of the murder of
22 Jenika Jones and I ask you to return a verdict of
23 guilty as to both of them,.

24 Thank you.

25 THE COURT: Thank you. Thank you very much

1 solicitor.

2 All right, Mr. Frick.

3 MR. FRICK: Thank you, Your Honor.

4 I got to start off talking about something that
5 probably at some seminar I went to a long time ago
6 they said never talk about. I have got to talk about
7 the victim in this case.

8 Ladies and gentleman, there is no escaping a
9 tragedy occurred on January 19th, 2012 on Roseanna
10 Lane. You and I heard not one single reason why
11 Jenika Jones put herself at fault in this situation.
12 She's not associating with people, you have not heard
13 any reason. She was a mother and this incident
14 occurred in her home with her children there. It is a
15 clear tragedy.

16 Now, this is not about retribution for that
17 terrible tragedy and I will be the first to tell you
18 it is a tragedy. This is not about that, this is
19 about determining whether or not the State has proven
20 who caused that tragedy.

21 So as I told you on Monday when we began you come
22 in this room you got to put personnel feelings aside.
23 You got to put all that away. You got to even forget
24 about the fact of who is the victim of this. It is
25 not to be considered once you get in that jury room.

1 And that's a difficult thing for a person to do. It
2 is a difficult thing. Probably one of the most
3 difficult things you will face, but it is your job as
4 you sit in that box right there. I will briefly tell
5 you a story about that.

6 I am from Fairfield. That is my home. My home
7 Court, Fairfield. Hanging above the wall in that
8 Courthouse is a painting of a sheriff who in 1915 was
9 escorting a prisoner. Even more than that it was a
10 black prisoner. Now I am not saying that to bring
11 race into anything. It is an important part of the
12 story. This sheriff was escorting this prisoner who
13 was accused of assaulting the wife of a prominent
14 person in Fairfield. His duty was to make sure that
15 that person, that prisoner, made it to court for his
16 day in court. That's his job. That is what he swore
17 to do.

18 The morning that he is taking the prisoner to the
19 courthouse -- Fairfield we still got our old Robert
20 Mills Courthouse with the flying staircase. So it has
21 got two staircases, iron staircases that come from the
22 ground and go to a portico that go into the courtroom.
23 The Court room is up on the second floor. As the
24 sheriff and his deputies are walking up there is a
25 crowd of folks on the portico. This is the family of

1 the victim. They are armed. The sheriff who is an
2 elected official standing there with an unpopular
3 person could have gone with what anybody I believe gut
4 reaction would have been, you know what, you are on
5 your own. He did not. He and his deputies walked up
6 the staircase through the gun fire. He was wounded,
7 the prisoner was wounded, his deputies were wounded.
8 He got to the courtroom. He suffered. He succumbed
9 to his injuries. The deputy succumbed to his
10 injuries. One of the deputies survived. But ladies
11 and gentleman he upheld his oath to do his duty
12 regardless of his personnel feelings and no doubt, no
13 doubt his personnel feelings were not to walk up that
14 staircase.

15 Now no one is certainly asking you and no one is
16 saying that you have to put your life on the line in
17 this case, but you swore a duty to listen to the case.
18 To weigh the facts. To put personnel feelings aside.
19 That is why I tell you that story. Remember your oath
20 because it is difficult to get past what happened.
21 But you have too and I know you will. You took the
22 oath and you will up hold it. That being said, you
23 know I am here on behalf of Mr. Clinton and I am going
24 to speak to him right now about his situation in this
25 case.

1 We know that the phone call or something came in.
2 Law enforcement gets a call that there has been some
3 event. I think his phrase it was a home invasion on
4 Roseanna Lane here in Lancaster just out south 200.
5 Four lane goes to a two Lane. A little road that goes
6 back off right there. We get to the scene. The door
7 is open. It doesn't appear to have been kicked in and
8 on the couch is a body. Nobody is on the scene. All
9 we know is that three folks, three, three, ladies and
10 gentleman have run from this place. That is the
11 information that they got. There is no information
12 about a Cadillac. At this time there is no
13 information about anything else. Just three people
14 running from the scene.

15 Let's talk a little bit about the scene and what is
16 at the scene and what is not at the scene. All right.
17 You heard talk about the Cadillac having mud and all
18 this stuff. All right. You got photos of the scene.
19 Look for some read mud. Now, I submit to you that
20 would make a whole lot more difference if we were a
21 little bit east of here were they don't have red clay,
22 but on this side that car could have been driven
23 around Lancaster, Chester or Fairfield easily picked
24 up some mud. But look at your pictures. State's
25 number 25 gives you a pretty good view of the road and

1 what we are looking at here. See where this red mud
2 is. In fact, I think it was Ken Taylor who told you
3 it was a gravel driveway. It wasn't a dirt driveway.
4 It was gravel driveway. That being said we got no
5 tire tracks, we got no footprints. We attempted some
6 fingerprints. I will give them that. They did
7 attempt. They were trying to get what they could get.
8 Obviously somebody is going to touch door handles, a
9 storm door. It's January. You heard testimony it was
10 cold, so this is not one of the nights where you got
11 the storm door open and the front door open taking in
12 the evening breeze. It was cold, so both doors are
13 probably shut. Stands to reason somebody is going to
14 touch that door handle, storm door handle, generally
15 you got to depress it so you can open it up. They
16 looked there. They don't have any fingerprints. We
17 do some touch DNA. Look at the door itself. Somebody
18 must have touched it. Got to open up the door. We
19 look, can't find any fingerprints but we do have some
20 DNA. Go in to the house. It is clear that everything
21 occurred in one location on the couch. All the
22 evidence seems to be that everything occurred right at
23 the couch. All of the blood, all of the bullets,
24 shell casings, what not, are right there. Then we
25 look around. Nothing else is really out of place in

1 the house accept for the master bedroom or what has
2 been call the master bedroom and there are several
3 pictures of it, but I will hold up State's number 10.
4 Clearly, clearly someone has rifled through this room.
5 I doubt very seriously that Miss Jones left the
6 drawers hanging out like this with stuff all over the
7 floor. In fact there is one drawer just laying in the
8 middle of the floor and a chest of drawers right here
9 tipped over. Now someone had to touch these things,
10 had to open the door, the drawer to the chest. We
11 didn't even attempt to get DNA there. That's what you
12 heard. We didn't swab anything in there. We tried to
13 get some fingerprints, but were unable to get any
14 lifts off of that. But no attempt to try to find
15 something in the bedroom where it is clear whoever
16 went in that house went looking for something. There
17 is no indication anything is missing. So kind of
18 makes you wonder the State doesn't have to prove
19 motive.

20 Judge may charge you on that. But wouldn't it be
21 nice to know a reason. You have no idea. It appears
22 it is attempted robbery, but other than a room that is
23 out of whack you got nothing to indicates. No one
24 says anything is missing. Well then on the scene this
25 is a neighborhood. You can see from this picture

1 right here in State's 25. They are not right on top
2 of each other but these mobile homes are fairly close
3 together. Short of somebody getting a knock on the
4 door, no one hears or sees anything. You got cars
5 flying out of there. You got gunshots. No one hears
6 or sees anything. It is about 10 o'clock at night. I
7 am sure some people had gone to bed but somebody is
8 probably awake. So you got no witnesses on the scene.
9 You know no more right now about what happened in that
10 trailer then you did Monday morning when the case was
11 called. You have no more information. No more
12 information. Even with everything Mr. Blakeney has
13 got to say. He couldn't tell you what happened in the
14 trailer because in his story he just sitting in the
15 car.

16 Now, getting to the car. What do we have what
17 don't we have from the car. Solicitor is right, you
18 will hear about these cigarette butts because they are
19 in the car. You got six of them. Never sent to be
20 tested. Now the explanation is, the explanation you
21 here from sheriff's department is SLED's policy is we
22 can only submit five items. Okay, that's fine. Look
23 at the reports you got. You got three DNA reports
24 from SLED and it shows what got sent. All right, 380
25 shell casing, jumpsuit, swabs from the storm door,

1 swabs from the front door, seat belt, fabric from the
2 passenger seat, fabric from the driver's seat, swabs
3 from the rear seat, another swab. One, two, three,
4 four, five, six, seven, eight. That didn't include
5 the swabs that they took from the people to compare it
6 to. There were eight items sent to SLED on this case.
7 So right now you already know if it is five, that is
8 not a hard and fast rule. And what does SLED do?
9 What does SLED do? Item number six is the jumpsuit.
10 We will talk about it in more detail in the second.
11 The jumpsuit, what does SLED do? They make it 14
12 different items. They cut tell 14 different pieces
13 off of it. So clearly SLED is not too worried about
14 this five item policy. That is not the only one they
15 do it with. Seat belt they make it two different
16 items. So don't stand up here and say oh, we can only
17 send five things. We don't need to worry about the
18 cigarette butts. And no one makes a phone call and
19 says, hey, you know this ain't a stolen law mower. I
20 got a murder. I am trying to figure out who was in
21 this car because the car was at the scene and somebody
22 was smoking cigarettes. Don't send it. This is stuff
23 that is collected a few days after the event. The
24 cigarette butts, the swabs from the steering wheel,
25 from the gear shifter, I mean, as SLED tells you when

1 you touch things it doesn't necessarily leave DNA on
2 it but if you are driving the car probably going to
3 find something on the steering wheel. If you got the
4 gear shifter wouldn't you think you would find
5 something on it. Well, somebody thought enough to
6 swab these things. Somebody thought enough to pick
7 them out of that ashtray. But they never make it
8 there. So you don't have that evidence to tell you
9 what was going on. Maybe it can, maybe it can't, but
10 right now you don't know. We're never going to know,
11 but that could have told you something. The mud on
12 the car, I don't know.

13 Mr. Barfield showed Mr. Blackmon this picture
14 (indicating) he says he didn't remember that. After a
15 while he realizes oh, yeah, yeah, yeah. That's right.
16 That's right, that molding was missing. So, whether
17 he kept his car clean, whether there was mud on it or
18 not, I tell you that is really not of very much
19 consequence, particularly given the fact that no one
20 can tell you there's muddy tracks leaving Roseanna or
21 any other place that they can tie back to this car.
22 So the fact that the car has mud on it and by the way
23 other than testimony you got nothing to substantiate
24 that.

25 How about this, we got a murder. We are trying to

1 figure out who does it. We come to Mr. Blackmon's
2 house. We look all through his car. We are at this
3 time looking through the ashtray, we are taking swabs
4 of the steering wheel, we are dusting for prints, we
5 are trying to get fingerprints, DNA, whatever it is we
6 can get. We believe this car was used in this murder
7 and the people who went there and did this thing went
8 to the scene and left with this vehicle. And then
9 they leave the car with Pomp Blackmon who then sells
10 it. Once we get wind of this being sold we get it
11 back. No one knows how we get it back but we get it
12 back and then in March -- March, all right, March we
13 decide maybe we need to go check for blood and that's
14 when we get the seat belt and that's when we get the
15 car seat. And that stuff gets sent on to SLED;
16 cigarette butts, steering wheel swabs still sitting in
17 Lancaster.

18 Now, let's suppose that there is some game of
19 chance where you can go to some convenience store and
20 wager two dollars for a chance to win several million
21 dollars, and your odds on that -- I don't know, one in
22 couple hundred million of winning. You might take
23 that bet. How does that relate to this DNA? Well,
24 you do have DNA and it does tell you something. It
25 tells you a whole lot and the first thing I want you

1 to look at is item number 1. This is the one and only
2 shell casing. The bullet is from a 380 gun. There is
3 one 380 casing in this house. It is in fact right
4 here on the couch over here. That is where it is
5 found behind the couch. Not in blood. Right here.
6 (Indicating). The only DNA on that shell casing is
7 Jenika Jones and not by a little bit. One in 8.9
8 quadrillion. Quadrillion. That is like 15 zeroes
9 past the nine. One in eight quadrillion. If you
10 trying to bet that you will find somebody else to
11 match that you ain't going to put two bucks on that.
12 One in eight quadrillion, that is Jenika Jones's DNA.
13 Not blood. SLED said they didn't find any blood on
14 the shell casing. Her DNA. How is her DNA the only
15 DNA on this bullet. Not the shooter. Not the man who
16 comes in here with the gun who presumably would have
17 loaded the gun, bullet by bullet and fired it. His
18 DNA is not on it at all, nor is Mr. Green's. Nor is
19 anybody else associated with the case. It is only
20 Miss Jones. Why? I don't have the first clue ladies
21 and gentleman, but that is the first part of looking
22 at reasonable doubt in this case. Why? If we think
23 this is the man who did it why is her DNA the only DNA
24 and by a lot. About as certain as you can get that's
25 her DNA.

1 Item number three, this is a storm door handle.
2 Remember it's January. Store door is closed, the
3 front door is probably closed. Somebody has got to
4 open the door. You know what the SLED report tells
5 you on that, it can not be Devatee Clinton. Can not.
6 Excluded. No way. Could be some of these other
7 people maybe, maybe not. I don't know. But it is not
8 Devatee Clinton.

9 Next item you got there, number three, the front
10 door, front door handle, and what it says on that is
11 well, I can't say whether it is or isn't Devatee
12 Clinton. Can't say. Not going to rule him in, not
13 going to rule him out. Just can not tell and because
14 we can not tell there are no odds on that. You
15 certainly not going to put two dollars down on a bet
16 like that.

17 All right, 6.1, remember now this jumpsuit -- I am
18 not going to drag it out quite yet. I will do that in
19 a minute. This jump suit which was SLED's 6.1, is a
20 cutting from this jump suit. This a jumpsuit that we
21 know is Devantee Clinton. We have no question that
22 this is it. We had somebody get up there and testify
23 that's the jumpsuit. This is his jumpsuit, right?
24 Well, maybe. All right, 6.1, that is not his DNA.
25 Can be excluded. Not his on his own jumpsuit. It's

1 somebody's because they say it is somebody's. You got
2 this report. You will be able to read it back there.
3 Six point two another cutting from this jumpsuit.
4 Profile developed from 6.2 was an identified male
5 individual. It ain't anybody's in this case that you
6 heard about. It's somebody entirely different. On
7 that blue jumpsuit that we are so sure is Devantee
8 Clinton's. Six point three, maybe, maybe not. It is
9 a mixture. Could be his DNA, but the odds of finding
10 somebody that matches that DNA profile well, it is one
11 in 580. All right, let's assume there is at the time
12 of this event about 76,000 people in Lancaster County
13 alone. That is 130 other people could be any of them,
14 that is bet you put money on it as to find someone who
15 matched that. Six point four, ain't it ironic one in
16 12. One in 12 chance. That could be any number of
17 people in this courtroom whose profile potentially
18 matches what they find on six point four. And then
19 they got other stuff. Remember it is 14 cuttings.
20 They find what they determine to be human blood on a
21 few of these. On other ones they find stuff that is
22 probably blood but it is not human blood.

23 Now, if you recall I asked and you probably thought
24 it was an odd question, could it chicken blood. SLED
25 agent said, yeah, it could be chicken blood. Do you

1 remember what else Pomp Blackmon gave them, an ID from
2 Tyson. It is up the road in Monroe. The chicken
3 plant in Monroe. This (indicating) just happens to be
4 with this. That's not important. The forensics
5 aren't important. The physical evidence is not
6 important in this case. You look at the witnesses is
7 what the solicitor says. We will get to them in just
8 a second. Twelve point two I believe is the seat belt
9 and what it tells you is it ain't anybody that you
10 heard about here. Got no idea who that person is.
11 So, somebody else is here. Somebody else is here
12 whose DNA has not been submit. The DNA tells you a
13 lot and what it tells you is that State can not tell
14 you that it was Devatee Clinton. Can not. That is
15 what that DNA tells you.

16 Witnesses, oh yeah, we got this great conversation.
17 We are over at Miss Tinsley's house. Apparently folks
18 are over there a couple different times. We're
19 hanging out eating breakfast, which is fine. Miss
20 Tinsley tells you she hears no conversation about a
21 robbery. Nothing. Miss Davis tells you, oh yeah, oh
22 they were sitting there, and Tate was sitting there
23 talking to Al and he said hey, let's go do this lick.
24 Can't tell you where. Can't tell you when. Can't
25 tell you who they talked about. They're just sitting

1 around before breakfast talking about doing a robbery.
2 Except she says that people are there that say -- they
3 get up later and say they weren't even there. So, I
4 don't know. You get to determine whether you are
5 going to believe it or not. But you take a look at
6 what they said and what they didn't say and who they
7 said wasn't there and that's how you weigh whether
8 they are telling you the truth or not.

9 Jamal Twitty says, I wasn't there. I was there for
10 a couple of minutes. I wasn't there for no
11 conversation about breakfast time, but we were hanging
12 out between the two apartments about ten o'clock that
13 night. Apparently Mr. Clinton is interviewing folks
14 for this robbery because everybody who walks up he is
15 asking do you want to hit a lick. That's what Miss
16 Twitty says. He is standing there and Mr. Clinton is
17 there and he wants to go hit a lick. He is telling
18 everybody he has got a gun and so when Mr. Twitty
19 walks up he said hey man, do you want to go with me
20 and Mr. Twitty in fact is the one that talked him out
21 of doing it that evening. That was his testimony.

22 Mr. Green walks up and he decides he needs to
23 talk to Mr. Green about it. Hey, let's interview him.
24 That's the conversation. Now even if you want to
25 believe that this conversation occurred, you find that

1 credible, you still have no idea what the heck they
2 are talking about because no one can say oh, this is
3 where they were talking about going. This is who they
4 were talking about robbing. When? No idea, except
5 Mr. Twitty is saying I talked him out of doing it that
6 night.

7 All right, now back to the car. We got Mr.
8 Blackmon. He is loaning his car out. He says he has
9 got two folks, two black guys come up and he loans the
10 car and he gives the keys to the one he thought had a
11 driver's license. As the car drive's off two more
12 guys get in the car. Now we got four people in the
13 car. All right. Then you got Miss Montgomery and
14 Miss Nelson all they were trying to do was get down
15 Roseanna Lane to go visit someone and a car comes
16 flying out. A car with its lights off. Kind of
17 boxy-looking car. Not entirely sure it was Cadillac
18 or Oldsmobile. That was her testimony and it is
19 flying out. Can't see who is in it. No idea.
20 Couldn't tell you whether it black people, white
21 people, purple people or orange people. Couldn't tell
22 you anything except about this car. There are no
23 street lights up and down Roseanna. You will see that
24 in the picture. All we know is that a car was there.
25 Okay. But we don't know who is in there. But here's

1 the issue and why I am bringing this up lady and
2 gentleman, I can't recall which one, but one of them
3 gets up there and says I saw that car the next day in
4 front of Piggly Wiggly and I ask how do you know it's
5 that car because that's the car I saw. How are you
6 sure? Because its was white Cadillac. And her
7 testimony was that is only white Cadillac she'd ever
8 see. Okay, ladies and gentleman that is for you to
9 decide whether you want to believe it or not, but I
10 submit it is not credible evidence.

11 Let's talk now about this jumpsuit. All right, we
12 talked about the DNA, we have talked about the several
13 different cuttings and how they can not if this is the
14 jumpsuit that he is wearing they can't put his DNA on
15 it. Can't find it on it. All you got is, well, it
16 might be his. One in 580 it could be somebody else's.
17 One in 12 it could be somebody else's. So what the
18 State has to rely on is Miss Stradford. Now, Miss
19 Stradford told you that Miss Jones was a friend of
20 hers. In fact she said at one point was a home girl.
21 That is a friend. That's a close friend. That is a
22 good friend. Maybe you don't hang out every day but
23 you see each other regularly and she just heard that
24 her home girl had been killed. She is understandably
25 upset about that situation. And then she says she

1 sees Mr. Clinton over at the Crenco on South Main and
2 she tells him about this and he is not upset at all.
3 He just wants a cigarette. But what the State puts
4 her up to do is to go Miss Stradford have you ever
5 seen this jumpsuit and I swear as soon as Mr. Barfield
6 got about right here (indicating), yeah, that is the
7 one Tate was wearing that night. Now she said she
8 seen him. She knows him. He wears a blue jumpsuit or
9 came a jumpsuit regularly. That's his normal
10 clothing. Folks one, she is going in the store after
11 her good friend had been murdered. I's sure she
12 wasn't paying a whole lot of attention necessarily as
13 to what Devatee Clinton was wearing that night. But
14 she didn't even look at it. She makes no observation.
15 As soon as it's pulled out of the box, two years
16 removed from the incident from the night not a doubt
17 in her mind, that is his jumpsuit. Ladies and
18 gentleman that is not at all credible. That is not at
19 all credible. It could have been any jumpsuit. It
20 just happens to be one in the courtroom right now.
21 That's why she says it is his.

22 Now, lets talk about Mr. Blakeney. Mr. Blakeney is
23 important and the solicitor just stood up here and
24 told you that is the best evidence they got in this
25 case. And I agree that is probably the best evidence

1 they got in this case. Let's talk about that evidence
2 because what they don't have the forensics, but what
3 they got to do is build this case and they are trying
4 to build in this situation is like an arch. Mr.
5 Blakeney is going to be there keystone to whole this
6 arch together. Well, lets talk about their keystone.
7 Here is Mr. Blakeney, gives absolutely inconsistent
8 statements. Tells law enforcement the day he gets
9 arrested, talks as soon as he gets arrested, and says
10 it was two people. Two people were in the car. In
11 his statement the cops catch him in a lie and he
12 starts correcting it by the end of the statement
13 before he leaves that day. He has already correcting
14 errors. What didn't he correct? Well, he said it was
15 two people at the time. It's later. Later once we
16 heard a little bit more about it and once we had a
17 little bit of time to think about it there were three
18 people in that car. I just sat in the car. No, there
19 was other people, Delrico. Delrico was there. That's
20 right. Why didn't you say -- why didn't you say that
21 before? Well, I couldn't remember his name. That's a
22 reason not to put a person there. You can not
23 remember there name so you just leave them out. Well,
24 I was scared. Okay. I mean, why is it any better now
25 then it was then, if you were scared then why aren't

1 you scared now. This is where you get to look at his
2 credibility, ladies and gentleman. When you lie about
3 things there is no reason to lie about. That's how
4 you determine credibility. He gets up on this stand,
5 sits up here and swears that after all this stuff
6 happened, as he is driving Devatee Clinton back home
7 over to Roseanna drive, that Clinton was not driving
8 the car, that he was driving the car. That Blakeney
9 was driving the car. Yet, when confronted because it
10 clearly said in his statement, Clinton was driving the
11 car at that point. Why do you lie about that?
12 Because you are lying about everything else that's
13 why.

14 Mr. Blakeney would also have you believe -- and by
15 the way, as I talk about his statement I am not saying
16 that you should find him at all credible. What I am
17 trying to explain to you is why you should not find
18 his statement credible at all. These are the issues.
19 He said Devantee Clinton didn't tell him anything.
20 Devantee Clinton who stands around interviewing
21 potential co-workers for this robbery doesn't tell the
22 dude who is driving them around a thing, except I need
23 to go get some money. So they hop in the car and they
24 drive down 200, pass the ATM over there in front of
25 the Food Lion at Airport Crossroads and says oh, no,

1 no, no, go down to this trailer park. And he says I
2 saw Devantee had a gun. I knew he had a gun. Man
3 with a gun gets in your car and says I want to go to
4 get some money. It's about ten something at night.
5 Says turn into this trailer park, go to this trailer
6 and you don't ask one question. Not a thought crosses
7 your mind. Man hops out of your car and other people
8 hop out of your car with a gun go to a trailer and you
9 sit there and wait for him. Okay. Doesn't question
10 anything on the scene. When they come back and get
11 into the car still doesn't have any questions and then
12 we got inconsistencies of what is even said inside of
13 the car. He said Devatee gets in the car and says
14 chill. Chill.

15 Now, I don't know maybe it is because I'm not from
16 Lancaster, but in Winnsboro chill means stay calm.
17 How are you suppose to chill and go, go, go at the
18 same time? But that's what he says these folks say
19 when he gets in the car and he takes off. Again, this
20 is something that you don't need to lie about. Just
21 tell what happened. Why do you lie about things you
22 don't have to lie about because everything you say is
23 a lie. That is why.

24 So, they head back over to the Hole in the Wall.
25 Now you saw Mr. Blakeney up here yesterday. He gets

1 up on the stand, he tells how terrible this whole
2 incident was. He even cries on the stand in
3 demonstration of how shook up this whole thing made
4 him. He was devastated, horrified. He was so upset
5 by this situation on that night that he drove back to
6 the bar and hung out with them for a couple more
7 hours. And after they hang out there, everybody is
8 ready to go home so he starts driving around, dropping
9 people off. They go to Newtown dropping people off.
10 Drop Mr. Green off. Maybe some other people off. Mr.
11 Clinton is still in the car with him.

12 Let's talk about this for a second. Okay. He says
13 he is hanging out at the Hole in the Wall with
14 Devantee Clinton until late in the night. All right.
15 They don't get back over to Roseanna until between
16 five and six in the morning. So they had to have been
17 there for a long time. Had to be hanging out together
18 for a long time. Well, Vivian Stradford said she saw
19 Devatee Clinton over at Crenco somewhere around 11
20 o'clock to midnight. Well, I mean, is he in two
21 places at once. See this is why I say she was in no
22 position to be observing. She doesn't remember what
23 she saw. She was not observing that. She was worried
24 about what had happened to her friend. So it is.
25 either Mr. Blakeney is correct or Miss Stradford is

1 correct or none of them are correct, because you can't
2 believe all of that together. It doesn't make sense.
3 Who is he hanging out with, or is he even there.

4 All right. So this terrible thing has occurred. I
5 am sitting outside while these people run in. They
6 come running back out. One of them tells me to chill.
7 One says go. I take out driving. They end up at a
8 bar. And apparently nobody talks about anything at
9 the bar. I mean, they are hanging out for a couple
10 hours and no one says anything. Word is getting
11 around town because people are making phone calls.
12 You hear Miss Stradford say she heard about it. She's
13 down at the gas staying. No one is saying a thing
14 while they're hanging out at the Hole in the Wall and
15 let's all drive home. We will drive home. All right.
16 Mr. Blakeney drives off. Drops everybody off.
17 Clinton just sitting in the car with him. One story
18 driving. One story not driving. But he's in the car
19 with him. At some point he says, hey, can you keep a
20 secret? Mr. Clinton who up to this point hadn't been
21 worried about keeping anything secret according to any
22 of the State's witnesses, all of a sudden wants to
23 keep a secret. And his secret is, I killed that
24 bitch. Mr. Blakeney, who is so upset that he got up
25 on that stand and cried for you yesterday, continued

1 driving. Didn't ask any questions. Now, certainly
2 that would be shocking. Someone just told you that,
3 that would be shocking. He still doesn't ask any
4 questions.

5 Now, how much concern does he really have. Well,
6 one, he is driving Mr. Clinton right back to the very
7 place where he has reason to believe he sat up there
8 and told you he had this funny feeling. He thought
9 something wasn't going right. Something was bad.
10 Tate got out with a gun. Went in there. Came out.
11 They are driving back to the same place and he doesn't
12 have one bit of hesitation. Just pulled right in
13 drops Tate off. No problem. Then he says, Clinton
14 looks at him and says hold this gun. Still Mr.
15 Blakeney tells you he doesn't do anything. Well, so
16 what does he do? What does he do then? He drives
17 home. Cars is about out of gas, is what he said. The
18 car is about out of gas. Parks over at the Piggly
19 Wiggly just up the road from Roseanna and then kind of
20 reminds me of a no old move I remember. When they get
21 out the car the guy looks at one fella and says take
22 the cannoli leave the gun, except this time it's take
23 the gun, leave the car. This guy has now been told
24 that his suspicions are correct. He drives Clinton
25 over there and these other people over there and

1 something bad did happen because he said he did
2 something bad. He's now got the gun in his
3 possession. He's now worried about this situation so
4 what does he do? He puts the gun in his pocket and
5 goes walking down the road. Couple days later, he
6 says, within a day or two he gets information about
7 what happened. He now knows who got killed. He now
8 believes Devatee Clinton is the one who killed Jenika
9 Jones because he has got all these factors in his
10 head. And it has been pieced together and now knows
11 what happened over at Roseanna and he is upset. He is
12 concerned. He is worried. Someone he knew got
13 killed. He comes up here two years later on the stand
14 visibly upset about it and when he is in the moment,
15 he is so upset, so distraught, that he sells the gun
16 for some money to his cousin, or some relative.
17 Nothing about his story makes sense except for one
18 thing. One thing. He sits up there with the same
19 exact charge and he tells you I want to be a guidance
20 counselor. I'm going to school. I want to be a
21 guidance counselor. He tells you the punishment for
22 murder and I ask him, so you don't expect to spend the
23 next thirty years in prison, do you? Nope, he
24 doesn't. You know why? Because he expects to get a
25 deal. He's in trouble. He is up to it further then

1 he wants to admit. The best thing he can do is throw
2 Devatee Clinton under the bus and help himself out.
3 So, does he have deal, does he not have a deal? Well,
4 that is part of your consideration when you want to
5 think about, whether you want to believe a single word
6 that came out of that man's mouth. Did he get some
7 consideration? Yeah, he did not have to stand in this
8 courtroom in front of a judge and beg for a bond. The
9 State gave him one. Gave him one. And then they
10 stand up here and say oh, we didn't promise him
11 anything. We are not going to say that we are or
12 aren't going to help him. He then goes on and says I
13 expect to be treated fairly. There's a motivations,
14 ladies and gentleman. There's your motivation.
15 Blakeney is in trouble and he needs to sacrifice
16 somebody. Good old Tate sitting there. Throw him
17 under the bus.

18 He is the keystone, ladies and gentleman. Without
19 Mr. Blakeney the State has nothing else. It all
20 crumbles. They have no case. Mr. Blakeney is not at
21 credible. Can not believe anything he told you except
22 for the fact that he expects to be treated fairly.
23 That's what you can expect from him.

24 So, to sum up -- I am almost done, I promise --
25 the State has got to prove to you beyond a reasonable

1 doubt that the Devantee Clinton committed murder.
2 That he went over to Jenika Jones's house and killed
3 her and they got to do that with competent evidence.
4 What is competent evidence? Well, my estimation of
5 competent evidence is credible evidence. Believable
6 evidence. Not, could be his DNA; maybe, probably, I
7 don't know. Well, it could be one of 130 other people
8 in Lancaster County, or every 12th person in Lancaster
9 County or wherever.

10 Competent evidence is not a man who gets up on the
11 stand and throws someone under bus to save his own
12 hide. That is not competent evidence. They have to
13 have competent evidence before you can find Mr.
14 Clinton guilty.

15 Reasonable doubt. Reasonable doubt, I mean, I will
16 tell you what I think it's not. It is not I've been
17 sitting here all week. I have been looking at Mr.
18 Clinton. I don't know, he kind of looks like he might
19 carry around a gun and go shoot people. It's not
20 maybe he did it. It's not I think. It has got to be
21 there is no other reasonable explanation and there is
22 plenty other reasonable explanation in this case as to
23 what happened besides it being Devatee Clinton. They
24 have got to show you by the high burden of beyond a
25 reasonable doubt. Not more likely. Not I think. Not

1 possibly.

2 If you go back there and you looked at everything
3 that you got and you believe that there is a real
4 possibility that Devatee Clinton didn't do it, a real
5 possibility that he didn't do it, then your job is to
6 find him not guilty.

7 Now the State I told you Monday, that they stand up
8 here and say, we don't really know who did it, but it
9 doesn't really matter and that's what they continue to
10 tell you. The solicitor is going to tell you oh yeah,
11 it is Devatee Clinton. Not one shred of evidence can
12 support that conclusion. The only evidence they got
13 is well, we think it is one of them two and if you
14 think one of them did it then both of them did it. So
15 they are relying on a principal called accomplice
16 liability. Okay. So, if you that point, if you reach
17 the point that you think these two gentleman were
18 involved then you are going to have have look at
19 accomplice liability. That means the State is telling
20 you we don't know who did it. It doesn't matter who
21 did it, but they both participated. Well, you got to
22 participate. You got to be there. You got to do
23 something with it. What it is not -- what accomplice
24 liability is not, is simply being there. If you
25 believe -- if you believe Devatee Clinton is standing

1 around in conversations about a robbery, if you
2 believe he's in a car where somebody commits a
3 robbery, just because he's in that car -- and by the
4 way, I am not in any way suggesting that you should
5 even reach that point because I don't think there is
6 one shred of evidence that supports that. But I got
7 to argue what you might go to and this is a
8 possibility that you might go to giving the evidence
9 that has been presented to you. So if you reach that
10 point -- which I don't think you will -- they got to
11 prove to you that he was more than merely there or
12 mere knowledge. They got to prove of participation.

13 Ladies and gentleman, once you go back there and
14 look at it, you are going to find that Devatee Clinton
15 was not there. Did not participate in any
16 conversations. Was thrown under the bus by Wayne
17 Blakeney because he was an easy target and Devantee
18 Clinton is not guilty. I want to thank you for your
19 time and your attention and your service.

20 THE COURT: Thank you. Thank you very much Mr.
21 Frick.

22 Miss Raney.

23 MS. RANEY: Thank you, Your Honor.

24 I know this has been a long week and a long day.
25 Hang in with me a little bit longer because this case

1 is important to Jenika Jones's family who have been
2 here all week and lost a daughter way too soon. But
3 it is also important to the young, Mr. Green, my
4 client, who is on trial for murder. What I think,
5 where I think the evidence really begins in this case
6 is with my client's sister, Latoya Green, who was
7 called to testify in this case by the State. The
8 government. And she gets on that stand and what did
9 she tell you? She has been friends with Jenika Jones
10 since they were kids. She was so close with Jenika
11 Jones that she is the God momma to her three babies.
12 She tells you that in 2011 she, Latoya Green, her
13 brother; my client, Al Green, lived with Jenika Jones
14 and not just with Jenika Jones, but her three small
15 children. And I asked her, were those kids there all
16 the time and she said, yes. They were there every
17 day. Fast forward, not that far down the road. Miss
18 Jones is murdered January of 2012. January 19th of
19 2012, and I believe it was Investigator Thompson or it
20 might have been SLED Agent Green yesterday when we
21 were talking to the police about how they conduct
22 their investigations. I believe it was one of them
23 that said yesterday when a crime is first committed we
24 cast a big wide net out there first and as we work
25 through our investigation we narrow it down. What did

1 SLED agent Green tell you yesterday. He talked to my
2 client, Al Green, just days after Miss Jenika Jones's
3 murder. I am not going to pull all this evidence out.
4 You will all have it back with you in the jury room to
5 go through and look at for yourself. But the State
6 put in evidence that Miranda or waiver of rights form
7 with a date on it that shows they were talking to my
8 client within days of Miss Jones being murdered. And
9 my client tells them I was at the Hole in the Wall.
10 Not a crime to be at the Hole in the Wall. His
11 girlfriend gets up there Miss Tinsley and they ask
12 her, where did Al Green tell you he was at on January
13 19, 2012? Well, he said he was at his mommas house
14 and then he went to the Hole in the Wall and he met up
15 with Tate there. Consistent with the same thing that
16 my client told the police. But if you also remember
17 what we talked about with Investigator Thomspson
18 yesterday when I was asking him about going to Marcus
19 Barnes the gentleman than Wayne Blakeney said had
20 given the gun to, I was asking Investigator Thomspson,
21 well, did you go to Mr. Barnes's house? Did you look
22 for the gun at Marcus Barnes's house? Did you ask for
23 consent to go look for the gun, and he said he didn't
24 really get anywhere with Mr. Barnes when he went
25 looking for the gun. If you remember at that point I

1 asked Investigator Thomson, what about a search
2 warrant? I had him explain to you all the process of
3 getting a search warrant. Where they, the police
4 officers can go to the judge and ask the judge to sign
5 off a search warrant so they can go in that house and
6 look for evidence and remember what he said. Well,
7 you know, that was in March and a couple of months had
8 passed by that time. So, I didn't really think the
9 judge would go for it. So I didn't even bother asking
10 the judge. Well, that wasn't the case was it. On
11 January 25th, just days, less than a week after Miss
12 Jones was murdered when the police were talking to Al
13 Green, did you hear any officer say, hey, you know we
14 are talking to Al Green. Obviously they consider him
15 a person of interest in this case, it is within days
16 of this woman being murdered. Maybe we should ask Al
17 Green if he will let us go take a look around his
18 house. SLED Agency Green didn't tell you that, did
19 he? Did you hear one officer say after the police
20 talked with Al Green within days, hey -- hey judge,
21 can we have a search warrant? This horrible crime
22 happened just a few days ago. We think this guy might
23 be involved in it so we want to go in his house and
24 look for evidence. And what kind of things could they
25 tell the judge they were looking for. Well, just a

1 few days after this we have a missing car key from
2 Pomp Blackmon's car. We have a missing murder weapon.
3 They haven't found that. I would think the police
4 would be interested since they think Mr. Green is the
5 person of interest in this case and what he was
6 wearing that night. Collecting that. Putting that in
7 evidence. Seeing if there is any type of forensics
8 they can find off that. Maybe interested in Mr.
9 Green's cell phone. Mr. Green was right there in the
10 police station meeting with the police. Did you ever
11 hear SLED Agent Green tell you he asked my client if
12 he could look through his phone? Everyone I know,
13 well, accept for the 14 of you because I know you
14 can't bring the phone in the courtroom -- everybody
15 when they are not stuck on jury duty carries their
16 phone around with them and certainly if it is not with
17 them you leave it at your house. Obviously the police
18 think phones are important evidence. They collected a
19 phone. Bothered to put it in for evidence from Miss
20 Jones's house. Never even asked, never even looked
21 for my client's to see if there is anything
22 incriminating on there. Any kind of text messages.
23 Nothing. Don't even look.

24 Then we heard from the first responding officers at
25 the scene. We heard from Officer Weiss and David

1 Belk. They tell you they get there really shortly
2 after all this happens. I believe it was around 10:15
3 and I ask them what's it like when you pull up. You
4 know, what do you he see when you pull up to Miss
5 Jones's house, and I honestly don't remember which one
6 of them say it, but I remember an officer telling me
7 in response to those questions, well, I remember there
8 was at least eight or ten other police officers there.
9 There is patrol cars there. There are blue lights.
10 We know CSI team is out there. We have three people
11 from the Lancaster County CSI team alone that
12 testified that they were out there that night. We
13 know that SLED was involved. I asked Officer Green
14 when did you first get involved and he said it was
15 real early on in that case. So we got SLED out there.
16 We got the CSI team out there. We got EMS out there.
17 We got Officer Weiss out there. We got Officer Belk
18 and ten -- eight to ten more. So there is a lot of
19 people out there. And what did they tell you they did
20 those first responding officers? Well, one thing they
21 told us is that they spent from about 10:15 at night
22 until 5:30 in the morning they are investing this
23 case. They also told us this happened on January
24 19th, 2012. Over two years ago. Over two years now
25 to collect evidence and prepare the case against my

1 client, Al Green. And do you remember me asking
2 Officer Weiss, well, what did you do when you got
3 there? And said he was tending to those children.
4 Jenika Jones's three small children; a four-year-old a
5 two-year old and then her youngest boy. And that all
6 three of those children had blood on there clothes.
7 There mom's blood. Did you ever hear him tell you or
8 any of the other officers that the State put forward
9 on the stand that they talked to the oldest child
10 about what happened? Did they ever ask this
11 four-year-old, this four-year-old that lived with my
12 client in 2011 and this incident happens in January of
13 2012? They don't ask him, hey, do you know Al? Hey,
14 here is a line-up, here is a photo of him, do you know
15 this guy? Was he in your house on January 19th of
16 2012? We don't know the answer to that because we
17 don't have any evidence in this case that the police
18 even bothered to ask him that, Mr. Blakeney.

19 Mr. Frick commented on the fact and the judge is
20 also going to tell you when witnesses are up on the
21 stand testifying you are suppose to look at their
22 demeanor and that is a factor just like it is in your
23 every day life when you are talking to people and
24 deciding whether or not you are believing what they
25 are telling you. And Mr. Blakeney was clearly upset.

1 He was tearful, emotionally torn, absolutely, but when
2 you were watching him and listening to him testify and
3 seeing him shed those tears and repeat over and over
4 again, I repeatedly heard him say, I am scared. I am
5 scared. I am so scared. I bet he is scared. He is
6 charged with murder. You think those tears he was
7 shedding were for Jenika Jones's family. You think
8 those tears he was shedding was for those three
9 children of who has been robbed of momma to early in
10 life, or were those tears he was shedding for himself
11 because he is in a heck of of mess isn't he. He feels
12 so bad about this situation, so shook up about this
13 situation, that he lets months, months pass and never
14 goes to the police. In fact the only time he talks to
15 the police is after one of his own friends rats him
16 out. That's what he told you. He gets arrested for
17 murder. Well, then he decides I better start talking.
18 And even then when he is trying to safe his own behind
19 he's not honest at first and he did admit to that.
20 But look at his actions. Another way we judge whether
21 people are telling us the truth or not in real live is
22 we not only look at what they say but also what they
23 do. If somebody comes up to you and says, hey Suzy,
24 she's a heck of a great girl. She's really nice. Are
25 you just going to judge suzy on people saying she's

1 nice or are you going to look at what Suzy does to
2 make that determination for yourself if she's a nice
3 person. You know how the saying is actions speak
4 louder then words.

5 The guy that feels so bad about all this, so
6 scared, so shook up, spends all of that time he said
7 with Mr. Clinton in the car that night after all the
8 others are dropped off. He says Mr. Clinton tells him
9 here you go. I killed that bitch and here's the gun.
10 Does he take it to the police, no. He ditches the car
11 because it ran out of gas. He holds on to that gun he
12 says for a couple of weeks and then he sells it to
13 make a couple of bucks. Sounds real broken up about
14 Miss Jones and her family. He's ditching what he has
15 allegedly told us is the murder weapon to make a
16 couple of buck. Sounds like someone is out to
17 themselves to me.

18 When SLED was up on the stand testifying they told
19 you they took a look at the shell cases and the bullet
20 that was recovered from Miss Jones's head and when
21 they are looking at those items they are looking for
22 markings to see if there is enough markings on the
23 shell casings on the bullet to determine whether or
24 not that if they even had a gun they would be able to
25 match it up. And the SLED firearms's expert told you

1 yeah, there was marking on both of these items and if
2 I had a weapon I could have test fired it to see if it
3 matched up with these marking and then we would have
4 known whether or not it was the murder weapon. But
5 Mr. Blakeney he got rid of it for a couple of bucks so
6 we don't know, do we.

7 When Mr. Barfield was talking about the
8 conversation I heard his say repeatedly to you in
9 closing argument; they, they, they, they. Is that
10 what the witness's stood up here and told you because
11 that is not what I remember hearing and I know you all
12 heard a lot and nobody can remember everything. So I
13 will tell you if when you get back there and you are
14 discussing this and you can't remember, because nobody
15 can remember everything exactly what somebody said you
16 do have the opportunity to rehear testimony.

17 What I remember Mr. Blakeney saying is there was no
18 they involved. He says when they get to the club he
19 don't know what Mr. McDow and Mr. Green are doing. He
20 couldn't even tell me if they were drinking. He says
21 Mr. Clinton came up to him and said I need to go get
22 some money, pick up money. Something to that effect.
23 He doesn't say that my client was there when Mr.
24 Clinton made this statement. He doesn't say Mr. McDow
25 was there when my client made the statement. He

1 wasn't even hanging out with my client then. Simply
2 we got to the club I don't know what they were doing.
3 I don't what they were drinking, but hey, Mr. Clinton
4 asked me to go ride him over to get me some money.
5 Where is the conspiracy, the aiding, the planning of
6 this crime by Mr. Green.

7 Mr. Blakeney says the four on of them get in the
8 car and what is discussed, what is even mentioned on
9 the way over to Roseanna Lane. Well, there is not one
10 word about Mr. Green saying anything. Not one word
11 about Mr. Green having a weapon. Not one word about
12 a robbery, a killing, a shooting. No one is pulling
13 out a gun on the way there and cocking it, checking to
14 make sure it is loaded. No one is putting on masks.
15 No one is putting on gloves to prevent leaving DNA
16 behind when they are touching things. No one is doing
17 anything suspicious like that. Wayne Blakeney says
18 it's just Mr. Clinton giving him directions on where
19 to go, not Al Green giving him directions. And he
20 says they roll up in at Roseanna Lane the four of them
21 in this car and three of them get out. How convenient
22 he is not one of those three. He says that he sits in
23 that car about ten minutes. He doesn't remember, I
24 asked him can you show me exactly where you parked
25 when he out there that night and he is not sure. But

1 he sure was sure when I asked him did you hear a
2 gunshot because you are telling us when Mr. Clinton
3 tells you, I shot her, that you didn't believe it. So
4 did you hear a gunshot that night? Nope, didn't hear
5 a gunshot. Well, did you see which way they went?
6 Nope. Could you see the door to Miss Jones's trailer
7 that all the State's evidence point to someone went
8 into the front door of her trailer? Nope. They
9 disappeared was the word I heard him say. So he can't
10 say whether the three of them stayed together. He
11 can't say which one of them, two of them, three of
12 them, any of them if they actually went inside of Miss
13 Jenika Jones's trailer. He could not see it. He says
14 ten minutes later they come back and I believe my
15 notes when he was testifying said they were in a
16 little bit of a hurry. They get in the car and Mr.
17 Clinton says chill. Well, at this point Mr. Blakeney
18 tells you he don't know anything that is going on at
19 all. He has no idea. He just thinks they are going
20 over there to pick up some money. Doesn't hear a a
21 gunshot. I asked did you hear any loud or unusual
22 noise? What did he say, he said no. So why would Mr.
23 Clinton get in the car and tell him to chill.
24 According to him he is not freaking out. He don't
25 even know anything is going on. And what does he say

1 he hears from the back seat where allegedly my client,
2 Mr. Green is and Delrico McDow, go, go. You notice
3 there was no explanation about that. We don't know
4 whether go, go means hurry up because I got to get to
5 back the club because I'm hitting on this girl and I
6 don't want her to leave because she was hot. We don't
7 know if it means hey, we got around the back side of
8 the the trailer, headed towards Jenika Jones's trailer
9 and Tate pulls out a gun and Mr. Green is like, whoa,
10 I did not the sign up for this and he's just wanting
11 to get the heck out of there. Cause what happens when
12 they leave Roseanna Lane? Well, for one, Mr. Blakeney
13 says he drives fast, but did you notice what he didn't
14 say? He never said he was driving with no lights on.
15 He never said that he almost ran another car off the
16 road. Like Miss Nelson and Miss Montgomery told you.
17 He didn't say any of those things. He says they go
18 back to the club, back to the Hole in the Wall, that
19 he is still at this point has never seen my client
20 with a weapon. Never heard him talking about a
21 robbery. Doesn't see him come back with anything in
22 his hands that could have been taken out of that
23 bedroom that you all have pictures of that are
24 ransacked. Nothing. And they hang out for a little
25 bit at the club and then he takes my client home.

1 Who does he spend all this quality time with that
2 evening, not Al Green.

3 He says as they are riding back to the club that
4 night he doesn't say anything about my client acting
5 freaked out, nervous, amped-up. Adrenaline pumping.
6 I think if you were there when all this goes down
7 someone that you use to live that has has know your
8 sister for ages you would be a little fired up about
9 that. He doesn't say anything unusual at all about
10 Mr. Green's demeanor. Nothing. Didn't hear him say
11 anything on the way back. Hang out for a little while
12 at the club. He takes all these people home, other
13 guys we don't even know who they are in addition to
14 Mr. McDow and Mr. Green. And spend all of this time
15 until six in the morning with Mr. Clinton the next day
16 and he says not when my client is in the car. Not
17 when Mr. McDow or anybody else is in the car. That
18 suddenly Mr. Clinton feels like talking and says I
19 killed her and he is in such a confessing mood
20 apparently, Mr. Clinton, I can't think of a more
21 incriminating statement to come out of someone's mouth
22 other than I killed her. Pretty damning. Really
23 putting yourself in a lot of trouble saying something
24 like that. But you know what he doesn't say? He is
25 willing to go that far and throw himself out there

1 under the bus, but he never says, oh, and Mr. McDow
2 and Mr. Green helped me do it. Oh, and they were in
3 on it the whole time. Oh, they were inside that
4 trailer with me. He is going to hold that back, but
5 confess to murder. Does that make be sense?

6 Motivation. People's reasons for saying what
7 they say. Mr. Barfield aruges that it makes Mr.
8 Blakeney a more credible witness that he doesn't have
9 a deal. Really? Think about that using your common
10 sense as several of us have asked you to do. If I am
11 hired to cut someone's lawn and they say right up
12 front here you go. I'm going to pay \$100 to do my
13 yard today and they gave me the money at seven o'clock
14 that morning. I got the money in my hand. Don't
15 matter how good or how bad a job I do cause I already
16 got the money. I got my deal. But if they say, hey,
17 go cut my lawn and I will pay you for your work when
18 the job is done, doesn't that give me a little extra
19 motivation to do a good job. Maybe spend a little
20 more time on what I am doing. Pay more attention to
21 detail; edging and blowing away all the grass
22 clippings when I am done. Making it look real nice
23 and pretty if I haven't got my money yet and I am
24 earning it.

25 Mr. Barfield also told you, oh, the defense is

1 going to talk about forensics. That is just fancy TV
2 stuff and you know, it is all real confusing. SLED
3 told you that. There is mixtures of people. What I
4 say to you ladies and gentleman you are going to have
5 all the SLED reports back there with you. Take a look
6 at them. I don't there is any confusion in SLED's
7 testimony or their reports. You will get to see what
8 they say, nothing they got is a match to Al Green. I
9 don't see any confusion there. And why is forensics
10 and DNA important, the same reason that I said at the
11 beginning of this trial. Yes, witness's testimony is
12 important. I want you to pay attention and consider
13 what all of the witnesses told you, but forensic
14 evidence, physical evidence, not even just forensic,
15 things like pictures and the trim off the car and all
16 this stuff that is going to come back to the jury room
17 is important because it can back up what someone says
18 or it can contradict it. To help you all do your job
19 to determine what the facts are in this case. So Mr.
20 Barfield wants you to pay attention to the physical
21 evidence in DNA when it helps you. When it helps your
22 case, but not when his case ain't so good. Then it's
23 just fancy T.V. stuff. Forensics and collecting
24 physical evidence isn't important, really. Our
25 Lancaster County County Sheriff's office, they had

1 three CSI people out there that night just on this
2 case. Why they spending all this money to pay those
3 people? We had at least three people from SLED
4 testify. Why are we putting all this money in those
5 people and in SLED in general if that stuff is just
6 fancy TV stuff. Just not that important. Does that
7 make sense.

8 I am not going to take at this out of this box and
9 I am sure there are pictures in this pile here too.
10 It certainly does appear that a piece of trim from
11 this car was on Roseanna Lane. Mr. Clinton lives on
12 Roseanna Lane. I don't how many times if it was this
13 car or not and how times it went in and out of that
14 Roseanna neighborhood that night. No idea. I can
15 tell you that Miss Montgomery and Miss Nelson say they
16 think they see that car there that night and Blakehey
17 drives it -- says he drove it through there twice.
18 And if a piece of trim is found at Roseanna Land that
19 does match the car, well great, the car is not on
20 trial here. We need more than that. The inquiry
21 doesn't stop with whether or not the car was there
22 that night. That's not the issue here. Was Mr. Green
23 in that car. Again, it doesn't stop there. Did Mr.
24 Green plan with Mr. Clinton or whoever else to commit
25 a robbery, plan a lick. Did he do something other

1 than merely be present? You are going to hear those
2 words, mere presence from the judge when he gives you
3 the law. Just being there is not enough to be a
4 criminal act. You have to do something to aid,
5 assist, some overt act to help further along what is
6 going on. I didn't hear testimony from a single
7 witness that he helped do that and the State says oh,
8 but wait a minute. We got it all figured out from the
9 day before. Remember Dominique Davis came up here and
10 told you up he has been planning this for at least a
11 day. And that's when Mr. Barfield started to use that
12 "they" language there again. They were planning this.
13 They were talking about this, but what I remember
14 Dominique Davis saying is Mr. Clinton asked Mr. Green,
15 or was telling Mr. Green about doing a lick. Not that
16 the two of them came up with this idea at the same
17 time. That it was a question or brought up by Mr.
18 Clinton. That's what I remember her saying. She says
19 that when she hears this conversation between Mr.
20 Green and Mr. Clinton that she's talking to Miss
21 Tinsley. So Miss Tinsley is close enough to all this,
22 to be having a conversation with Miss Davis. She
23 can't be that far away and Miss Davis can focus on
24 that conversation with Miss Tinsley and this
25 conversation going on over here between Mr. Green and

1 Mr. Clinton. Miss Tinsley, called by the State, tells
2 you I did not hear any such conversation. And Mr.
3 Twitty who tells you he stopped by there that morning
4 said when I got to the house I didn't even see Mr.
5 Clinton there and did not hear any discussion about a
6 robbery or a lick. And even if Miss Davis is -- if we
7 believe that what Miss Davis is telling you the truth
8 what does she say my client said about that. She said
9 my client said, are you talking about the girl that
10 works all the time with the black car. It's kind of
11 like what are you talking about. She didn't say I
12 heard him say yeah, let's go do it, or yeah, how are
13 we going to get this done. Yeah, I got a gun I can
14 bring to this, or yeah, I'm going to get some money
15 off that girl. None of that. She never says she
16 heard Mr. Green agree to go along with this.

17 I never heard any testimony that Miss Jones has a
18 black car. I heard mention of a Jeep somewhere. Not
19 sure from who. You are going to have the pictures at
20 her residence. There is no black car there. That's
21 all there in evidence. No talk at all that day about
22 who they are talking about. That a huge assumption
23 there. Miss Davis said I didn't hear names, who,
24 what, what they were going to steal, who they were
25 going to go after, or where they were going to do

1 this. None of that. So then the State says, oh, wait
2 but we got Mr. Twitty too and he can show Mr. Green
3 was more than just a sweet innocent babe in the woods.
4 He helped plan all this at least a day in advance.
5 And what does Mr. Twitty tell you. There's a lot of
6 "they" talk again when the solicitor talked about it.

7 Mr. Twitty tells you it is Mr. Clinton. That my
8 client is not even there and Mr. Twitty tells you
9 Clinton comes up to him and it's like, hey man, want
10 to do a lick? And what does Mr. Twitty tell you his
11 response was to that question posed by Mr. Clinton,
12 yeah whatever. Then Mr. Twitty says my client comes
13 up. Comes out of Miss Tinsley's house or whatever he
14 was in the neighborhood. Again, my client is not even
15 there hanging out with Mr. Clinton when this
16 conversation first starts. He just strolls up on Mr.
17 Clinton and Mr. Twitty's conversation and then when
18 Mr. Green rolls up on the conversation Mr. Twitty says
19 he hears Mr. Clinton hey man, do you want to do a
20 lick? What does he say my client said, yeah,
21 whatever. The same response that Mr. Twitty gave. If
22 Mr. Clinton and Mr. Green had already planned to do a
23 robbery that morning why later on that night is Mr.
24 Clinton asking my client again about the very same
25 thing if they already have this big agreement. That

1 don't make any you sense. And then who keeps pushing
2 up. Did you hear any testimony from Mr. Twitty that
3 my client is like, yeah, well how are we going to get
4 there? I will try to get a car and I'm going to get a
5 gun and this is how we are going to do it. No, he
6 didn't hear my client say anything like that. He says
7 it is Mr. Clinton pushing him, Mr. Twitty, to go get a
8 car and Mr. Twitty is like, no, man, my car is parked
9 for the night. Well, you don't hear my client jump in
10 say oh, let me see if I can get a car. Pushing that
11 along.

12 I asked Mr. Twitty, well, you said yeah, whatever.
13 Whenever Mr. Clinton asked you to do the lick did you
14 ever go do you a lick, robbery or any crime with Mr.
15 Clinton and he is like no.

16 Beyond a reasonable doubt. It is the State's job.
17 It is their burden to give you evidence beyond a
18 reasonable doubt in this case. I submit to you they
19 don't have it against Mr. Green. If after you heard
20 all of the evidence in this case, the judge is going
21 to describe for you reasonable doubt and give you the
22 charge on the law of what that means and I ask you pay
23 close attention when he does that. I believe he at
24 the beginning of this case did give you instruction on
25 reasonable doubt and said, you know, if they proved

1 their case beyond a reasonable doubt you will be
2 firmly convinced of Mr. Green's guilt. Are you? The
3 judge has also reminded you that just because these
4 two individuals; Mr. Clinton and Mr. Green are both
5 charged with murder and are both being tried at the
6 same time that you have to evaluate all the evidence,
7 the case against Mr. Clinton and then the case against
8 Mr. Green.

9 The judge is not going to tell you, because that is
10 not the law, that you have to come up with the same
11 result or same verdict on both of them. You can.
12 They can be different or they can be the same. That
13 is for you all. You guys are fact finders in this
14 case. It is your job to hold the State to their
15 burden. They have not met it. The evidence is not
16 there and for that reason I ask you to find my client
17 not guilty..

18 THE COURT: Thank you. Thank you, very much. Miss
19 Raney.

20 Mr. Foreman, ladies and gentleman of the jury, I
21 believe we will take about a 15 minute recess. During
22 this recess do not discuss this case with your fellow
23 jurors or anyone else. You may now go with the
24 bailiff.

25 THE COURT: All right. Court will be in recess 15

1 minutes. Short break.

2 (WHEREUPON, there was a short break.)

3 All right. Welcome back, Mr. Foreman, ladies and
4 gentlemen of the jury panel, it is now the portion of
5 the trial where I will charge or instruct you the law
6 that you are to apply to the facts of the case as you
7 find them to be. The manner in which I charge the law
8 in a criminal matter, in a criminal case, is I charge
9 the general law that applies to all criminal cases in
10 South Carolina first. After I charge the general
11 criminal law I will then charge the law of the crime
12 charged in the indictment of murder. I will then
13 charge hand of one, hand of all or accomplice
14 liability.

15 Finally, I will then charge or instruct you on the
16 form of the verdict and the verdict form itself that
17 you will have in the jury room with you, Mr. Foreman,
18 ladies and gentleman of the jury. Typically, I will
19 give you the caption of the section that I am fixing
20 to cover when I change from one topic or subject to
21 another, I will then give you that next caption to
22 follow along.

23 Charge, arrest, indictment not evidence. As you
24 know the indictments in this case of the defendants
25 charge each defendant with the crime of murder. I

1 remind you that the fact that the defendant were
2 arrested, charged and indicted in this case is not
3 evidence in this case and can not be considered as
4 evidence of guilt in this case, nor do the indictments
5 create any presumption or inference of guilt. These
6 documents again are simply the formal written
7 instruments which contain the charge made against each
8 of the defendants. It is the formal written document
9 by which the case is brought in to this court.
10 Multiple defendants, I charge you that there are two
11 defendants in this case. Each of them is charged with
12 the crime of murder. The case of each defendant and
13 the evidence and the law concerning that defendant
14 should be considered separately and individually.
15 Your verdict does not have to be the same for both
16 defendants. The fact that you may find one defendant
17 guilty or not guilty, should not control your verdict
18 as to the other of defendant.

19 Where more than one person is charged with a crime,
20 if the evidence warrants it, you may convict one and
21 acquit the other, or you may acquit both or you may
22 convict both. It will depend upon your view of the
23 testimony and the evidence and the facts in this case.
24 You must take each defendant and consider the evidence
25 as to that defendant and my instructions to you on the

1 law. You will then right a separate verdict of guilty
2 or not guilty as to each defendant.

3 Presumption of innocence, each defendant has plead
4 not guilty to the indictment and that plea puts the
5 burden on the State to prove the defendants's guilt.
6 A person charged with committing a criminal offense in
7 South Carolina, is never required to prove himself
8 innocent.

9 I instruct you that it is an important rule of the
10 law that a defendant in a criminal trial, no matter
11 what the seriousness of the charge may be, will always
12 be presumed to be innocent of the crime for which the
13 indictment was issued unless guilt had been proven by
14 evidence satisfying you of that guilt beyond a reason
15 doubt. This presumption of innocence does not end
16 when you begin your deliberations, but it accompanies
17 each defendant throughout the trial until you reach a
18 verdict of guilt based on evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 The presumption of innocence has been said to be
21 like a robe of righteousness placed about the
22 shoulders of the defendant which remains with the
23 defendant until it has been stripped from the
24 defendant by evidence satisfying you of the
25 defendants's guilt beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which ever defendant is entitled
4 unless you, the jury, are satisfied from the evidence
5 of the defendants's guilt beyond a reasonable doubt.
6 What is a reasonable doubt in the law? A reasonable
7 doubt is the kind of doubt that would cause a
8 reasonable person to hesitate to act.

9 The State has the burden of proving the defendant's
10 guilt beyond a reasonable doubt. Some of you may have
11 served as jurors in the past, in civil cases where you
12 were told that it is only necessary to prove that a
13 fact is more likely true then not true, such as by the
14 greater weight or the preponderance of the evidence.
15 In criminal cases, the State's proof must be more
16 powerful then that. It must be beyond a reasonable
17 doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendants's guilt.
20 There are very few things that we know in this world
21 with absolute certainty, and in criminal cases the law
22 does not require proof that overcomes every possible
23 doubt. If, based on your consideration of the
24 evidence, your firmly convinced that the defendant or
25 defendants is guilty of the crime charged you must

1 find the defendant or defendants guilty. If on the
2 other hand, you think there is a real possibility that
3 the defendant or defendants is not guilty, you must
4 give the defendant the benefit of the doubt and find
5 him not guilty.

6 Duties of trial jury and trial judge: I remind you
7 that during this trial you and I have certain duties
8 to perform. As to the trial judge, it is my
9 responsibility to preside over the trial of this case,
10 and I also have the duty to rule on the admissibility
11 of the evidence offered during the trial. You are to
12 consider only the competent evidence before you. You
13 are to consider only the testimony which has been
14 presented from the witness stand, and any exhibits
15 which have been made part of the record in this case
16 which you will have with you in your jury room during
17 your deliberations.

18 I have the additional duty to charge you the law
19 applicable to this case. As the presiding judge, I am
20 the soul judge of the law of this case, and it is your
21 duty as jurors to accept the law and to apply the law
22 as you now state it to you. If you already have any
23 idea as to what the law is, or what the law ought to
24 be and it does not agree with what I tell you the law
25 is, you must abandon, you must set aside your idea

1 because you are sworn. You have taken an oath to
2 accept the law and to apply the law exactly as I state
3 it to you.

4 In every case tried in this court before a trial
5 jury, the jury becomes the soul and exclusive judge of
6 the facts in a case. A trial judge cannot intimate,
7 state, comment on, or make any statement to a trial
8 jury about the facts in the case. Since you, the
9 jury, are the soul judges of the facts in this case,
10 you are not to infer from what I have said during the
11 progress of this trial in ruling upon the
12 admissibility of evidence, or otherwise, or anything
13 that I say now during the course of my instructions to
14 you, that I have any opinion about the facts in this
15 case. The law does not allow me to have an opinion
16 about the facts in this case. That is a matter solely
17 for you, the jury, to determine. As jurors, it is
18 your duty to determine the effect, the value, the
19 weight, and the truth of the evidence that has been
20 presented during this trial.

21 Direct and circumstantial evidence. There are two
22 types of evidence which are generally presented during
23 a trial, direct evidence and circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 claims to have actual knowledge of a fact, such as an

1 eyewitness or a earwitness. It is evidence which
2 immediately establishes the main facts to be proved.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a
5 fact. It is evidence which immediately establishes a
6 collateral facts from which the main fact may be
7 inferred. Circumstantial evidence is based on
8 inference and not on personal knowledge or personal
9 observation.

10 The law makes absolutely no distinction between the
11 weight or the value to be given to either direct or
12 circumstantial evidence. Nor is there a greater
13 degree of certainty required of circumstantial
14 evidence then of direct evidence. You should weigh
15 all of the evidence in the case. After weighing all
16 all of the evidence, if you are not convinced of the
17 guilt of the defendant beyond a reasonable doubt, you
18 must find the defendant not guilty. If on the other
19 hand you are convinced of the guilt of the defendants
20 beyond a reasonable doubt, you must find the defendant
21 guilty. Again, ladies and gentleman, there are two
22 types of evidence which are generally presented during
23 a trial, direct evidence and circumstance evidence.
24 Direct evidence directly proves the existence of a
25 fact and does not require deduction. Circumstantial

1 evidence is proof of a chain of facts and
2 circumstances indicating the existence of a fact.
3 Crimes may be proven by circumstantial evidence. The
4 law makes no distinction between the weight or value
5 to be given to either direct or circumstantial
6 evidence. However, to the extent the State relies on
7 circumstantial evidence all the circumstances must be
8 consistent with each other and when taken together
9 point conclusively to the guilt of the accused beyond
10 a reasonable doubt. If these circumstances merely
11 portray the defendants behavior at suspicious the
12 proof has failed.

13 The State has the burden of proving the defendant
14 guilty beyond a reasonable doubt. This burden rests
15 with the State regardless of whether the State relies
16 on direct evidence circumstantial evidence or some
17 combination of both.

18 Credibility of witnesses. Necessarily, you must
19 determine the credibility of witnesses who have
20 testified in this case. Credibility as you all know
21 simply means believability. It becomes your duty as
22 jurors to analyze and to evaluate the evidence and
23 determine which evidence convinces you of its truth.
24 Against the backdrop of your individual and collective
25 good judgement, and common sense, in determining the

1 believability of witnesses who have testified in this
2 case, you may believe one over several or several
3 offer one. You may believe a part of the testimony of
4 a witness and reject the remaining part of the
5 testimony of that same witness. You may believe the
6 testimony of a witness in its entirety or reject the
7 testimony of a witness in it's entirety. You may
8 consider whether any witness has exhibited to you any
9 interest, bias, prejudice or other motive in this
10 case. You may consider whether or not the witness's
11 testimony has been corroborated by other witness's
12 testimony or has been contradicted or impeached by
13 other witness's testimony. Whether or not a witness
14 testimony is consistent within itself or there are
15 inconsistencies within the testimony. You may also
16 consider whether any witness has exhibited to you any
17 interest, any bias, any prejudice, or any other motive
18 in this case. You may also consider the demeanor of
19 the witness while testifying before you on the witness
20 stand. In other words, the appearance of the witness.
21 The manner of the witness while testifying before you
22 that was exhibited to you while the witness was on the
23 witness stand. You may consider anything that is in
24 the record that will help you to determine the
25 credibility, believability of the witnesses who have

1 testified before you from this witness stand.

2 Expert witnesses, and you heard me say this several
3 times throughout the trial. This is a little bit
4 longer than the ones I use in the trial, but not much.
5 Not much. The rules of evidence ordinarily do not
6 permit witnesses to testify to opinions or
7 conclusions. There is an exception to this rule for
8 witnesses that we call "expert witnesses". A witness
9 who, by education and experience has become an expert
10 in some art, science, profession, or calling may state
11 an opinion as to relevant and material matters, in
12 which the witness claims to be expert, and may also
13 state the reasons, or the basis for the opinion or
14 opinions.

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

25 An expert witness's testimony is to be given no

1 greater weight than that of any witness simply because
2 the witness is an expert. Further, you are not
3 required to accept an expert's opinion, even though it
4 is not contradicted.

5 Statement of defendants. A statement alleged to
6 have been made by and I used defendant, defendants,
7 singular or plurally, has been admitted into evidence
8 in this case. While the Court has determined that the
9 statement is admissible, I instruct you that you make
10 the ultimate decision as to whether or not the
11 defendant made the statement. If the defendant did
12 make a statement, you must determine whether the
13 statement was made by the defendant voluntarily and of
14 his own free will. This means that the statement was
15 not caused by pressure, force, fear, threats,
16 coercion, or intimidation, or by hope or a promise of
17 leniency or a reward of any kind. In determining
18 whether the statement was voluntarily, you should
19 consider both the characteristics of the defendant and
20 the details of the questioning. Some of the factors
21 that you must consider are: The age of the defendant;
22 the defendant's education or lack of education; the
23 defendant's mental ability or capacity; the defendants
24 I.Q. or intelligence; the defendant's background and
25 environment; the place and length of the detention;

1 the nature of the questioning; and the advice, or lack
2 thereof to the defendant of his constitutional rights
3 including, but not limited to, the right to remain
4 silent; that any statement could be used against him
5 in a court of law; the right to have a lawyer present;
6 that if he could not afford a lawyer a lawyer would be
7 appointed to represent him without any cost; and that
8 he could stop making a statement at any time. You
9 must carefully consider all of the surrounding
10 circumstances before you give any weight to an alleged
11 statement.

12 The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was
14 voluntary. If you determine that it was voluntary you
15 may give the statement any further consideration that
16 you deem proper. You must decide what weight, if any,
17 should be given to the alleged statement. If you
18 determine an alleged statement was not the free and
19 voluntary statement of the defendant you should not
20 consider the statement at all.

21 I instruct you and emphasize that the fact the
22 defendants did not testify is not a factor to be
23 considered by you in any way in your deliberation and
24 in your consideration on the question of the guilt or
25 the innocence of the defendant. It must not be

1 considered by you in any manner whatsoever. A
2 defendant has the constitutional right to remain
3 silent, and the assertion of this right must not be
4 considered by you in your deliberations. I will
5 repeat, under your oath, you are to draw no conclusion
6 whatsoever from the fact that the defendants in this
7 case did not testify. The fact that these defendants
8 did not testify should not even be discussed in the
9 jury room. The burden of proof as I have stated to
10 you is on the State, the defendant are not required to
11 prove themselves innocent. The burden of proof
12 remains on the State to prove guilt beyond a
13 reasonable doubt.

14 Intent. In order to establish criminal liability,
15 criminal intent is required. For example, the mental
16 State required to be proven by the State for a
17 particular crime might be purpose, intent, knowledge,
18 recklessness, or criminal negligence. Criminal intent
19 must be proven by the State beyond a reasonable doubt.
20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances
22 surrounding the situation. There is no way to prove
23 intent to a mathematical certainty. There is no way
24 medical science can dissect a person's brain and
25 determine what the person had in mind, so the law says

1 that criminal intent may be inferred from the
2 circumstances shown to have existed. This is how you
3 make your determination of whether or not the element
4 requiring in at any time was present. It is not
5 necessary to establish intent by direct and positive
6 evidence, but intent may be established by inference
7 in the same way as any other fact by taking into
8 consideration the acts of the parties and all the
9 facts and circumstances of the case.

10 Criminal intent, ladies and gentleman, is a mental
11 state. A conscious wrongdoing. It is up to you to
12 determine what the defendant or defendants intended to
13 do based on the circumstances shown to have existed.

14 Criminal intent can arise from action or a
15 failure to act. It may arise from negligence,
16 recklessness, or an indifference to duty or to
17 consequences that is considered by the law to be the
18 equivalent of criminal intent.

19 Ladies and gentleman, that is the general criminal
20 law that applies to all criminal cases in South
21 Carolina. Just to recap, the charge, arrest,
22 indictment not evidence; I charged you on multiple
23 defendants; the presumption of innocence; the burden
24 of proof being on the State beyond a reasonable doubt;
25 duties -- your duties as the trial jury, my duties as

1 the trial judge; direct and circumstantial evidence;
2 the credibility of the witnesses; expert witnesses;
3 statement of the defendant; not holding the fact that
4 neither of the defendants did not testify in this
5 case, nor even discuss it in the jury room, and the
6 issue of criminal intent.

7 I now go going to charge you specifically on the
8 elements of murder and accomplice liability, or as
9 some time called the hand of one is the hand of all.

10 Each defendant is charged with murder. The State
11 must prove beyond a reasonable doubt that the
12 defendant killed another person with malice
13 aforethought.

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

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

25 Malice aforethought may be express or inferred.

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

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

21 The following are examples of instruments which may
22 be deadly weapons: A pistol, shotgun, rifle, dirk,
23 dagger, knife, sling shot, metal knuckles, razor,
24 gasoline. A gun may be a deadly weapon even if it is
25 not operating.

1 If facts are proven beyond a reasonable doubt
2 sufficient to raise inference of malice to your
3 satisfaction, this inference would be simply an
4 evidentiary fact to be considered by you, the jury,
5 along with the other evidence in the case and you may
6 give it the weight that you decide it should receive.

7 Under our law there is what is known as
8 accomplice liability, or as some time called the hand
9 of one is the hand of all. If a crime is committed by
10 two or more people who are acting together in
11 committing a crime, the act of one is the act of all.
12 A person who joins with another to commit an
13 unlawfully act is criminally responsible for
14 everything done by the other person which happens as a
15 probably or natural consequence of the acts done in
16 carrying out the common plan and purpose. For
17 example, two people can be guilty of of a burglary
18 when only one entered the residence. One could remain
19 outside and items could be stolen and handed out the
20 window to one outside. Both could be guilty of the
21 burglary although one entered the residence. A
22 lookout could be guilty of the burglary although he or
23 she did not go in the residence while another
24 individual went in the residence, stole items from the
25 residence and came back out. Two or more people are

1 together, acting together, assisting each other in
2 committing the offense the act of one is the act of
3 all or as it is some time said the hand of one is the
4 hand of all. Prior knowledge that a crime is going to
5 be committed without more is not sufficient to make a
6 person guilty of that crime. Mere knowledge that
7 another person is going to commit a crime, even if the
8 defendant is present when the crime is committed, is
9 not sufficient to convict the defendant as a
10 principal. Guilt as a principal is shown by actual or
11 constructive presence at the scene as a result of
12 prior arrangement.

13 Therefore, a finding of prior arranged plan or
14 common scheme is necessary for a finding of guilt as a
15 principal.

16 The State must prove beyond a reasonable doubt by
17 competent evidence the theory of the hand of one is
18 the hand of all. A principal in a crime is one, one
19 who either actually commits the crime, or two, one who
20 is present aiding, abetting, or assisting in the
21 committing of the crime. When a person does an act in
22 the presence of and with the assistance of another,
23 the act is done by both. Where two or more people
24 acting in a common plan or scheme are present at the
25 commission of a crime, it does not matter who actually

1 commits the crime. All are guilty. The hand of one
2 is the hand of all. Present at the commission of a
3 crime means to be sufficiently near to aid, and abet
4 and substance, in the commission of the crime.

5 However, mere presence at the scene of a crime is not
6 sufficient to convict one as a principal on the theory
7 of aiding and abetting.

8 Intent is also a necessary element. For there must
9 have been a common design or intent to commit the
10 crime and the crime must have been committed pursuant
11 thereto with the person present aiding and abetting by
12 some overt act. Intent means intending the result
13 which actually occurs not accidentally or involuntary.
14 Intent may be shown by acts and conduct of the
15 defendant and other circumstances from which you may
16 naturally and reasonably infer intent. The State must
17 prove these elements beyond a reasonable doubt. That
18 is the charge of murder and its accompanying charge of
19 accomplice liability, or the hand of one is the hand
20 of all.

21 Finally, ladies and gentleman, jury verdict. There
22 are two possible verdicts you may find in this case as
23 to each defendant; guilty or not guilty. There is
24 absolutely no significance whatsoever in the order in
25 which I state those possible verdicts. It is simply

1 one must be stated first.

2 You will have Mr. Foreman, ladies and gentleman, a
3 verdict form in the jury room with you, one as to Mr.
4 Clinton, one as to Mr. Green. They are
5 self-explanatory. It has the caption, the indictment
6 number, it says as to the murder we the jury
7 unanimously find the defendant, whichever name is at
8 the top, guilty or not guilty. After your
9 deliberation and your determination of the facts in
10 the case you take those facts and you apply them to
11 the law as I told you the law is, based on that you
12 find that the State has met its burden of proof,
13 beyond a reasonable doubt as to the guilt of the
14 defendant, Clinton, I would ask you, Mr. Foreman, if
15 you check to the left of the word guilty and circle
16 both the check mark and the word guilty, date and
17 sign it. If after your determination of the facts of
18 the case as to the defendant Clinton, you find the
19 State has failed to meet its burden of proof beyond a
20 reasonable doubt I will ask you to check to the left
21 of the two words, not guilty, circle the check, circle
22 the two words, date and sign.

23 As to Mr. Green, if you find the State has met its
24 burden of proof beyond a reasonable doubt your verdict
25 guilty, check to the left of the word guilty, circle

1 both, not guilty, check to the left, circle both, date
2 and sign it.

3 Ladies and gentleman, your verdict must be
4 unanimous. All 12 of you must agree as to the verdict
5 as to each defendant. Again, you can find both
6 guilty, you can can find both not guilty, you can find
7 one guilt and the other one not guilty. That is
8 entirely your decision, but the verdict as to each
9 defendant must be the unanimous verdict of the jury;
10 guilty or not guilty. Unanimous. Your verdict can
11 not be based on passion, prejudice, emotion or any
12 other factor not in evidence on this case.

13 Mr. Foreman, once the jury has reached a unanimous
14 verdict if you would then knock on the jury room door,
15 we will then receive you back in to the courtroom for
16 the presentation of the verdicts of the jury. I am
17 going to have to ask you one final time to go to the
18 jury room. Do not begin your deliberations at this
19 time. The law requires I meet with the attorneys one
20 final time in case I misspoken or have to additionally
21 instruct you on the law. If I do not have to bring
22 you back out, I will then bring the alternates out.
23 The evidence -- make sure all the evidence, I think
24 it's 1 through 63. The items of evidence would be
25 presented to you along with the verdict form. You

1 will then be informed by the clerk to begin your
2 deliberations with your fellow jurors. I believe they
3 brought lunch --

4 MR. BARFIELD: Yes.

5 THE COURT: And you can eat and deliberate or
6 however you want to do it. If you have any questions
7 during the course of your deliberations if you would
8 write me out a note, knock on the jury room door, Mr.
9 Knight will certainly give it to my attention. Again,
10 do not begin your deliberations until you are
11 instructed to do so by the clerk. You may now go with
12 your bailiff to the jury room.

13 (WHEREUPON, the jury leaves the courtroom.)

14 THE COURT: Any exceptions from the State?

15 MR. BARFIELD: No, sir.

16 THE COURT: From the defense, Mr. Frick?

17 MR. FRICK: None on behalf of Mr. Clinton.

18 THE COURT: Miss Raney?

19 MS. RANEY: None on behalf of Mr. Green.

20 THE COURT: All right. If you all will check one
21 through 63 and I do have the verdicts up here if you
22 like to look at it.

23 (WHEREUPON, the attorneys went through the
24 exhibits.)

25 THE COURT: All right, any objections?

1 MS. RANEY: No objection for Green.

2 MR. FRICK: No objection for Clinton.

3 MR. BARFIELD: No objection.

4 THE COURT: All right. We will be at waiting our
5 jury's verdict.

6 (Jury started deliberations at 1:38).

7 THE COURT: All right. I understand that we have a
8 verdict in this matter. I would remind the spectators
9 in the courtroom that I do not allow any show of
10 emotion whatsoever. I have found that this stage, the
11 taking of the verdict can be very emotional for
12 obviously the victim's family and also for the family
13 of the Mr. Clinton and Mr. Green. It can be emotional
14 for both sides. If you do not feel like you can
15 contain your emotions I would ask you to please leave
16 at this time. If you choice not to leave I will take
17 that as an indication that you can control your
18 emotions and if you stay and do not control them I
19 will ask the sheriff to take you into custody. I
20 consider that to be a contempt of court and will have
21 a contempt hearing after the taking of the jury's
22 verdict. So if anyone want to leave, leave now.

23 Thank you. Thank you, very much. All right. If
24 you bring us our jury panel please.

25 (Jury returns with verdict at 3:47)

1 THE COURT: All right, madame clerk.

2 All right, the jury verdict appears to be in
3 proper form, signed and date by presiding juror.
4 Madame clerk would you publish our verdict, please.

5 COURT CLERK: Yes, sir. Case number
6 2012-GS-29-616, State versus Devatee Tymar Clinton, we
7 the jury unanimously find the defendant guilty.
8 Indictment number 2012-GS-29-636, State of South
9 Carolina versus Al Martinez Green, we the jury
10 unanimous lie find the defendant guilty.

11 Ladies and gentlemen, is this your verdict so say
12 you all by the raising of your right hand.

13 (Jurors raise their hands.)

14 THE CLERK: Let there record reflect all jurors
15 rasied their hands.

16 THE COURT: All right, thank you. Thank you very
17 much. Anything for the jury from the State solicitor?

18 MR. BARFIELD: No, sir.

19 THE COURT: From the defendant Clinton?

20 MR. FRICK: Request polling, Your Honor.

21 THE COURT: From the defendant Green?

22 MS. RANEY: Requesting polling, Your Honor.

23 THE COURT: All right, madame clerk will you
24 explain that procedure to the jury?

25 THE CLERK: I am going to ask each one of you a

1 question and ask you if this is your verdict and is it
2 still your verdict and you need to respond.

3 Foreman, James M. Spicer, were these your
4 verdicts?

5 JUROR: Yes, ma'am,

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes, ma'am.

8 THE CLERK: Taylor Shurlëy, are these your
9 verdicts?

10 JUROR: Yes, ma'am.

11 THE CLERK: Are they still your verdicts.

12 JUROR: Yes, ma'am.

13 THE CLERK: Robert Whitaker, are these your
14 verdicts?

15 JUROR: Yes, ma'am.

16 THE CLERK: Are they still your verdicts?

17 JUROR: Yes, ma'am.

18 THE CLERK: Brooke Parker, are these your
19 verdicts?

20 JUROR: Yes, ma'am.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes, ma'am.

23 THE CLERK: Shahn Syfert, are these your verdicts?

24 JUROR: Yes, ma'am.

25 THE CLERK: Are they still your verdicts?

1 JUROR: Yes, ma'am.

2 THE CLERK: Michael Walker, are these your

3 verdicts?

4 JUROR: Yes.

5 THE CLERK: Are they still your verdicts?

6 JUROR: Yes.

7 THE CLERK: Alicia Flannigan, are these your

8 verdicts?

9 JUROR: Yes, ma'am.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes, ma'am.

12 THE CLERK: Christopher Koutroumpis, are these your

13 verdicts?

14 JUROR: Yes.

15 THE CLERK: Are they still your verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Judy Max, are these your verdicts?

18 JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 JUROR: Yes.

21 THE CLERK: David Cauthen, are these your verdicts?

22 JUROR: Yes.

23 THE CLERK: Are they still your verdicts?

24 JUROR: Yes.

25 THE CLERK: Joida Burtis, are these your verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdicts?

3 JUROR: Yes.

4 THE CLERK: Carol Roger, are these your verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE COURT: All right. It appears all jurors have
9 been polled as to the verdicts. They have answered
10 each question in the affirmative; are these your
11 verdicts and are they still your verdicts, as to Mr.
12 Clinton and as to Mr. Green.

13 Anything further for the jury from the defendant
14 Clinton, Mr. Frick?

15 MR. FRICK: No, sir.

16 THE COURT: The defendant Green, Miss Raney?

17 MS. RANEY: No, Your Honor.

18 THE COURT: Thank you. Thank you, very much. Mr.
19 Foreman, ladies and gentleman of the jury panel,
20 momentarily I will release you from your jury service
21 for the remainder of the week. I know it has been a
22 long week for you. I think all the attorneys, who
23 were excellent trial lawyers, have told you it was
24 going to be a long, tedious and somewhat repetitive
25 week. I am sure when you got that notice in the mail,

1 however many weeks ago you got it about jury duty you
2 perhaps never imagined yourself being selected on the
3 case such as this lasting this length of time. Quite
4 frankly I never criticize nor commend a jury for its
5 verdict or verdicts, but I will say this, I have not
6 worked with a more hard working, focused attentive
7 jury then you have been and that is very important to
8 our system of justice. Our jury trial system is the
9 greatest judicial system ever created by man and many
10 people attack it from many points of views. Well may
11 be judges should decide. May be this, may be that.
12 It's like people don't trust the American people. But
13 if you watch the news, which I know many of us do, and
14 we tragedies that occur in our country like the Boston
15 marathon, like 911, like the violence that we see in
16 schools. Each and every time we see Americans running
17 towards the fire, running to help their fellow
18 Americans, going upstairs way of buildings that are on
19 fire, protecting students, teachers don't run they
20 protect their students. They save their lives and
21 many times give up their own lives. I don't know of a
22 better group to decide these cases between the State
23 and the defendants or between citizens and citizens or
24 citizens and business then the American people.

25 It's my pleasure and privilege and I sincerely mean

1 that to work with you you all. Besides being a daddy
2 it's probably the greatest honor of my life to work
3 with the citizens of South Carolina week end and week
4 out in either in our criminal or civil case and I
5 salute you for that.

6 You are now excused. Of course if you want to
7 remain I will take up some motions and probably also
8 sentence Mr. Green and Mr. Clinton today. You can
9 certainly as you go come back around and remain in the
10 courtroom if you like, but you are now excused. Thank
11 you. Thank you, very much.

12 (WHEREUPON, the jurors leave the courtroom.)

13 THE COURT: All right, any motions on behalf the
14 Mr. Clinton, Mr. Frick?

15 MR. FRICK: Yes, sir. At this time on behalf of
16 Mr. Clinton we would ask for a new trial based on our
17 objections and pretrial motions and probably motions
18 in trial that were denied regarding pretrial motions
19 and I think there was a bit of evidence that Your
20 Honor let in that I objected to understands 403
21 analysis; the statement of the conspiring, for lack
22 ever a better.

23 THE COURT: Of Miss Davis and --

24 MR. FRICK: That's correct.

25 THE COURT: Mr. Twitty?

1 MR. FRICK: Correct, and other pretrial motions
2 that we made.

3 THE COURT: Thank you. Thank you, Mr. Frick. I
4 would respectfully deny the motion for a new trial. I
5 reaffirm all my previous of rulings, both pretrial,
6 most of which were -- most of which were rulings
7 against the State of South Carolina as far as 404(B),
8 Neil versus Biggers, although res gestae I think also,
9 but clearly your 403 and State's 11.

10 MR. FRICK: Yes.

11 THE COURT: All of that is clearly preserved and I
12 will renew all my previous rulings in that regard.

13 MR. FRICK: One additional motion, I y always make
14 after trial and I'm not entirely sure whether it
15 applies or not because I can't find adequate case law
16 to inform me, but I think it does apply in criminal
17 cases as well. I would ask the Court acting as 13th
18 juror to set aside the verdict having seen the
19 evidence that the State presented is not adequate for
20 them to have reached the verdict they did and in your
21 capacity as 13th juror you can set aside the verdict
22 and I you ask you to do so.

23 THE COURT: All right. Thank you. Thank you, Mr.
24 Frick, I would respectfully deny than motion.

25 Miss Raney.

1 MS. RANEY: Thank you, Your Honor. On behalf of
2 defendant Al Green I would also renew all previous
3 objections and motions made throughout the course of
4 trial on his behalf and ask that a new trial be
5 granted and I don't know always term the 13th juror
6 motion as the judgement, notwithstanding the verdict
7 asking you to step in as Mr. Frick did and find that
8 there was not enough evidence and set aside the jury's
9 verdict, Your Honor.

10 THE COURT: Again, I would respectfully deny those
11 motions and I would reaffirm all my previous trial
12 rulings as to Mr. Green.

13 THE COURT: Any reason Mr. Frick sentencing could
14 not be imposed at this time?

15 MR. FRICK: I am not aware of any reason, no, sir.

16 THE COURT: Miss Raney?

17 MS. RANEY: I am not aware of any reason either.

18 THE COURT: All right. If they will come around
19 please. Solicitor

20 All right, anything further from the State
21 solicitor?

22 MR. BARFIELD: Your Honor, I will give records on
23 these young men and also the victim's mom and stepdad
24 are here along with victim's dad and and stepmom, I
25 think. Are they here today? They are gone. There

1 some folks who I am sure will want to speak, but I
2 will give you the records first. I will tell you
3 about Mr. Green first. Your Honor his record is just
4 juvenile record. He has got adjudications in 2004 for
5 carrying a weapon on school property and in 2011 for
6 assault on a correctional facility employee. That
7 again is Mr. Green.

8 Your Honor, Mr. Clinton's record is 2005, assault
9 and battery of a high and aggravated nature and then
10 in 2012 he was convicted again of assault and battery
11 of high and aggravated nature. That conviction was
12 for a pre 2010 ABHAN, the old common law ABHAN. He
13 also had a possession of a pistol of a person
14 convicted of a violent crime, carrying a pistol,
15 pointing and presenting a firearm and burglary second
16 degree, violent.

17 THE COURT: And tell me about, were those all one
18 event?

19 MR. BARFIELD: No, sir. I think I can break it
20 down this way and I sure Mr. Frick and Mr. Clinton
21 will correct me if I am wrong. The first ABHAN was a
22 separate event. I believe that the second ADHAN and
23 the firearm, the possession of pistol by a person
24 convicted of a crime of violence and carrying the
25 pistol and pointing the pistol were a separate event

1 and then the burglary conviction was the result of the
2 the Nard Roseborough armed robbery that we talked
3 about in camera in this case. So there were three
4 separate events, I believe, that led to those
5 convictions.

6 THE COURT: So the 2012 conviction is one assault
7 battery of high and aggravated nature?

8 MR. BARFIELD: Yes, sir.

9 THE COURT: And there is a second, that is
10 possession of a pistol by an individual convicted of a
11 crime of violence, carrying a pistol, pointing and
12 presenting a pistol.

13 MR. BARFIELD: Those four I think were one event.

14 THE COURT: All right.

15 MR. BARFIELD: And then there was 2005 ADHAN and
16 then the 2012 burglary.

17 THE COURT: Tell me about the 2012 burglary?

18 MR. BARFIELD: Your Honor, let me give you a
19 little bit of background. When this murder -- first
20 of all, the government did not know about the
21 burglary, armed robbery involving Jeffrey Lanard
22 Roseborough until they began investigating this
23 homicide.

24 THE COURT: What was the relationship, if any,
25 between Jeffrey Lanard Roseborough and Jenika Jones,

1 victim in this case?

2 MR. BARFIELD: They were boyfriend and girlfriend
3 and lived together some if not all of the time and
4 Jeffrey Lanard Roseborough was said to have lived at
5 [REDACTED] Roseanna Lane and if anybody screams, they will
6 scream, but there is some speculation in this case
7 that Jeffrey Lanard Roseborough was the target of the
8 planned robbery the night Miss Jones was killed. And
9 ~~in November of 2011 approximately two months before~~
10 Miss Jones's death Jeffrey Lanard Roseborough was at a
11 different apartment in Azalea apartments with some
12 other folks and it was alleged that Mr. Green -- Mr.
13 Clinton, Mr. Green, a fella name Shabrey Truesdale and
14 may be one other, I can't recall -- came in to that
15 apartment all armed and robbed Mr. Roseborough of
16 money and drugs again back in November of 2011. That
17 event was brought to the attention of law enforcement
18 as they started talking to folks during the
19 investigation of Jenika Jones's murder. Mr.
20 Roseborough gave a statement concerning that event.
21 Another female who was in the apartment at that time
22 talked to the police and both Clinton and Green and
23 the others that I mentioned were both charged, I
24 believe with burglary first and armed robbery as a
25 result of that incident. Mr. Clinton plead to several

1 charges after that incident occurred including
2 burglary 2nd degree violent as a result of that
3 incident. I think we dismissed the armed robbery.

4 MR. FRICK: That's correct.

5 THE COURT: And was Mr. Clinton alleged to have
6 been armed at the time of the armed robbery of
7 Roseborough?

8 MR. BARFIELD: He was most definitely.

9 THE COURT: Was there any description of the
10 weapon that he was armed with?

11 MR. BARFIELD: Your Honor, I left that file up in
12 my office. Can you go up to my spare office and there
13 is a manila file jacket with that file in it. We will
14 tell you that in a minute. Well hang on --

15 I got a copy of Mr. Roseborough's statement
16 concerning that case in this file. Let look at it
17 real quick. Bare with me just a minute sir.

18 THE COURT: Yes, sir.

19 MR. BARFIELD: Yes, sir, Mr. Roseborough gave a
20 statement which indicated -- I will tell you about the
21 pistol in a minute. I will tell you what happened
22 first. Tate, meaning Clinton came out first and put a
23 pistol to my chest and Mr. Roseborough was asked later
24 during the taking of the statement, what kind of gun
25 did each of them have. He said Tate had a new looking

1 gun. It look to be a tauris 9 or 380. That is how he
2 described it.

3 THE COURT: And Mr. Green was allegedly there?

4 MR. BARFIELD: Yes, sir. He has not been
5 convicted of anything but he is charged with burglary
6 first and armed robbery, I believe.

7 THE COURT: And was he to have been armed?

8 MR. BARFIELD: He was alleged to have been armed
9 and again as you know Mr. Green's nickname is Capone,
10 and Mr. Roseborough's statement indicates Capone had a
11 Mac 9 for sure. It had a long extended clip for it.
12 It looked like a machine gun pistol.

13 THE COURT: So that takes care of all the records
14 of Mr. Clinton and all the records of Mr. Green?

15 MR. BARFIELD: Yes, sir.

16 THE COURT: All right. Anything further,
17 solicitor?

18 MR. BARFIELD: Well, other than the victim
19 information or victim comments when you are ready for
20 that.

21 THE COURT: I will be glad to hear from anyone you
22 want me to hear from.

23 MR. BARFIELD: Whoever wants to talk step up to
24 that microphone. State your name and your relationship
25 to Jenika and say what you like to.

1 MS. STEVENSON: Your Honor, my name is Rachelle
2 Stevenson. I am the mother of Jenika Jones. It has
3 been a long two years and I know that what happened
4 today would not bring her back and there are no
5 winners in this, but I stand here asking for the
6 maximum sentence that you can give.

7 THE COURT: Thank you. Thank you very much.

8 THE COURT: Anybody else solicitor?

9 MR. BARFIELD: Anybody else want to speak. No,
10 sir.

11 THE COURT: That is all from the State.

12 THE COURT: Tell me solicitor the status of Miss
13 Jones's children?

14 MR. BARFIELD: Miss Jones's children, I believe are
15 being reared by Rachelle Stevenson and they are of
16 course two years older. They are probably three, four
17 and six now. Are you concerned -- you just want to
18 know where they are and whose taking care of them or
19 do you want to know how they are doing?

20 THE COURT: Well ---

21 MR. BARFIELD: Would you like to stand up and
22 address the judge about what effect this had had on
23 the children, I guess.

24 MS. STEVENSON: Your Honor the children are
25 somewhat doing good. They have had counseling

1 sessions. My granddaughter she is still having a hard
2 time. She is always crying for her mother. Wants to
3 know why this happened to her mother. Had even asked
4 to see pictures of the men who killed her mother, so
5 she understands that her mother is not here.

6 The oldest grandchild he at one time was having
7 real bad problems. He was having problems in school
8 with his -- he was emotional. Angry. Had one time
9 started acting out, but he seems to have come down of
10 that a little. My youngest grandson, he knows of his
11 mom, but, you know, he'll point to a picture. That's
12 Jenika. That's my momma, but hasn't shown no emotions
13 cause he was so small. Other than that they are doing
14 reasonably okay.

15 THE COURT: Thank you. Thank you, very much.
16 Anything further solicitor?

17 MR. BARFIELD: No, sir.

18 THE COURT: All right. Thank you. Mr. Frick.

19 MR. FRICK: That you, Your Honor.

20 Your Honor, Mr. Clinton is 26 years of age. As you
21 are aware he is currently serving a ten-year sentence
22 in South Carolina Department of Corrections for the
23 last charge the solicitor spoke of which came out of
24 two events. The one event, the assault charge and
25 then the burglary charge which is Mr. Roseborough's

1 situation. In that situation Mr. Clinton has accepted
2 his responsibility. He has fully admitted his guilt
3 and his role in that situation. It is my estimation
4 that is what immediately made him a suspect in this
5 situation, in the case presently.

6 Your Honor is aware, and I just want to put it on
7 the record for the point of mitigation, that there
8 were other suspects in this case. Mr. Rashad Johnson
9 was immediately suspect because that was a name by
10 nickname that came out of the mouth of the youngest --
11 oldest child who got the attention of someone who
12 called law enforcement. Law enforcement did follow up
13 on that. There was an alibi, however, as it goes on
14 further the alibi didn't necessarily check out. But
15 there was no further investigation on that. I am not
16 saying that to bash law enforcement's investigation.
17 I am simply saying that there was another suspect as
18 is clear from the DNA that someone else was at the
19 scene and we have no idea who it was.

20 Regarding Mr. Delrico McDow, I don't think you
21 heard testimony on this, but Mr. Blakeney's testimony
22 is Mr. McDow was in the vehicle with them when it
23 occurred. Mr. McDow is on a GPS tracking device
24 probation, pardon and parol. The information that
25 probation and parol has about that tracking device was

1 it never at any point got close to Roseanna Lane at
2 any time during that evening. So, that does not
3 support the evidence that Mr. Blakeney presented here
4 today or during this trial.

5 Your Honor, I say all that in somewhat mitigation.
6 Obviously, we are not standing here and this is not a
7 situation where we are able to tell you that we are
8 sorry for what we did because we stand here before you
9 and maintain our innocence in this case. I have
10 talked to Mr. Clinton about this situation. I don't
11 think he is going to address Your Honor because I've
12 advised him that from this point of course give Notice
13 of Appeal and it goes on and I don't want him to say
14 anything that can be used against him. So I ask you
15 not to hold anything in that regard against him for
16 lack of remorse or what not because I advised him from
17 a legal standpoint that that is probably in his best
18 interest.

19 Your Honor, he has been incarcerated since really
20 before the warrant came on this charge. We plead. He
21 had this charge on him when we entered the plea on the
22 other matters for which he is in the Department of
23 Corrections. I would ask you to credit him back to
24 the time at which he was served the warrant in this
25 case. I think he is due that because if he had gotten

1 out on those other charges he would not have gone
2 home. He would have been in the detention center here
3 in Lancaster without bond. So I think the prevailing
4 case law would be he is entitled to that time. I
5 would ask you for that. I.

6 He does have family. I know his mother is present.
7 I don't know if she wants to address the court or not,
8 but I do want the Court to know he does have family
9 that loves him, has been no one contact with us about
10 him. His mother, grandmother, cousins, sister have
11 all been speaking with him. So he does have folks out
12 there for him. Understanding he does have some stuff
13 on his record. Your Honor and I both know it is not
14 the most egregious record that I have seen and it's
15 likely not the most egregious record that you have
16 seen, although it does have ABHAN and this burglary
17 situation.

18 Judge, I do want to say, and not just simply to
19 bash Mr. Roseborough, but to talk about that
20 situation. He of course as a said Mr. Clinton has
21 admitted to his role in that. Mr. Roseborough did not
22 contact law enforcement. As you heard his testimony
23 in the pretrial motion, he was involved in drug
24 activity and that's why he didn't report it. That's
25 what he told law enforcement in his statement. I

1 understand that does not excuse anything at all, but I
2 think the Court needs to be aware of that and what the
3 entire situation was when it takes into consideration
4 for sentencing. So, I ask you for what leniency you
5 can show for my client who has somewhat of a limited
6 record although having had some exposure in general
7 sessions court.

8 THE COURT: Thank you. Thank you, Mr. Frick. And
9 I will ask is there anything you want to say Mr.
10 Clinton.

11 DEFENDANT CLINTON: No, sir.

12 THE COURT: Thank you. Miss Raney.

13 MS. RANEY: Thank you, Your Honor. As Your Honor
14 has heard throughout the course of this trial, my
15 client is 20 years old. He has a young daughter with
16 Miss Tinsley who you saw testify before you and a 9th
17 grade education. I have also similar to Mr. Frick
18 advised my client since he does wish to appeal to not
19 say anything during the course of sentencing as well.

20 I will say Your Honor, I actually just got to
21 know Mr. Green back in November of last year. He was
22 previously represented by a different attorney in our
23 office, so given that we had a trial date set when I
24 took over the case, frankly the bulk of my time with
25 Mr. Green has been spent focusing on this murder trial

1 rather than the other pending charge that the
2 solicitor referenced.

3 I can tell you that in spending a lot of time with
4 Mr. Green preparing for trial he has always been
5 nothing but, you know, a model client for me to deal
6 with. I think this has been extremely difficult
7 situation not only for him but for his family. As
8 Your Honor learned during the course of the trial his
9 sister who he grew up with and all of Al's family
10 member including my conversations with Mr. Green
11 himself they viewed Miss Jones as family member. Even
12 though she was not biological so, he thought of her as
13 a sister. So this has been difficult on many levels
14 because of the personnel connection there.

15 Mr. Green's family has been here in support of him
16 all week. I looked back to his mother earlier before
17 we came up here. I think she is a little to upset to
18 address the Court but I did want to bring it to the
19 attention of the Court that he does have family
20 support. They have been in contact with me throughout
21 my representation of Mr. Green being supportive of
22 him. I would ask Your Honor to take all of that as
23 well as his young age and his minimal criminal record
24 and the bulk of the evidence pointing in this case to
25 him not being the shooter. I echo Mr. Frick's

1 previous statement that there were certainly several
2 triable issues in this case and you take that into
3 consideration as well and ask that you consider
4 showing him some leniency sentencing him in the range
5 of thirty years, Your Honor, and giving him credit for
6 the time he has been in jail which has been since he
7 has been arrested on this charge for about two years
8 now.

9 THE COURT: Thank you, Miss Raney. Anything you
10 like to say Mr. Green?

11 DEFENDANT GREEN: No, sir.

12 THE COURT: And Mr. Frick you are appointed?

13 MR. FRICK: Yes, sir.

14 THE COURT: And Miss Raney you are appointed?

15 MS. RANEY: Yes, Your Honor.

16 THE COURT: Thank you. Thank you both very much
17 for taking on this very important assignment.

18 I don't have my list, the number of murder cases I
19 have tried as judge, but I probably charged six in the
20 last eight or nine months. I probably handled
21 hundreds over the course of my career; pre-judge and
22 judge. Some things -- no murder case is less tragic
23 or more tragic, but many times there are certain facts
24 that come out during the course of a trial that you
25 can't turn a blind eye to.

1 I do take into account the young age of both of
2 these men, 26 and 20. Twenty?

3 MS. RANEY: Yes, Your Honor.

4 THE COURT: They both have a 9th grade education.
5 You are correct Mr. Frick and of course Miss Raney,
6 they do not have a lengthy criminal history. The bulk
7 of the direct and circumstantial evidence of course
8 would point to Mr. Clinton as the -- lack of a better
9 work the trigger man, and point to Mr. Green under the
10 theory of the hand of one, hand of all as present
11 aiding and abetting. Technically this case would have
12 perhaps qualified as a death penalty case because it
13 appeared it would be a burglary first having gone in
14 the residence with the intent to commit a crime
15 whether they had consent or not. If they held the
16 victim captive for any period of time even on just a
17 sofa, under the State versus Hall that would be
18 kidnapping.

19 There are certain places in the world that we
20 should feel safe, the first place is our home.
21 Whether it be a trailer, condominium, a two-bedroom
22 home, or a mansion. Here you have a young lady taking
23 care of three children, ages four and under, and the
24 testimony is such that three individuals get out of a
25 borrowed or perhaps rented white Cadillac to go to an

1 unarmed innocent mother of three with her babies there
2 and place a nine millimeter so close to the left side
3 of her cheek and jaw that there is a muzzle
4 impression. You look at woman some times and you see
5 a beauty mark, but they put a death mark on her; that
6 muzzle impression. And you see funerals passing, you
7 see family members riding in Cadillacs behind the
8 hearse. In this case the Cadillac that show up was
9 like a funeral car. Her fate was sealed on the 18th.
10 And then her children endured walking around in their
11 mother's blood; from there clothes, on there feet, on
12 there body. Some wounds never heal. Some stains can
13 never be removed. And then that young woman is
14 described as quote that bitch end quote.

15 2012-GS-29-616, Devatee Tymar Clinton, the jury
16 having convicted the defendant of the crime of murder,
17 the defendant is committed to the State Department of
18 Corrections for the term of life without parole.

19 2012-GS-29-636, Al Martinez Green, the jury having
20 convicted the defendant for the crime of murder, the
21 defendant is committed to a State Department of
22 Corrections for a term of life without parole. One
23 wouldn't have happened without the other.

24 Good luck to you Mr. Green. Good luck to you Mr.
25 Clinton. Sheriff. Thank you again, Mr. Frick and Ms.

1 Raney for your service.
2 MS. RANEY: Thank you, Your Honor.
3 THE COURT: Anything further from the State?
4 MR. BARFIELD: No, sir.
5 THE COURT: From the defense?
6 MR. FRICK: Nothing.
7 MS. RANEY: No, sir.
8 THE COURT: Thank you. Thank you very much.
9 Court will be in recessed for the remainder of the
10 week.

11 (END OF TRANSCRIPT)
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter
for the Seventh Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings in the
captioned case, in the Circuit Court for Lancaster County, South
Carolina, on the 14th day of March, 2014.

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

May 24, 2014

Aileen Butler

AIDING AND ABETTING - ACCOMPLICE LIABILITY

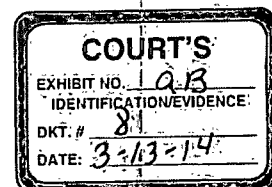
THE STATE IS CONTENDING THAT DEFENDANT AL GREEN IS GUILTY OF MURDER ON A THEORY THAT HE WAS AN ACCOMPLICE. THE STATE HAS CHARGED MR. GREEN WITH MURDER. THE STATE HAS NOT CONTENTED THT MR. GREEN FIRED ANY SHOTS, BUT THE STATE MAINTAINS THAT HE IS GUILTY AS AN ACCOMPLICE.

SO, I NEED TO EXPLAIN TO YOU THAT A PERSON CAN BE GUILTY OF A CRIME EITHER BY DIRECTLY PERPETRATING IT HIMSELF OR BY BEING PRESENT AT THE SCENE OF THE CRIME AND AIDING, ABETTING, OR ASSITING IN THE COMMISSION OF THE CRIME. THIS IS KNOWN AS ACCOMPLICE LIABILITY.

A PERSON WHO WAS PRESENT AT THE SCENE OF A CRIME AND INTENTIONALLY, OR THROUGH A COMMON PLAN, AIDED, ABETTED, OR ASSISTED IN THE COMMISSION OF THAT CRIME THROUGH SOME OVERT ACT IS GUILTY AS AN ACCOMPLICE.

TO BE LIABLE AS AN ACCOMPLICE, DEFENDANT GREEN MUST HAVE KNOWLEDGE OF THE OTHER PERSON'S ILLEGAL CONDUCT AND AID, ABET, OR ASSIST IN ITS COMISSION. MERE PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO ESTABLISH GUILT AS AN ACCOMPLICE. SO, A DEFENDANT'S MERE PRESENCE WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME DOES NOT MAKE A DEFENDANT AN ACCOMPLICE OR AN AIDER OR ABETTOR.

TO BE PROVEN TO BE AN ACCOMPLICE, THE STATE MUST PROVE THAT THE DEFENDANT ENGAGED IN A WILFULL, INTENTIONAL, AND KNOWING ACT OF AIDING, ABETTING OR



ASSISTING IN THE CRIME, WITH THE DEFENDANT BEING PRESENT. IT IS NOT NECESSARY THAT THERE BE ANY KIND OF FORMAL AGREEMENT. BUT IT MUST BE PROVEN BEYOND A REASONABLE DOUBT THAT MR. GREEN KNEW THAT ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE OF MURDER WERE OCCURRING AND THAT HE INTENTIONALLY AND KNOWINGLY AIDED THE COMMISSION OF THE CRIME THROUGH A JOINT EFFORT.

INTENTIONALLY MEANS TO ACT WILFULLY, INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.

TO "AID" MEANS TO HELP, TO PROMOTE THE COURSE OR ACCOMPLISHMENT OF, TO GIVE SUPPORT TO, OR TO GIVE ASSISTANCE TO.

TO "ABET" MEANS TO ENCOURAGE OR SUPPORT.

"ASSIST" IS A TERM THAT SHOULD BE GIVEN ITS PLAIN AND ORDINARY MEANING.

WHEN I USE THE TERM ACCOMPLICE THROUGHOUT THIS CHARGE, YOU SHOULD APPLY ALL THE REQUIREMENTS OF MEETING THAT DEFINITION THAT I HAVE JUST DISCUSSED WITH YOU.

MERE PRESENCE

MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO PROVE SOMEONE GUILTY OF A CRIME. A DEFENDANT'S PRESENCE WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME DOES NOT MAKE A DEFENDANT AN ACCOMPLICE OR AN AIDER AND ABETTER OF THE PERSON COMMITTING THE CRIME.

THE BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF THE CRIME CHARGED. IF YOU FIND, AFTER REVIEWING ALL THE EVIDENCE, THAT THE STATE HAS PROVED THAT THE DEFENDANT WAS ONLY PRESENT AT THE SCENE OF A CRIME, AND THAT THEY HAVE NOT PROVED, BEYOND A REASONABLE DOUBT, ANY

OTHER PARTICIPATION IN THE CRIME, THEN YOU
MUST FIND THE DEFENDANT NOT GUILTY. THE
LAW IS THAT PROOF OF AT THE SCENE OF THE
CRIME IS NOT SUFFICIENT TO FIND SOMEONE
GUILTY.

HAND OF ONE IS THE HAND OF ALL

IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT OF ONE IS THE ACT OF ALL OR, AS IT IS SOMETIMES SAID, "THE HAND OF ONE IS THE HAND OF ALL".

PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR ARRANGED PLAN OR COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.

A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING, OR ASSISTING IN COMMITTING THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. WHERE TWO OR MORE, ACTING WITH A COMMON PLAN OR INTENT, ARE PRESENT AT THE COMMISSION OF A CRIME, IT DOES NOT MATTER WHO ACTUALLY COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS THE HAND OF ALL.

PRESENT AT THE COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE COMMISSION OF THE CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. INTENT IS ALSO A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE STATE MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Circumstantial evidence is based on inference and not on personal knowledge or observation

The law makes no absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

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

State v. Logan, 405S.C. 83 (2013)

WITNESSES

Catalano - LCSO #12-02271

Scump

ARREST WARRANT NUMBER/DOA

M742583 (DOA-3-9-12)

ACTION OF GRAND JURY

TRUE

Rogan Mosley
Foreperson of Grand Jury
Date: JUN 7 2012

VERDICT

Foreperson of Petit Jury
Date:

Frick
DOCKET NO. 2012-GS-29- 616

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2012

**THE STATE
vs.**

Devatee Tymar Clinton

Wayne Blakeney, Jr. 607

Al Green 636

Indictment for

Murder

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

R - 678

2012 JUN -7 PM 12:24

JOHN
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on June 7, 2012, the Grand Jurors of Lancaster County present upon their oath:

over 3/4/14

Clinton **MURDER**

That Devatee Tymar ~~Glingen~~ did at [REDACTED] Roseanna Lane, in Lancaster County on or about January 19, 2012, feloniously, willfully, and of his malice aforethought kill and murder Jenika Jaraya Jones by shooting the victim in the head and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Catalano - LCSO #12-02271

Adams

ARREST WARRANT NUMBER/DOA

M742583 (DOA-3-9-12)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

MAR. 06 2014

DOCKET NO. 2012-GS-29-616

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MARCH TERM 2014

THE STATE

VS.

Devatee Tymar Clinton

Amended
Indictment for

Murder

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM

R - 680

FILED
OFFICE OF CLERK
OF COURT

2014 MAR -6 PM 2:24

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

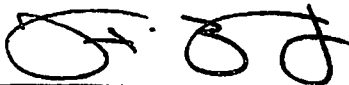
AMENDED INDICTMENT

At a Court of General Sessions, convened on March 6, 2014, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Devatee Tymar Clinton did at [REDACTED] Roseanna Lane, in Lancaster County on or about January 19, 2012, feloniously, willfully, and of his malice aforethought kill and murder Jenika Jaraya Jones by shooting the victim in the head and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATE

VS:

Devatee Tymar Clinton

AKA:

Race: B Sex: M Age: 26

DOB: 87 SS#:

Address: Roseanna Lane

City, State, Zip: Lancaster, SC: 29720

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2012-GS-29 - 616

AW#: M742583

Date of Offense: 1/19/12

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted ☐ Lesser Included OffenseThe plea is: ☐ Without Negotiations or Recommendation☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST:

514

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 180 days/months/years or ☐ under the Youthful Offender Act not to exceed years;
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

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

Clerk of Court/Deputy Clerk

Court Reporter: Obtain GED ☐Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. In equal consecutive weekly/monthly

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

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Christy Rogers
Lancaster County Sheriff's Office
P.O. Box 908
Lancaster, SC 29720

FIREARMS DEPARTMENT
March 15, 2012
SLED LAB: L12-01205
Your Case No: 1202271
Incident Date: 1/19/2012
[V-Deceased] Jenika Jones

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 1 One fired 380 Auto caliber cartridge case.

RESULTS:

Item 1 may be suitable for identification with a specific firearm.

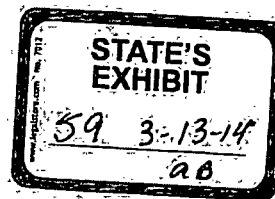
Item: 4 One fired bullet (taken from victims head at autopsy).

RESULTS:

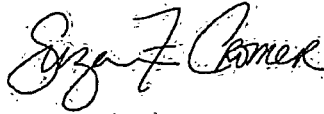
Examination of Item 4 revealed that it was most consistent with bullets loaded into some 380 Auto caliber cartridges and may be suitable for identification with a specific firearm. Based on the general rifling characteristics, the only currently known firearm that could have fired Item 4 was a Hi-Point.

Item 1 was entered into the Integrated Ballistics Identification System (IBIS). Should any "hits" be developed against this entry, you will be notified. Please retain this item for a minimum of two years in order to maintain its availability for any future comparisons related to IBIS activity.

Item 2 was not entered into the Integrated Ballistics Identification System (IBIS) as it did not meet the current SLED criteria for entry.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



Suzann F. Cromer
Forensic Scientist



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Christy Rogers
Lancaster County Sheriff's Office
P.O. Box 908
Lancaster, SC 29720

DNA ANALYSIS
February 15, 2012
SLED LAB: L12-01205
Your Case No: 1202271
Incident Date: 1/19/2012
[V-Deceased] Jenika Jones



This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	.380 casing	1	See DNA analysis.
2	Swabs from underside of storm door handle-exterior	2	See DNA analysis.
3	Swabs from door knob on main door-exterior	3	See DNA analysis.
6.1	Cutting from jumpsuit	6.1	No human blood identified. See DNA analysis.
6.2	Cutting from jumpsuit	6.2	No human blood identified. See DNA analysis.
6.3	Cutting from jumpsuit	6.3	No human blood identified. See DNA analysis.



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Items Submitted:

Results of Examinations:

6.4	Swab from jumpsuit	6.4	See DNA analysis.
6.5	Debris from jumpsuit	6.5	No hair suitable for STR PCR DNA analysis.
6.6	Cutting from jumpsuit	6.6	No human blood identified.
6.7	Cutting from jumpsuit	6.7	No human blood identified.
6.8	Cutting from jumpsuit	6.8	No human blood identified.
6.9	Cutting from jumpsuit	6.9	No human blood identified.
6.10	Cutting from jumpsuit	6.10	No human blood identified.
6.11	Cutting from jumpsuit	6.11	No human blood identified.
6.12	Cutting from jumpsuit	6.12	No human blood identified.
6.13	Cutting from jumpsuit	6.13	No human blood identified.
6.14	Cutting from jumpsuit	6.14	No human blood identified.
8	Buccal swabs from Ponp Blackmon	8	See DNA analysis.
9	Blood standard from Jenika Jones	9	See DNA analysis.
9.1	Dried blood standard from Jenika Jones	9.1	No analysis performed.

DNA ANALYSIS

ITEMS ANALYZED:

8	Buccal swabs from Ponp Blackmon
9	Blood standard from Jenika Jones
1	.380 casing
2	Swabs from underside of storm door handle-exterior
3	Swabs from door knob on main door- exterior
6.1	Cutting from jumpsuit



- 6.2 Cutting from jumpsuit
- 6.3 Cutting from jumpsuit
- 6.4 Swab from jumpsuit

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 1 matches the DNA profile of Jenika Jones. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 8.9 quadrillion.

The DNA profile developed from item 2 is a mixture of at least three individuals. Jenika Jones cannot be excluded as a possible contributor to this mixture. Ponp Blackmon can be excluded as a possible contributor to this mixture.

The DNA profile developed from item 3 is a mixture of at least two individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as a possible contributor to this mixture. Ponp Blackmon can be excluded as a possible contributor to this mixture.

The DNA profile developed from item 6.1 is a mixture of at least three individuals. Jenika Jones and Ponp Blackmon can be excluded as possible contributors to this mixture.

The DNA profile developed from item 6.2 is from an unidentified male individual.

The DNA profile developed from item 6.3 is a mixture of at least three individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as a possible contributor to this mixture. Ponp Blackmon can be excluded as a possible contributor to this mixture.

The DNA profile developed from item 6.4 is a mixture of at least four individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as a possible contributor to this mixture. Ponp Blackmon can be excluded as a possible contributor to this mixture.



SLED LAB No. L12-01205
February 15, 2012

Page 4 of 5

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Maryann E. Boehm

Maryann E. Boehm
Forensic Scientist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

R - 688

App - 721

Table 1 – Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
8- Pomp Blackmon	10,15	28,35	7,10	10,11	15,16	7	11	10,12	16,24	12,2,15	15,17	8	13,16	11,13	23	XY
9 Jenika Jones	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
1 380 casing	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
2 Storm door	12,13, 14,16	28,(29), 30,30,2, 33,2	8,(9), 10,(11), 12	(8),10, 12,13	15,16, 17	7,8, 9	8,11, 12,(13)	9,10, 11,12	(21),22, 23	(12),12,2, 13,14, (15,2), (16,2)	15,16, 17,18, 19	8,11, 12	13,16, 17,(18), 19	10,11, 12,13	(18),20, 21,24, (25)	XY
3 Main door	12,(13), 14,(16)	28,(29), (30)	8,(9), (10)	(10),12	15,16, 17	6,(7), 8,9	(11),12	(11)	(22)	12,2,14, 16,2	15,(16), (17), (18)	(8),(12)	(18)	10,(11), 12	(23)	XY
6.1 Jumpsuit	12,13, 14,(15), 16	(28),29, 30	(8),(9), 10,(11)	(10),11, 12	(14),(15), 16,(17)	(6),7, 8	(11),12	9,(11), (12)	(18),19, (22),(23)	(12,2),13, 14	15,(16), (18)	8,(9), 11	15,(16), (18)	(8),11, 12,(13)	(19), (23)	XY
6.2 Jumpsuit	14	28	10,11	11,12	14	7,8	11,12	11,(13)	(19),(24)	13,2,14	16,17	6,11	(15),18	13	25,26	XY
6.3 Jumpsuit	11,12, 13,14, (15)	28,29, 30,33,2	8,9, 10	7,10, 11,12	14,15, 16,17	6,7, 8,(9)	11,12, (13)	(10),11, 12,13, 14	15,17, (18),19, 21,(22), (25)	12,2,13, 14,16,2	15,(16), 17,18	8,11, 12	15,16, 17,18	8,10, 12,13	19,20, 22,23	XY
6.4 Jumpsuit	11,12, 13,14, 15,16	27,28, 29,30, (31)	8,9, 10,11, (12)	7,10, 11,12	14,15, 16,17	6,7, 8,9	11,12, (13)	9,11, 12,13, 14	15,17, 18,19, 20,21, 22,23, 24	11,(12), 13,13,2, 14,16,2	15,16, 17,18	6,8, (9),10, 11,12	15,16, 17,18	8,10, 11,12, 13	19,(20), (21),22, 23,24, 25	XY

() = alleles between 75 and 149 bp



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Christy Rogers
Lancaster County Sheriff's Office
P.O. Box 908
Lancaster, SC 29720

DNA ANALYSIS
January 10, 2014
SLED LAB: L12-01205
Your Case No: 1202271
Incident Date: 1/19/2012
[V-Deceased] Jenika Jones
[S] Wayne Blakeney
[S] Delrico McDow
[S] Al Green

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

- 8. Buccal swabs from Ponp. Blackmon
- 9. Blood standard from Jenika Jones
- 11. Buccal swabs from Wayne Anthony Blakeney, Jr.
- 16. Buccal swabs from Delrico McDow
- 17. Buccal swabs from Al Martinez Green
- 18. Buccal swabs from Devatee Tymar Clinton
- 1. .380 casing
- 2. Swabs from underside of storm door handle-exterior
- 3. Swabs from door knob on main door-exterior
- 6.1. Cutting from jumpsuit
- 6.2. Cutting from jumpsuit
- 6.3. Cutting from jumpsuit



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- 6.4 Cutting from jumpsuit
- 12.2 Cutting from portion of seat belt

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 1 matches the DNA profile of Jenika Jones. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 8.9 quadrillion.

The DNA profile developed from item 2 is a mixture of at least three individuals. Jenika Jones and Delrico Mcdow cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 27. Ponp Blackmon, Wayne Blakeney, Jr., Al Martinez Green, and Devatee Tymar Clinton can be excluded as possible contributors to this mixture.

The DNA profile developed from item 3 is a mixture of at least two individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones or Devatee Tymar Clinton as possible contributors to this mixture. Ponp Blackmon, Wayne Blakeney, Jr., Delrico Mcdow, and Al Martinez Green can be excluded as possible contributors to this mixture.

The DNA profile developed from item 6.1 is a mixture of at least three individuals. Jenika Jones, Ponp Blackmon, Wayne Blakeney, Jr., Delrico Mcdow, Al Martinez Green, and Devatee Tymar Clinton can be excluded as possible contributors to this mixture.

The DNA profile developed from item 6.2 is from an unidentified male individual.

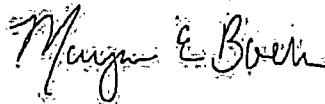
The DNA profile developed from item 6.3 is a mixture of at least two individuals. Devatee Tymar Clinton cannot be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 580. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as a possible contributor to this mixture. Ponp Blackmon, Wayne Blakeney, Jr., Delrico Mcdow, and Al Martinez Green can be excluded as possible contributors to this mixture.

The DNA profile developed from item 6.4 is a mixture of at least four individuals. Devatee Tymar Clinton cannot be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 12. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones, Delrico Mcdow, or Al Martinez Green as a possible contributor to this mixture. Ponp Blackmon and Wayne Blakeney, Jr. can be excluded as possible contributors to this mixture.



The DNA profile developed from item 12.2 is from a second unidentified male individual.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Maryann E. Boehm
Forensic Scientist



Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
8 Ponp Blackmon	10,15	28,35	7,10	10,11	15,16	7	11	10,12	16,24	12,2,16	15,17	8	13,16	11,13	23	XY
9 Jenika Jones	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
11 Wayne Blakeney Jr.	8,12	30,32	8,10	11,12	14,16	6,8	12	11,14	20,23	13,14	17	8,11	12,20	11,12	24,27	XY
16 Delrico Medow	13,14	28,33,2	10,12	10,13	16	7	12,13	9,11	23	13	15,17	8,11	13,17	11,13	20,21	XY
17 Al Green	11,14	30,32	10	7,11	16,17	7	12	9,13	19,21	14,14	15,19	9,12	18,19	8,12	23,24	XY
18 Devatee Clinton	12	28,30	8,9	7,12	16,17	6,8	12	11,14	15,17	14,16,2	15,17	11,12	16,18	12	19,23	XY
1 380 casing	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
2 Storm door	12,13, 14,16	28,(29), 30,30,2, 33,2	8,(9), 10,(11), 12	(8),10, 12,13	15,16, 17	7,8, 9	8,11, 12,(13)	9,10, 11,12	(21),22, 23	(12),12,2, 13,14, (15,2), (16,2)	15,16, 17,18, 19	8,11, 12	13,16, 17,(18), 19	10,11, 12,13	(18),20, 21,24, (25)	XY
3 Main door	12,(13), 14,(16)	28,(29), (30)	8,(9), (10)	(10),12	15,16, 17	6,(7), 8,9	(11),12	(11)	(22)	12,2,14, 16,2	15,(16), (17), (18)	(8),(12)	(18)	10,(11), 12	(23)	XY
6.1 Jumpsuit	12,13, 14,(15), 16	(28),29, 30	(8),(9), 10,(11)	(10),11, 12	(14),(15), 16,(17)	(6),7, 8	(11),12	9,(11), (12)	(18),19, (22),(23)	(12,2),13, 14	15,(16), (18)	8,(9), 11	15,(16), (18)	(8),11, 12,(13)	(19), (23)	XY
6.2 Jumpsuit	14	28	10,11	11,12	14	7,8	11,12	11,(13)	(19),(24)	13,2,14	16,17	6,11	(15),18	13	25,26	XY
6.3 Jumpsuit	11,12, 13,14, (15)	28,29, 30,33,2	8,9, 10	7,10, 11,12	14,15, 16,17	6,7, 8,(9)	11,12, (13)	(10),11, 12,13, 14	15,17, (18),19, 21,(22), (25)	12,2,13, 14,16,2	15,(16), 17,18	8,11, 12	15,16, 17,18	8,10, 12,13	19,20, 22,23	XY



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Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
6.4 Jumpsuit	11,12, 13,14, 15,16	27,28, 29,30, (31)	8,9, 10,11, (12)	7,10, 11,12	14,15, 16,17	6,7, 8,9	11,12, (13)	9,11, 12,13, 14	15,17, 18,19, 20,21, 22,23, 24	11,(12), 13,13.2, 14,16.2	15,16, 17,18	6,8, (9),10, 11,12	15,16, 17,18	8,10, 11,12, 13	19,(20), (21),22, 23,24, 25	XY
12.2 Seat belt	14,16	28	11,12	11,12	14,16	7,9	11,12	11,12	21	12,13.2	18	7,11	18,19	12,13	23	X

(-) = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

Inc = Inconclusive



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Christy Rogers
Lancaster County Sheriff's Office
P.O. Box 908
Lancaster, SC 29720

DNA ANALYSIS
July 19, 2012
SLED LAB: L12-01205
Your Case No: 1202271
Incident Date: 1/19/2012
[V-Deceased] Jenika Jones
[S] Wayne Blakeney
[S] Delrico Mcdow

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	.380 casing	1	See DNA analysis.
2	Swabs from underside of storm door handle-exterior	2	See DNA analysis.
3	Swabs from door knob on main door-exterior	3	See DNA analysis.
6.1	Cutting from jumpsuit	6.1	No human blood identified. See DNA analysis.
6.2	Cutting from jumpsuit	6.2	No human blood identified. See DNA analysis.



Items Submitted:

Results of Examinations:

6.3	Cutting from jumpsuit	6.3	No human blood identified. See DNA analysis.
6.4	Cutting from jumpsuit	6.4	See DNA analysis.
8	Buccal swabs from Ponp Blackmon	8	See DNA analysis.
9	Blood standard from Jenika Jones	9	See DNA analysis.
11	Buccal swabs from Wayne Anthony Blakeney, Jr.	11	See DNA analysis.
12.1	Cutting from portion of seat belt	12.1	No human blood identified.
12.2	Cutting from portion of seat belt	12.2	See DNA analysis.
13	Cutting from stained fabric from front passenger seat	13	No human blood identified.
14	Cutting from stained fabric from front driver seat	14	No human blood identified.
15	Swabs of red/brown stains from rear seat		
15.1	Swabs of red/brown stains from rear seat- seat section	15.1	No human blood identified.
15.2	Swabs of red/brown stains from rear seat- back rest	15.2	No human blood identified.
15.3	Swabs of red/brown stains from rear seat- back rest	15.3	No human blood identified.
16	Buccal swabs from Delrico Mcdow	16	See DNA analysis.



DNA ANALYSIS

ITEMS ANALYZED:

- 8 Buccal swabs from Ponp Blackmon
- 9 Blood standard from Jenika Jones
- 11 Buccal swabs from Wayne Anthony Blakeney, Jr.
- 16 Buccal swabs from Delrico Mcdow

- 1 .380 casing
- 2 Swabs from underside of storm door handle-exterior
- 3 Swabs from door knob on main door- exterior
- 6.1 Cutting from jumpsuit
- 6.2 Cutting from jumpsuit
- 6.3 Cutting from jumpsuit
- 6.4 Cutting from jumpsuit
- 12.2 Cutting from portion of seat belt

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 1 matches the DNA profile of Jenika Jones. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 8.9 quadrillion.

The DNA profile developed from item 2 is a mixture of at least three individuals. Jenika Jones and Delrico Mcdow cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 27. Ponp Blackmon and Wayne Blakeney Jr. can be excluded as possible contributors to this mixture.

The DNA profile developed from item 3 is a mixture of at least two individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as a possible contributor to this mixture. Ponp Blackmon, Wayne Blakeney Jr., and Delrico Mcdow can be excluded as possible contributors to this mixture.

The DNA profile developed from item 6.1 is a mixture of at least three individuals. Jenika Jones, Ponp Blackmon, Wayne Blakeney Jr., and Delrico Mcdow can be excluded as possible contributors to this mixture.



Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
8 Ponp Blackmon	10,15	28,35	7,10	10,11	15,16	7	11	10,12	16,24	12,2,16	15,17	8	13,16	11,13	23	XY
9 Jenita Jones	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
11 Wayne Blakeney Jr.	8,12	30,32	8,10	11,12	14,16	6,8	12	11,14	20,23	13,14	17	8,11	12,20	11,12	24,27	XY
16 Delrico Meadow	13,14	28,33,2	10,12	10,13	16	7	12,13	9,11	23	13	15,17	8,11	13,17	11,13	20,21	XY
1 380 casing	14	28,30,2	8	10,12	15,17	8,9	12	12	21,22	12,2,16,2	15,18	8	17,18	10,11	23,24	X
2 Storm door	12,13, 14,16	28,(29), 30,30,2, 33,2	8,(9), 10,(11), 12	(8),10, 12,13	15,16, 17	7,8, 9	8,11, 12,(13)	9,10, 11,12	(21),22, 23	(12),12,2, 13,14, (15,2), (16,2)	15,16, 17,18, 19	8,11, 12	13,16, 17,(18), 19	10,11, 12,13	(18),20, 21,24, (25)	XY
3 Main door	12,(13), 14,(16)	28,(29), (30)	8,(9), (10)	(10),12	15,16, 17	6,(7), 8,9	(11),12	(11)	(22)	12,2,14, 16,2	15,(16), (17), (18)	(8),(12)	(18)	10,(11), 12	(23)	XY
6.1 Jumpsuit	12,13, 14,(15), 16	(28),29, 30	(8),(9), 10,(11)	(10),11, 12	(14),(15), 16,(17)	(6),7, 8	(11),12	9,(11), (12)	(18),19, (22),(23)	(12,2),13, 14	15,(16), (18)	8,(9), 11	15,(16), (18)	(8),11, 12,(13)	(19), (23)	XY
6.2 Jumpsuit	14	28	10,11	11,12	14	7,8	11,12	11,(13)	(19),(24)	13,2,14	16,17	6,11	(15),18	13	25,26	XY
6.3 Jumpsuit	11,12, 13,14, (15)	28,29, 30,33,2	8,9, 10	7,10, 11,12	14,15, 16,17	6,7, 8,(9)	11,12, (13)	(10),11, 12,13, 14	15,17, (18),19, 21,(22), (25)	12,2,13, 14,16,2	15,(16), 17,18	8,11, 12	15,16, 17,18	8,10, 12,13	19,20, 22,23	XY



Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSFPO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
64, Jumpsuit	11,12, 13,14, 15,16	27,28, 29,30, (31)	8,9, 10,11, (12)	7,10, 11,12	14,15, 16,17	6,7, 8,9	11,12, (13)	9,11, 12,13, 14	15,17, 18,19, 20,21, 22,23, 24	11,(12), 13,13.2, 14,16.2	15,16, 17,18	6,8, (9),10, 11,12	15,16, 17,18	8,10, 11,12, 13	19,(20), (21),22, 23,24, 25	XY
12.2 Seat belt	14,16	28	11,12	11,12	14,16	7,9	11,12	11,12	21	12,13.2	18	7,11	18,19	12,13	23	X

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No(s): 2012-GS-29-616

The State of South Carolina,

Respondent.

Devatee Tymar Clinton,

Appellant.

NOTICE OF APPEAL

Devatee Tymar Clinton appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Knox McMahon on March 14, 2014.

PLEASE TAKE FURTHER NOTICE THAT this appeal shall be upon a case and exceptions to be served upon you and filed hereafter in accordance with the rules of the court and laws in such cases made and provided.

Date: March 18, 2014


William P. Frick, Esq.
Public Defender
Post Office Box 1809
Lancaster, SC 29721
SC Bar #69739

Other Counsel of Record:
Douglas A. Barfield, Jr.
Solicitor
6th Judicial Circuit
Post Office 607
Lancaster, SC 29720

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SC Court of Appeals

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM LANCASTER COUNTY
Court of General Sessions**

R. Knox McMahon, Circuit Court Judge

Case No(s): 2012-GS-29-616

The State of South Carolina,

Respondent.

Devatee Tymar Clinton,

v.

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 18, 2014, addressed to Douglas A. Barfield, Jr., Solicitor, Office of the Solicitor, 6th Judicial Circuit, Post Office Box 607, Lancaster, SC 29720.

Date: March 18, 2014

Leah Stinger

Leah Stinger
Secretary for William P. Frick, Esq.
Post Office Box 1809
Lancaster, SC 29721

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**SIXTH JUDICIAL CIRCUIT
PUBLIC DEFENDER'S OFFICE**

Post Office Box 1809
Lancaster, South Carolina 29720
Telephone/Fax No.: (803) 285-5585

March 18, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State of South Carolina, Respondent vs. Devatee Tymar Clinton, Appellant

Dear Ms. Kitchings:

Please be advised that with this letter I am filing:

1. Notice of Appeal and two (2) copies; and
2. Proof of Service of Notice of Appeal and two (2) copies

Please return clocked copies of the Notice of Appeal and Proof of Service in the envelope provided.

Yours very truly,



William P. Frick
Attorney for the Appellant

Enclosures

cc: Douglas A. Barfield, Jr., Solicitor, Sixth Judicial Circuit (w/ enclosures)

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SC Court of Appeals

R - 702

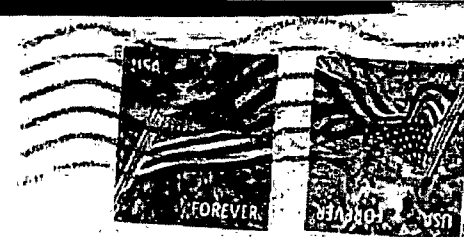
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**Public Defender's Office
Sixth Judicial Circuit**

Post Office Box 1809
Lancaster, SC 29721

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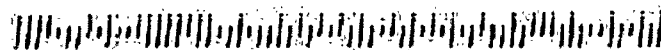
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SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000594

The State, ... Respondent,

v.

Devatee Tymar Clinton, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties; material required by Rule 210(c), SCACR, and not any other material.



Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Robert M. Dudek
Chief Appellate Defender
SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1530

Attorneys for Appellant

Columbia, South Carolina
May 26, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000594

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SC Court of Appeals

The State, ... Respondent,

v.

Devatee Tymar Clinton, ... Appellant.

FINAL BRIEF OF APPELLANT

Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330
Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in excluding the statements given by the four-year-old son of the Victim to multiple law enforcement and EMS professionals, shortly after witnessing Victim's murder, which identified someone other than Clinton as the murderer?
- II. Did the trial court err in failing to direct a verdict in favor of Clinton where the evidence and testimony merely raised a suspicion, but failed to meet the elements of the charged crime?

STATEMENT OF THE CASE

This case was commenced against Appellant Devatee Tymar Clinton upon indictment 2012-GS-29-616 for the charge of murder. (R. pp. 678-681). Clinton was tried before a jury, along with co-defendant Al Martinez Green, in Lancaster, South Carolina during the week of March 10-14, 2012. (R. p. 4). Following deliberations, Clinton was found guilty of murder and thereafter sentenced by the trial court to life in prison, without parole. (R. pp. 646; 668; 682). Clinton timely served his notice of appeal on March 18, 2014. (R. pp. 700-703).

STATEMENT OF THE FACTS

Late in the evening on January 19, 2012, Jenika Jones (Victim) was killed by a single gunshot wound. (R. p. 84). At the time of her death, Victim was in her home, a mobile home in a mobile home community located off of Highway 200 near Great Falls, South Carolina. (R. p. 245). Sadly, Victim's three children, all under the age of four years old, were also in the home at the time she was killed. (R. pp. 37-48). Her oldest, a four year old boy, went next door to notify neighbors of the incident, who called 9-1-1. (R. pp. 19; 23).

Upon arrival, Lancaster County Sherriff's Officers found Victim, already deceased, laying on the couch in the mobile home's main, family room. (R. p. 43). The youngest two children, a girl, aged two, and a second boy, aged one, were found in the home; the oldest child remained with neighbors. (R. pp. 37-48.). All three children had blood on their clothing, presumably from Victim.¹ (R. pp. 23-24; 59-60).

Police arrived on the scene within minutes of the call to 9-1-1. (R. pp. 19; 39). Although the mobile homes in this particular community were very near to each other, the State produced no neighbors who heard the gunshot that killed Victim. (R. pp. 52-55; 578-79). Nor did the State produce any witness that saw someone entering or leaving Victim's mobile home. (R. pp. 578-59). Multiple officers and crime scene investigators, including a resident officer of the South Carolina Law Enforcement Division (SLED) responded to the scene. Evidence was gathered, the scene was dusted for fingerprints, and deoxyribonucleic acid (DNA) samples were collected.

¹ The record does not indicate that a test was ever performed to confirm the source of the blood; however, the children were uninjured. (R. p. 78).

Initially, Victim's children were secured by first responders in an ambulance at the scene. (R. pp. 62-63). There, the oldest child spontaneously stated (without provocation or questioning) to at least two police officers, as well as other EMS individuals on hand, that "Shi's Daddy shot my Momma."² (R. pp. 14-15). Shortly thereafter, the oldest child's exclamation changed slightly, becoming "Shortycake shot my Momma."³ (R. p. 17). This statement was repeated several times in the minutes following the first responders' arrival, with all of these statements estimated to have occurred within thirty (30) minutes. (R. pp. 14-31; 256-59). Upon the State's motion *in limine*, the trial court initially ruled that the oldest child's hearsay statements were admissible, so long as proper foundation for their admittance was established. (R. pp. 32-36). Thereafter, however, the trial court sustained the State's objection to the oldest child's statements and they were never heard by the jury. (R. pp. 256-59).

The Lancaster Sherriff's Office developed leads based on the evidence collected at the scene. Ultimately, the investigation centered upon three individuals, Clinton, co-defendant Green, and a third individual, Wayne Blakeney, all three of whom were charged with Victim's murder. (R. pp. 13; 29). The linchpin of the State's case was the

² This matter initially comes to light as a result of the pre-trial motion *in limine* of the State seeking to exclude testimony of the oldest child's exclamations from the jury. (R. pp. 14-36).

³ It was later submitted that the oldest child may have also stated that "Jamia's Daddy hurt my Momma." (R. p. 19). During the pre-trial motion, it was confirmed by both the Solicitor and Defense Counsel that "Shi" is a nickname for a boy whose first name is "Jamia." (R. pp. 17-19). Additionally, it was confirmed that "Shi's Daddy" also goes by the nickname "Shortycake." *Id.* Moreover, it was determined that Shi's Daddy/Shortycake's actual name is Rashad Johnson. *Id.* Thus, Shi = Jamia, while Shi's Daddy = Shortycake = Rashad Johnson.

testimony of Blakeney, who provided a statement to police and ultimately testified against Clinton and Green at trial.⁴ (R. pp. 402-455).

Blakeney testified that on the night of Victim's murder, he, Clinton, Green, and a fourth individual, Delrico McDow borrowed a white Cadillac with a ragtop roof from a person named Pomp Blackmon. (R. pp. 412-15). Those four took the Cadillac to the Hole in the Wall Club (Club), a local bar/nightclub. (R. p. 416). Blakeney testified that he drove the Cadillac, as he had a driver's license, but Clinton, who knew Blackmon and asked to borrow the Cadillac in the first instance, did not. (R. p. 409). While at the Club, according to Blakeney, Clinton said that he needed to leave and get some money. (R. p. 417). All four left the Club in the Cadillac, Blakeney again driving, and with Clinton providing directions as to their destination. (R. pp. 417-19). On the way, Blakeney testified that he saw Clinton, who was riding in the front passenger's seat, with a gun in or around his lap. (R. p. 419). Blakeney further testified that while *en route*, no one discussed a plan or purpose for the trip. (R. pp. 417; 422).

⁴ Blakeney was also charged with Victim's murder, initially. (R. p. 403). However, the State consented to Blakeney being bonded out of jail and he provided incriminating testimony against Appellant and Green during the trial. (R. pp. 402-455). Although Blakeney testified that he had received neither a deal nor promise of one in exchange for his testimony, the Court may take judicial notice of the fact that, following his testimony in this trial, Blakeney's murder charged was reduced to Accessory After the Fact under the Youthful Offender Act. See <http://publicindex.sccourts.org/lancaster/publicindex/> (Under search "Blakeney Jr, Wayne Anthony"); see also *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable."); *Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984); *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) ("A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records."). Blakeney pled guilty to this reduced charge, and was sentenced to six years, suspended for time served and eighteen (18) months' probation.

Eventually, the group arrived at their destination at the mobile home community located on Roseanna Lane, off of Highway 200.⁵ (R. pp. 418-20). Blakeney parked the car, but could not remember where. (R. pp. 418-20; 450-51). Blakeney testified that he stayed in the car, while Clinton, Green, and McDow exited the car and “disappeared” amongst the mobile homes. (R. p. 420). Blakeney said that he did not know, and could not see, where the three went, if anywhere, or whether one or all three went to the same place. (R. pp. 420-21). They were gone for approximately ten (10) minutes. (R. p. 421). During that time, Blakeney testified he saw no one, including his three passengers, heard nothing, and was unaware of their destination or purpose. (R. pp. 421; 440-41; 450-53).

Ten minutes after they exited the vehicle, the three returned. (R. pp. 421; 452). The four left the mobile home community and returned to the Club. (R. p. 422). Several hours later, the four left the Club, along with several unidentified persons, and Blakeney drove to the Newtown area of town (incidentally, where they borrowed the Cadillac in the first place), where he dropped off Green, McDow, and the unidentified persons; Blakeney and Clinton remained in the car. (R. pp. 424-25). Thereafter, Blakeney drove Clinton back to his Grandmother’s mobile home on Roseanna Lane. (R. pp. 425-26). During this car ride, Blakeney testified that Clinton told him that “I killed that bitch,” although he did not elaborate and Blakeney had no idea to whom he was referring. (R. pp. 426-27). Blakeney further testified that, although he felt “shocked a little bit,” he did not believe Clinton had killed anyone. (R. pp. 427-28; 444-45). Once they reached the

⁵ It was later revealed that Appellant lived with his Grandmother in this same mobile home community on Roseanna Lane, in the mobile home next door to Victim. (R. pp. 418; 455; 561).

mobile home community, Blakeney testified that Clinton left the gun he had previously seen in the glove box of the Cadillac and asked Blakeney "to hold it for him." (R. p. 428). Blakeney obliged, for a while, but later sold the gun to a relative (despite originally lying and telling a friend that he had buried the gun). (R. pp. 429-30; 447; 453-54). After dropping Clinton off at his Grandmother's home, Blakeney ditched the Cadillac at a nearby Piggly Wiggly. (R. pp. 429-30; 443-44).

Even after learning of Victim's murder, and its date and location, Blakeney did not go to the police. (R. pp. 433-34). Instead, he later told a friend about his assumed role in Victim's death, and the friend later reported same to the police. Id. Blakeney was arrested and charged with Victim's murder. (R. p. 430). He gave multiple inconsistent statements to police, later admitting that he lied, which implicated Clinton, Green, and McDow. (R. pp. 432-34; 437-39).

The Lancaster Sherriff's Office, meanwhile, followed up on other leads. Led to the Cadillac after Blackmon reported it missing,⁶ (R. p. 152), investigators took swabs and samples from the Cadillac which were submitted to SLED for DNA testing. (R. pp. 203-204; 233-40). Test results revealed no link to either Victim or Clinton. (R. pp. 345-56). Police also recovered a blue work jumpsuit from the Cadillac, which was also submitted to SLED for DNA testing. (R. pp. 302-04). Witnesses claimed to have seen Clinton in a blue jumpsuit on the night of the murder, and Clinton admitted that he owned a similar jumpsuit. (R. p. 470). However, nothing linked the recovered jumpsuit to Victim or her mobile home.

⁶ Two other witnesses testified that they saw the Cadillac leaving the mobile home community around the time of the murder, lights off and moving at a high rate of speed, but could not identify any of the occupants of the car. (R. pp. 65-70; 118-20).

Investigators recovered little physical evidence at the mobile home of Victim. Swabs were taken of entry door handles, but nothing matched Clinton. **(R. pp. 179; 188-189; 192-94)**. Additionally, although the master bedroom of the mobile home appeared to have been ransacked, nothing was ever identified by police as having been stolen, and no fingerprints or “touch” DNA were recovered from the home. **(R. pp. 171-74)**. An autopsy of Victim recovered the bullet that caused her death, and a bullet casing was recovered from the mobile home. **(R. pp. 219-21; 391-92)**. However, a SLED ballistic expert testing of both the bullet and the casing was inconclusive. Neither item revealed a link to Clinton, and the expert could not even definitively state, with any degree of scientific certainty, that the recovered bullet came out of the recovered casing. **(R. p. 392)**. Moreover, despite Blakeney’s apparent cooperation, the murder weapon was never recovered. **(R. pp. 455-56)**.

Finally, the State relied upon testimony of several individuals who had seen Clinton and Green at the apartment of Green’s girlfriend the day before Victim was murdered. According to the testimony of Dominique Davis and Jamal Twitty, Clinton and Green were discussing doing a “lick.”⁷ However, of the two individuals who testified regarding these conversations, both testified that the conversations were devoid of details, and neither Clinton nor Green discussed when or where the lick was supposed to occur, or who the apparent target might be. The only descriptive fact resulting from this testimony turned out to have no relevance to the facts of this case. Davis testified that she heard Green ask Clinton “[d]oes she drive a black car?” **(R. p. 95)**. Davis did not know who the “she” was, or even if “she” was the target of the supposed “lick.” **(R.**

⁷ According to testimony, a “lick” is a robbery. **(R. p. 93)**. See also Urban Dictionary <http://www.urbandictionary.com/define.php?term=lick&defid=1795706>.

pp. 95-96). Irrespective, no testimony or evidence was introduced that Victim even owned a car, much less a black car.

Jamal Twitty's testimony was similarly vague and non-descriptive. Twitty testified that Clinton asked him if he wanted to "go on a lick." (R. p. 106). Twitty was interested, but, according to Twitty, the group stayed put where they were. (R. p. 107). Akin to Davis' testimony, no specific details of this "lick" were discussed in Twitty's presence. (R. pp. 107-110). Moreover, Twitty's strongest recollection of the conversation was favorable to Clinton, when he testified that he was certain Clinton did not have a gun on him the night of their conversation. (R. pp. 109-110). That is all the evidence the State introduced to support the murder charge against Clinton.

In sum, the testimony and evidence put forward by the State was disjointed, amounting to no direct evidence of Clinton's involvement in Victim's murder, but only circumstantial evidence that failed to surpass the level of mere suspicion. Further, the State failed to establish a consistent timeline of the events of the evening of Victim's death or the individuals alleged to have been involved. Finally, Police failed to follow up on the content of the oldest child's statements that incriminated another person, and the State was successful in suppressing the statement before the jury.

SUMMARY OF ARGUMENT

The trial court abused its discretion in excluding the statements of Victim's four-year-old son, who clearly and repeatedly implicated someone other than Clinton as the person that killed his mother. Victim's son had first-hand knowledge of Victim's attacker, as he was present in the home at the time of his mother's death. Further, in describing the perpetrator, the oldest son described the person by name in two separate

ways, demonstrating consistency and understanding of his observations. Because the foundation for these statements was sufficiently laid, they are plainly relevant to Clinton's defense, and they comport with the temporal standard set forth in current case law evaluating the excited utterance exception to the rule against hearsay, the trial court erred as a matter of law in determining that the oldest son's statements were not excited utterances under Rule 803(2), SCRE. In the alternative, and for the same reasons, these statements satisfy the present sense impression exception to the rule against hearsay under Rule 803(1), SCRE.⁸ Accordingly, the trial court abused its discretion in excluding the statements of Victim's oldest son, which was prejudicial to Clinton's defense.

Moreover, the State failed to present any direct evidence of Clinton's involvement in the murder of Victim. Additionally, the State failed to present any substantial circumstantial evidence of Clinton's involvement that did more than raise a suspicion of Clinton's guilt. Therefore, trial court's failure to grant Clinton's motion for directed verdict at the close of the State's case-in-chief constitutes reversible error.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. State v. Garner, 389 S.C. 61, 65, 697 S.E.2d 615, 617 (Ct. App. 2010) (citing State v. Rice, 375

⁸ In short, these statements fully qualify under the traditional, common law *res gestae* exception to hearsay. State v. Burroughs, 328 S.C. 489, 498–99, 492 S.E.2d 408, 412–414 (Ct. App. 1997) (explaining that the former *res gestae* exception comprised what the South Carolina Rules of Evidence now recognize as two separate exceptions to the rule against hearsay: present sense impression (Rule 803(1)), and excited utterance (Rule 803(2))).

S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007)). On review, appellate courts are limited to determining whether the trial judge abused his discretion. State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998). The trial court abuses its discretion when the ruling is based on an error of law or factual conclusion that is without evidentiary support. Garner, 389 S.C. at 65, 697 S.E.2d at 617 (citing Rice, 375 S.C. at 315, 652 S.E.2d at 415).

In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013) (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004)). “During trial, ‘[w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.’” Id. (citation omitted); see also Rule 19(a), SCRCrP. “The trial court should ‘grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.’” Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 (internal quotation omitted). “On the other hand, ‘a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.’” Id. (citing Cherry, 361 S.C. at 594, 606 S.E.2d at 478).

On appeal, “[w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state.” Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 (citing Cherry, supra; State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (finding that when ruling on cases in which the state has relied

exclusively on circumstantial evidence, appellate courts are likewise only concerned with the existence of the evidence and not its weight)). “If the state has presented ‘any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,’ this Court must affirm the trial court’s decision to submit the case to the jury.” *Id.* (citations omitted).

ARGUMENT

I. The trial court erred in excluding the statements of the Victim’s four-year-old son to first responders that implicated someone other than Clinton and his co-defendant in the charged crime.

a. Introduction and background.

The trial court abused its discretion in excluding the oldest son’s multiple statements to police and first responders that identified another person (someone not investigated, charged, or tried for Victim’s death) as being the person that killed Victim. As this identification meets the requirements of both the excited utterance and/or present sense impression exceptions to the rule against hearsay, the trial court’s ruling that the statements could not be introduced through the officers or first responders who witnessed the declarations was an error of law that warrants reversal.⁹

⁹ While the majority of the discussion centered on the excited utterance exception to the rule against hearsay, the trial court repeatedly refers in his analysis to the period immediately following Victim’s murder and the oldest child’s statements as a part of the *res gestae* of the incident. (**R. pp. 24; 652**). Of course, the *res gestae* exception to hearsay, which formerly comprised and required that a statement be substantially contemporaneous with the litigated transaction and was the spontaneous utterance of the mind while under the active, immediate influence of the event, was codified in the South Carolina Rules of Evidence and split into two separate exceptions. See Rule 803(1) and (2); *Burroughs*, 328 S.C. at 498–99, 492 S.E.2d at 412–414; see also *State v. Burdette*, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999) (citing *Burroughs*). Because the trial court ruled that the statements did not qualify under *res gestae*, its ruling therefore covers the present sense impression exception to the rule against hearsay under Rule 803(1), SCRE, and that argument is preserved for this Court’s review. Compare *State v. Garner*, 389 S.C. 61, 66, 697 S.E.2d 615, 617 (Ct. App. 2010) (wherein the Court of Appeals declined

This issue was first brought to the trial court's attention by way of the State's motion *in limine*, prior to opening statements, seeking to exclude testimony of the statements from officers and first responders. (R. pp. 14-36). As described by Clinton's counsel, police and investigators arrived on the scene of the mobile home community within minutes of the call to 9-1-1 by Victim's neighbors. (R. pp. 14-31; 256-59). Neighbors were notified of the situation by Victim's oldest son, who was four-years-old at the time, when he goes next door to ask for help. (R. pp. 19; 23). Thereafter, in the presence of officers and first responders, and on multiple occasions, the oldest child spontaneously exclaims: "Shi's Daddy shot my Momma." (R. pp. 14-15). Later, also to officers and first responders, the oldest child states: "Shortycake shot my Momma," (R. p. 17), and also "Jamia's Daddy hurt my Momma." (R. p. 19).

During this pre-trial discussion it was explained that Shi and Jamia are the same person. (R. pp. 17-19). It was also explained that Shi's Daddy/Jamia's Daddy goes by the nickname Shortycake, and Shortycake's actual name is Rashad Johnson.¹⁰ *Id.* Thus, substituting nicknames, the oldest child told officers and first responders on multiple occasions, within, at most, two hours of having been present inside the mobile home for his mother's killing, that Rashad Johnson shot my Momma; Rashad Johnson hurt my Momma. The State objected to Clinton's counsel eliciting this testimony from officers and first responders on the grounds of hearsay. (R. pp. 14-15).

to address the appellant's argument that the trial court erred in excluding a similar hearsay statement on preservation grounds, where the appellant failed to argue the statement was admissible as non-hearsay or under an exception to the rule against hearsay below).

¹⁰ The solicitor stated that "Your Honor, we did verify there is a child who goes by Shi, the nickname Shi ... And that child's daddy is in fact Rashad Johnson." (R. pp. 17-18). The trial court inquired: "Okay. And is Rashad Johnson known as Shortycake?" *Id.* To which the solicitor responded: "Yes, sir he is." *Id.*

Initially, the trial court was concerned about the competency of the oldest child, stating that “I think you would have to determine although I realize 803 availability of a witness is immaterial but you have to determine the competency of the individual that made the statement.” (R. pp. 18-20). The State adopted this argument, arguing that an additional element of competency should be added to the court’s review of an exception to hearsay. (R. pp. 18-19). Ultimately, the trial court reserved judgment and took the matter under advisement. (R. pp. 24-25).

The following morning of trial, the court made its ruling on the State’s motion *in limine*. (R. pp. 32-26). The trial court indicated that it had read the case law submitted by counsel and no longer believed that there must be a finding of competency of the oldest child prior to the admittance of his statements. (R. p. 34); see also State v. Ladner, 373 S.C. 103, 119, 644 S.E.2d 684, 692 (2007) (“We hold that the incompetency of a declarant at the time of trial does not preclude the admission of that declarant’s excited utterance through a different, competent witness.”) (citing State v. Bauer, 146 Ariz. 134, 704 P.2d 264, 267 (1985) (“excited utterances of children who are incompetent to testify because of their age are admissible in evidence”); Kilgore v. State, 177 Ga.App. 656, 340 S.E.2d 640, 643 (1986) (rejecting the contention “that because the victim would have been incompetent to testify in court, her out-of-court statements were thus unreliable and incompetent”); People v. Smith, 152 Ill.2d 229, 178 Ill.Dec. 335, 604 N.E.2d 858, 871 (1992) (excited utterances are sufficiently reliable to be admitted even where the declarant is incompetent); Com. v. Pronkoskie, 477 Pa. 132, 383 A.2d 858, 861 n. 5 (1978) (“a finding of incompetency to testify does not necessarily undermine the indicia of reliability attendant upon an excited utterance of the incompetent witness”); State v.

Bouchard, 31 Wash.App. 381, 639 P.2d 761 (1982)). Thus, the court denied the State's motion and correctly ruled that, subject to the parties laying the proper testimonial foundation for the exception to the rule against hearsay, the child's statements were admissible. **(R. pp. 35-36).**

However later, during the cross examination of Officer Ken Taylor, one of the first-responding Crime Scene Investigators for the Lancaster County Sherriff's Office and one of the officers to whom the oldest child made his statements, the trial court inexplicably reversed its ruling and sustained the State's renewed objection to the oldest child's statements coming into evidence. **(R. p. 259).** This ruling was an error. The foundation for the application of the exceptions to the rule against hearsay was set forth in the following manner.

Police officers were dispatched to the scene of Victim's mobile home community at 10:09 pm, and the initial officers arrived only three (3) minutes after 9-1-1 and police dispatch calls, at 10:12 pm. **(R. p. 39).** Officer Taylor later testified that he was called to respond to the scene at 10:30 pm, and arrived a little after 11:00 pm. **(R. p. 212).** One of Officer Taylor's duties at the scene was to collect certain evidence, including the clothes of the Victim's children, which were bloody. **(R. pp. 212-13; 257-59).** He testified that he observed the children for a period of time when they were being tended to by EMS first responders in an EMS vehicle. **(R. pp. 256-57).** He observed "[b]lood on just about all the children's clothing." **(R. p. 257).** The oldest child was present, and was able to tell Officer Taylor his name, as well as the name of his younger sister. Id. The "[o]ldest child, if I recall he had blood on him as well, but I don't think he had nearly as much as the other two [children]." **(R. p. 258).**

The following colloquy between Officer Taylor and Clinton's counsel, William Frick, occurred:

Q: Did you ever have any conversation with any of these children?

A: Yes.

Q: Which one?

A: Oldest child.

Q: Okay. Where did you have this conversation?

A: In the EMS truck.

Q: Do you recall about when you had this conversation? How long you had been on the scene?

A: I had probably been there about maybe 20 minutes, 30 minutes. So it was probably shortly before midnight, maybe.

Q: Do you recall the demeanor of this child?

A: He seemed – he didn't really seem too upset to a great extent. Kind of being entertained by EMS folks. They were trying to keep him and his sister and I guess the younger brother occupied to keep there [sic] mind off maybe their thoughts or whatever.

Q: Okay. Did you take a statement from any of these children?

A: No, I did not take a statement.

Q: Was anything told to you?

[SOLICITOR]: Objection.

MR. FRICK: I didn't ask what.

THE COURT: I will sustain the objection. You may ask your next question.

MR. FRICK: Thank you, Your Honor.

(R. pp. 258-59).

b. Hearsay standard.

"Hearsay is an out of court statement, offered in court to prove the truth of the matter asserted." State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996). A

“statement” as defined by Rule 801(a), SCRE, includes “nonverbal conduct of a person, if it is intended by the person as an assertion.” See also id., 321 S.C. at 59, 467 S.E.2d at 141 (finding the gesture of pointing to be an assertion). Under Rule 803, SCRE, hearsay statements are not admissible unless otherwise provided by the Rules of Evidence or by other rules prescribed by the Supreme Court or by statute. This “rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies.” Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001) (citing Jolly v. State, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994)).

The oldest child’s statements are hearsay, and Clinton does not challenge that fact. Of course, a determination that a statement is hearsay does not end the inquiry, and exceptions to the rule against hearsay exist and are codified under Rule 803, SCRE. The statements in this case meet the elements of both excited utterances and present sense impressions as a matter of law, and the trial court abused its discretion in excluding them.¹¹

¹¹ Additionally, unlike many cases where the State seeks to introduce hearsay statements against a defendant in a criminal case, in the circumstances under which the oldest child’s statements were to be introduced there is no Confrontation Clause issue under the Sixth Amendment, see U.S. Const. amend. VI., because the statement was proffered by the Defendants, and the State is entitled to no such procedural protections. See, e.g., State v. Davis, 364 S.C. 364, 373, 613 S.E.2d 760, 765 (Ct. App. 2005) (containing an extensive discussion on post-Crawford v. Washington, 541 U.S. 36 (2004) Confrontation Clause jurisprudence), rev’d in part, vacated in part, 371 S.C. 170, 638 S.E.2d 57 (2006). Similarly, the child’s statements, even though they were to police officers and EMS responders, was clearly non-testimonial in the context that they were given. See Crawford, 541 U.S. at 51-52 (describing testimonial statements as testimony provided at a preliminary hearing, before a grand jury, at a former trial, or formal, recorded statement made to police during an investigation).

c. Oldest child's statements qualified for the excited utterance exception to the rule against hearsay.

i. *Excited utterance standard.*

The oldest child's statements qualify under the excited utterance exception to the rule against hearsay. See Rule 803(2), SCRE (providing that an excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."). "An excited utterance may be admitted whether or not the declarant is available as a witness." State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007) (citing Rule 803, SCRE). "Moreover, when a statement is admissible because it falls within a Rule 803 exception, it may be used substantively, that is, to prove the truth of the matter asserted." Id. (citing State v. Dennis, 337 S.C. 275, 283–84, 523 S.E.2d 173, 177 (1999)).

In order for a statement to qualify as an excited utterance, three elements must be met: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition. Ladner, 373 S.C. at 116, 644 S.E.2d at 691 (citing Sims, 348 S.C. at 21, 558 S.E.2d at 521). "The excited utterance exception is based on the rationale that 'the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication.'" Id. (citing Dennis, 337 S.C. at 284, 523 S.E.2d at 177). Whether a statement is admissible under the excited utterance exception to the hearsay rule depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court. Burdette, 335 S.C. 34, 43-44, 515 S.E.2d 525, 530 (citing Harrison, *supra*).

- ii. *The case of State v. M. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002) is on point and the Supreme Court's analysis is controlling.*

The facts of this case are strikingly similar to those in Sims, wherein the Supreme Court affirmed the admittance of a similar hearsay statement under the excited utterance exception. 348 S.C. 16, 558 S.E.2d 518. In Sims, police were called and dispatched to an apartment where a five-year-old boy was found upset and crying outside of the apartment. Sims, 348 S.C. at 18, 558 S.E.2d at 520. When they arrived, police discovered the mother of the five-year-old on her bed in a pool of her own blood, with a knife protruding from one of her wounds. Id. One of the officers who came to the scene assisted with the five-year-old and began asking him questions. Id. at 19, 558 S.E.2d at 520. At trial, the officer testified that the son answered her questions in a vague and automatic manner, failing to provide any specific details and keeping his head down when answering questions. Id. When the officer asked the five-year-old if there was anyone else in the apartment the night before, the five-year-old responded with a name.¹² Id.

When this testimony was sought to be introduced at trial, defense counsel objected, and the question to the officer was initially withdrawn. Id. Thereafter, the son, six-years-old by the time of the trial, was called to testify. Id. While initially cooperative, the son ceased answering questions on the stand prior to identifying the defendant and was excused as a witness. Id. Subsequently, the State recalled the officer to the stand in order to testify as to the five-year-old's statement at the time, which

¹² In Sims, the manner in which the hearsay statements were introduced is the exact opposite from the case at hand: the five-year-old actually implicated the person (Sims) on trial; thus, this line of questioning was initiated by the solicitor and objected to by defense counsel. Sims at 19, 558 S.E.2d at 520.

identified the defendant. Id. at 20, 558 S.E.2d at 520. Defense counsel renewed their objection on hearsay grounds; however, the trial court overruled the objection and allowed the testimony under the excited utterance exception to the rule against hearsay. Id.

On appeal, the Supreme Court affirmed the trial court's ruling and found, as a matter of law, that the five-year-old's statement to the officer was an excited utterance. With respect to the first element of the requirement for an excited utterance, the Court found it clearly met, "because it relates to the startling event of the son seeing his mother after she was attacked and possibly while she was being attacked." Id. at 21, 558 S.E.2d at 521. The Court found the third element similarly easily satisfied, stating that "if the son was under the stress of excitement, then that stress was caused by the startling event of seeing his mother being attacked and not being able to wake her." Id.

The Court spent more time analyzing the second element of the requirements for an excited utterance. With respect to the time that had elapsed, in Sims, it was estimated that the attack had occurred approximately twelve (12) hours before the five-year-old's statements to the officer. Id. Stating that the passage of time "is not the dispositive factor," the Court determined the five-year-old's statements were made during the continuing stress of seeing his mother in such a state. Id. at 21-22, 558 S.E.2d at 521 ("Under these circumstances, we find the stress of excitement from those events lasts a longer period of time than would be likely to occur if the son had been an adult.") (citing State v. Cude, 784 P.2d 1197, 1200 (Utah 1989) (excitement generally lasts longer in children and fabrication is less likely)).

The Court further held that “[o]ther factors useful in determining whether a statement qualifies as an excited utterance include the declarant’s demeanor, the declarant’s age, and the severity of the startling event. Clearly, the son’s age and the severity of the startling event are factors that weigh in favor of finding his statement to be an excited utterance.” Id. Therefore, in similar circumstances to those present in this case, the Supreme Court downplayed the relevance of the child’s demeanor, in favor of the child’s age and the severity of the event. The Court went on to say that “[w]hile the son was not crying or acting ‘excited’ in the sense of being animated when he made the statement, we believe his demeanor can also be characteristic of someone who is under the ‘stress of excitement.’” Id.¹³

Ultimately, the Court employed a “totality of the circumstances” standard to the facts in Sims and found that the five-year-old was under the continuing stress of excitement when he told the officer the identity of the person in the home the night of the

¹³ The Court cited additional case law in support of this proposition. See, e.g., Dezarn v. State, 832 P.2d 589, 591 (Alaska Ct. App. 1992) (statement to mother by two-year-old child, who had been unusually quiet, concerning sexual abuse by defendant was excited utterance; extreme emotion can still a person’s speech as well as evoke it); State v. Kay, 129 Idaho 507, 927 P.2d 897, 907 (Ct. App. 1996) (four-year-old child, who had dried tear tracks on face and was unusually subdued and quiet, was found to be under stress of abduction and molestation when making statements to mother and officer); People v. Nevitt, 135 Ill.2d 423, 142 Ill.Dec. 854, 553 N.E.2d 368, 376 (1990) (statement to mother by three-year-old child, who was uncharacteristically silent and withdrawn, concerning sexual abuse by defendant was excited utterance); State v. Hobby, 9 Neb.App. 89, 607 N.W.2d 869, 876 (Ct. App. 2000) (victim, who was upset, nervous, withdrawn, and uncomfortable, was speaking under stress of nervous excitement and shock produced by assault perpetrated by defendant); State v. Kaytso, 684 P.2d 63, 64 (Utah 1984) (child who gives statement under stress of nervous excitement need not be hysterical as long as still under emotional influence of the event); Braxton v. Commonwealth, 26 Va.App. 176, 493 S.E.2d 688, 692 (Ct. App. 1997) (statement by three-year-old child approximately one hour after discovered with mother’s body was admissible as excited utterance; although record did not establish how much time had passed following mother’s death, child remained visibly distressed, *i.e.*, was quiet and dazed, through time of statement).

attack. Id. at 23, 558 S.E.2d at 522. Accordingly, the Supreme Court affirmed the trial court¹⁴ in admitting the five-year-old's statement to police, "because the statement falls under the excited utterance exception to the hearsay rule." Id.

iii. *Under Sims, the oldest child's statements should have been admitted.*

Here, under the express guidance and precedent of Sims, all three elements to the excited utterance exception are met. First, the oldest child's statement clearly related to a startling event or condition; it should go without saying that a child witnessing the brutality of his mother being shot in their home and laying, bleeding, on the family room couch is a startling event or condition. Second, oldest child's statements were made while he was still under the stress of the excitement from the event.¹⁵ The fact that oldest

¹⁴ The Court also discarded an additional distinguishing feature of Sims from the case at hand based on the fact that the five-year-old's statement was given in response to a question, rather than spontaneously. Id. at 23 n.1, 558 S.E.2d at 522 n.1. If anything, the facts in this case are even stronger because of the fact that the oldest son's statements were made spontaneously and consistently to multiple officers and first responders.

¹⁵ All of the oldest child's statements occurred less than two hours after the child was present in the home for his mother's murder, and some were much closer to the event. However, the trial did not find that the elapsed time between the incident and the statements was a contributing factor to the exclusion of the statements for trial, thus that is not an issue in the trial court's ruling and not a proper subject of this Court's review. Moreover, the State did not argue at trial that this length of time rendered the statements inadmissible; therefore, this argument has been waived and is unpreserved to this Court's review. Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) (holding that an argument must be raised to and ruled upon by the trial judge in order to be preserved for appellate review).

Notwithstanding, longstanding case law confirms that statements made within the time period in which the oldest child made them to police officers and first responders clearly qualifies for both present sense impressions and excited utterances. "While '[t]here are no hard and fast rules as to when the *res gestae* ends,' this Court has generally allowed as excited utterances statements made by the victim to the police immediately following a physical attack." State v. Burdette, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999) (quoting State v. Harrison, 298 S.C. 333, 336, 380 S.E.2d 818, 820 (1989)); Sims, 348 S.C. 16, 558 S.E.2d 518 (finding a child's statements to police given twelve hours after witnessing the event qualified as an excited utterance); see also State

son's statements were given within two hours of witnessing this event, fits squarely within the temporal guidelines set forth in relevant case law, particularly in light of the facts and discussion in Sims, where the Court expressly relaxed the temporal restriction on excited utterances with respect to minors. 348 S.C. at 22, 558 S.E.2d at 521 ("Under these circumstances, we find the stress of excitement from those events lasts a longer period of time than would be likely to occur if the son had been an adult.").

At trial, a fair amount of time and testimony was spent on developing the foundation of the oldest child's demeanor at the time the statements were given.¹⁶ When initially ruling in favor of allowing the child's statements, the trial court noted that it struggled with the concept of the state of mind of a four-year-old child and whether a child that young is even capable of the reflection typically evaluated in an excited utterance context. (R. pp. 34-35).

v. M.C. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991) (allowing statements made to police under *res gestae* exception where the officer had proceeded directly to the scene attack upon it being reported); Harrison, *supra* (allowing as *res gestae* the statements of an alleged rape victim to an officer at the hospital upon first opportunity to tell what had occurred to her); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) (noting that a time interval of over one hour, and up to eleven hours, did not necessarily eliminate a statement as part of the *res gestae*); State v. Quillien, 263 S.C. 87, 207 S.E.2d 814 (1974) (concluding a rape victim's statements to police when she arrived at the emergency room were admissible under the *res gestae* exception); State v. Dennis, 321 S.C. 413, 468 S.E.2d 674 (Ct.App.1996) (allowing statements made to the police and nurse where the record indicated there was no appreciable time lapse between the attack and the statements).

¹⁶ In fact, after the trial court sustained the State's objection to Officer Taylor's testimony regarding the child's statements, co-defendant's counsel (who cross examined Officer Taylor after Appellant's counsel) attempted to lay further foundation for this element of an excited utterance. (R. pp. 270-289). Ms. Raney elicited testimony that there were eight to ten officers at the scene at the time, multiple police cars with blue lights on, and at least one EMS vehicle. (R. pp. 271-72). In the ambulance, the children were being entertained by adults they did not know with pairs of gloves ("nitro gloves") packs of crackers and cookies. (R. pp. 273-76). Ultimately, Officer Taylor maintained his testimony that the oldest child "didn't seem too upset to a great extent" and that he was "happy-go-lucky" being entertained by the EMS professionals. (R. pp. 259; 275).

The above-cited colloquy between Officer Taylor and Clinton's counsel reflects this line of thinking, with questions targeted at the "demeanor" of the oldest child at the time the statements were made. (R. pp. 258-59). However, too much analysis of the child's demeanor here is fraught with uncertainty, as pointed out by the Supreme Court in Sims. How should a four-year-old act upon witnessing such an event? Is there any precedent for what is considered "normal," given the age? Additionally given the fact that Officer Taylor testified that police and first responders were making a concerted effort to "entertain" these children and "keep their mind and thoughts off of" what they witnessed, (R. pp. 259), it is little wonder that the oldest child was acting in the manner described. In Sims, the child's age and the severity of the startling event were given more probative value than the child's "demeanor" with first responders. 348 S.C. at 22, 558 S.E.2d at 521. Based on the striking similarity of circumstances, the trial court erred in failing to employ the same approach and adhere to the clear precedent of Sims. In this case, based on the evidence and testimony, the oldest child was still acting under the stress of the excitement of the event when he gave his multiple statements to first responders.

Third and finally, also very similar to the situation in Sims, the oldest child's statements were prompted by the startling event of being present in the home and witnessing his mother's murder along with his siblings. Accordingly, all three elements of the excited utterance exception are present here, and under the holdings and totality of the circumstances approach adopted in Sims on almost identical facts (if not stronger here), the trial court's exclusion of the oldest son's statements to police constitutes an abuse of discretion that warrants reversal.

iv. *Oldest child's statements are relevant and probative to Clinton's defense.*

The oldest child's statements are relevant to Clinton's defense, and the probative value of the statements far outweighs any prejudicial effect in this case.¹⁷ See Rule 403, SCRE. Statements made by a witness who was present during or immediately after the commission of this crime, which identify someone other than the persons charged with the crime, is a significant piece of evidence that goes to reasonable doubt of Clinton's guilt. Under Sims, the jury should have heard these statements, and the trial court's decision to exclude the statements constitutes an abuse of discretion. Additionally, the fact that the oldest son's statements changed as they were repeated, yet they remained consistent in their identification of the persons involved, speaks to the reliability of the statements. In each variation, the oldest son's identification remained the same, changing between real names and nicknames (*i.e.*, "Shi" and "Jamia," and "Shi's Daddy/Jamia's Daddy" and "Shortycake"), but unfailingly identifying the same person each time.

Further, the oldest son's statements become even more probative when put in the context of other testimony elicited at trial. The State called Latoya Green, co-defendant Al Green's sister, at trial. (R. p. 82). She testified that she was close friends with Victim,¹⁸ (R. p. 83), and is actually Godmother to Victim's three children. (R. p. 84). In fact, Latoya Green testified that she, her co-defendant brother Al Green, Victim, and all three of Victim's children *lived together in an apartment earlier in 2011*, only months

¹⁷ Again, because these statements were proffered by the Defendants in this case, as opposed to the vast majority of cases, where the statements are proffered by the State and are prejudicial to the defendant, the circumstances here weigh heavily in favor of a finding that the trial court abused its discretion.

¹⁸ Her testimony also intimated at some familial connection to Victim, stating that Victim's sister and Latoya Green are cousins, although that relationship is never fully developed or explored and remains unclear based on the Record on Appeal. (R. p. 84).

before Victim was murdered. **(R. pp. 84-85).** Thus, viewed with this additional fact, the oldest son's identification of Shi's Daddy/Shortcake as the person who killed his mother is even more impactful. If, under the State's theory of the case, Clinton, Green, and McDow entered Victim's residence and murdered her in front of her children, the fact that the oldest son identified someone other than Green as being involved is significant and relevant to their defense.

d. Oldest child's statement also qualified for the present sense impression exception to the rule against hearsay.

Additionally, oldest child's statements qualify under the present sense impression exception, which also requires the demonstration of three elements: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event, or immediately thereafter; and (3) the declarant must have personally perceived the event. State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014) (citing Rule 803(1), SCRE; United States v. Mitchell, 145 F.3d 572, 576 (3d Cir. 1998) (listing the "three principal requirements" for a statement to be admissible as a present sense impression). All three elements are met here.

First, oldest child's statements describe and explain the event that occurred in Victim's mobile home. In no uncertain terms, the oldest child exclaims several variations of the theme: someone shot/hurt my momma. **(R. pp. 14-31; 256-59).** Second, the statements were substantially contemporaneous to the event.¹⁹ Finally, the foundation laid by counsel—and even the statements themselves—conclusively demonstrate that the oldest child was present in the mobile home at the time of his mother's murder and perceived the event. As described above, the oldest child is the person who notifies

¹⁹ See discussion, supra.

neighbors of his mother's death. (R. pp. 19; 23). He perceives the event, has his mother's blood on his clothing, then goes to the neighbor's house crying in order to get help for his mother. (R. pp. 19; 23-24; 258). His actions are what precipitated the police and first responders coming to the mobile home in the first place. (R. pp. 23-24). Moreover, the statements made on multiple occasions to police officers and first responders were in the form of a declarative sentence, with no question but that the oldest child perceived the event and is reporting what he saw. (R. pp. 15-19). Based on these facts, the elements of the present sense impression were met with respect to the child's statements, and the trial court abused its discretion in reversing its initial ruling and excluding the admission of the statements before the jury.

e. The exclusion of the oldest child's statement was an abuse of discretion.

In sum, the trial court abused its discretion in excluding the statements of Victim's oldest son, who clearly and repeatedly implicated someone other than Clinton as the person that killed his mother. Victim's son had first-hand knowledge of Victim's attacker, as he was present in the home at the time of his mother's death. Further, in describing the perpetrator, the oldest son described the person by name in two separate ways, demonstrating consistency and understanding of his observations. Because the foundation for these statements was sufficiently laid, they are plainly relevant to Clinton's defense, and they comport with the temporal standard set forth in current case law evaluating the exceptions to the rule against hearsay, the trial court erred as a matter of law in determining that the oldest son's statements qualified neither as present sense impressions under Rule 803(1), SCRE, nor excited utterances under Rule 803(2), SCRE.

II. The trial court erred in failing to direct a verdict in favor of Clinton where the evidence and testimony merely raised a suspicion that he was involved in a crime, but failed to meet the elements of the charged crime.

In State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013), the Supreme Court set forth the current standard under which a trial court should evaluate a defendant's motion for directed verdict under Rule 19, SCRCrP. Under Rule 19, SCRCrP, "[o]n motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight." The standard set forth by the Supreme Court dictates that where the State has failed to present any direct evidence or insufficient circumstantial evidence reasonably tending to prove the guilt of the accused, a verdict of not guilty should be directed in favor of the accused. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 (citing Cherry, 361 S.C. at 593-94, 606 S.E.2d at 478; Mitchell, 341 S.C. at 409, 535 S.E.2d at 127).

Clinton moved for a directed verdict at the close of the State's case-in-chief.²⁰ (**R. p. 503**). Additionally, Clinton renewed his motion prior to closing statements, (**R. p. 525**), as well as in a post-trial motion for a new trial. (**R. pp. 651-52**). Because the State did not meet its burden in presenting evidence of Clinton's guilt of the charge of murder, the trial court erred in failing to direct a verdict in his favor.

²⁰ The "waiver" rule and its exceptions, discussed in Hepburn, have no applicability to this case, as neither Appellant nor co-defendant Green testified or presented any evidence in their defense. (**R. p. 523**). Consequently, this Court's review is constrained to the same evidence (or lack thereof) presented by the State and considered by the trial court.

Clinton was charged with murder under section 16-3-10 of the South Carolina Code (1976, as amended). This statute defines murder as “the killing of any person with malice aforethought, either express or implied.” Id. In a murder prosecution, malice may be implied if the defendant uses a deadly weapon. State v. Kelsey, 331 S.C. 50, 63, 502 S.E.2d 63, 69 (1998). Although devoid of any direct evidence tending to support their arguments, the State presented to the jury a theory that Clinton was the triggerman in Victim’s murder, and co-defendant Green was his accomplice, guilty of murder under the “hand of one is the hand of all” doctrine. (R. pp. 543; 637; 639-41); see State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). In denying Clinton’s motion for a directed verdict, the trial court found the existence of certain evidence and testimony persuasive. (R. pp. 509-16).

However, none of the evidence put forward by the State qualified as direct evidence, and the circumstantial evidence presented fails to rise to the level of substantial circumstantial evidence. When you look under the surface, the evidence submitted by the State establishes nothing but a mere suspicion of Clinton’s guilt. See State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (“Accordingly, a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.”) (citing State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000)).

In this context, the inadequacy of the State’s evidence is best demonstrated by pointing out what the State failed to show:

- The State produced no evidence that Clinton was present inside Victim’s mobile home.
 - DNA swabs from the underside of the mobile home’s storm door did not contain Clinton’s DNA. (R. pp. 345-48; 685-99).

- DNA swabs from the main door knob of the mobile home do not indicate the presence of Clinton's DNA. **(R. pp. 345-48; 685-99).**
- Blakeney testified he has no idea where Clinton went upon exiting the vehicle, and did not see Clinton, Green, or McDow enter or even approach Victim's mobile home.
 - By contrast, testimony demonstrated that Clinton lived in that same mobile home community with his Grandmother. **(R. pp. 418; 455; 561).** It is equally as plausible of an explanation that Clinton went to his own mobile home upon exiting Blakeney's presence.
- The bullet casing did not contain the DNA of the Victim, and no one else, including Clinton. **(R. pp. 343; 685-99).**
- No murder weapon was ever retrieved. **(R. pp. 455-56).**
- No samples collected tied the blue jumpsuit to the Victim or the Victim's mobile home. **(R. pp. 334-65; 685-99).**
- None of the DNA samples collected from the Cadillac could be connected to Clinton (or anyone else in this case). **(R. pp. 334-65; 685-99).**
- Blakeney's testimony of Clinton's alleged statement that "I killed that bitch" proves nothing.
 - Blakeney testified that Clinton did not identify Victim when he made his statement and he did not know to whom Clinton was referring. **(R. p. 427).** This makes Clinton's alleged statement, even if believed, merely circumstantial evidence.²¹
- Testimony placed Clinton at the Club on the night of the murder.

None of the "evidence" presented by the State in this case places Clinton in Victim's mobile home with a motive to commit murder. The State's case below was built around the self-serving testimony of Blakeney, who was also charged with

²¹ Compare State v. Phillips, Op. No. 5280 (SC. Ct. App. Filed November 12, 2014) (Shearouse Adv. Sh. No. 45 at 82) (wherein the Court found testimony about the appellant's statements to be direct evidence, where the statement identified "the child" in question and thus required no further fact or inference). The court in Phillips found the identification of the child in the statement conclusive, as it could not have referred to anyone else. Appellant's alleged statement, while callous, requires additional information in order to determine the subject, as confirmed by Blakeney. This unquestionably restricts the alleged statement from qualifying as direct evidence and instead renders it merely circumstantial in nature.

Victim's murder and stood to gain (and did subsequently gain) significant favor by providing incriminating testimony about Clinton and Green. However, while Blakeney testified regarding his supposed first-hand, actual knowledge, which would ordinarily qualify as direct evidence, Blakeney's testimony did not establish any precise fact that impacts an element of the murder charge against Clinton. See State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) ("Direct evidence is based on personal knowledge or observation and ..., if true, proves a fact *without inference or presumption.*") (emphasis added). Indeed, Blakeney was witness to no crime. Thus, Blakeney's testimony is merely circumstantial evidence which, if believed, does nothing more than establish secondary facts which do not support a murder charge. See Lollis, 343 S.C. at 584, 541 S.E.2d at 256 ("'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.") (citing (State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963))); see also State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955) ("It is not sufficient that they create a probability, though a strong one....").

Taken as a whole, Blakeney's testimony does not rise to the level of substantial circumstantial evidence required to overcome Clinton's motion for a directed verdict. Coupled with the fact that no physical evidence links Clinton to Victim or her home, the State did not meet its burden in this case. See Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 ("The trial court should 'grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.'"). Consequently, the trial court erred as a matter of law in failing to direct a verdict in favor of Clinton,

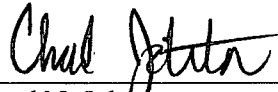
where the State presented no direct evidence, and the circumstantial evidence presented did not rise to the level that could survive a directed verdict motion.

CONCLUSION

For the reasons set forth above, the trial court should be reversed. The trial court erred as a matter of law, under the Sims case, in excluding the statements of Victim's four-year-old son, which qualified as both excited utterances and present sense impressions. Accordingly, the court's exclusion of the statements constituted an abuse of discretion that warrants reversal. Moreover, the State failed to present any direct evidence, and the circumstantial evidence presented was insufficient as a matter of law, as it failed to raise more than a mere suspicion of Clinton's guilt. Consequently, the trial court should be reversed.

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Respectfully submitted,



Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

(803) 252-3300

Robert M. Dudek

Chief Appellate Defender

**SOUTH CAROLINA COMMISSION ON
INDIGENT DEFENSE**

1330 Lady Street, Suite 401

Columbia, South Carolina 29201

(803) 734-1330

Counsel for Appellant

Devatee Tymar Clinton

Columbia, South Carolina
June 15, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000594

The State, ... Respondent,

v.

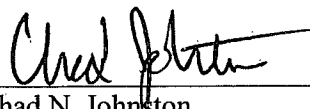
Devatee Tymar Clinton, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Briefs of Appellant Devatee Clinton comply with Rule 211(b), SCACR.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

(803) 252-3300

Robert M. Dudek

Chief Appellate Defender

**SOUTH CAROLINA COMMISSION ON
INDIGENT DEFENSE**

1330 Lady Street, Suite 401

Columbia, South Carolina 29201

(803) 734-1330

Counsel for Appellant

Devatee Tymar Clinton

Columbia, South Carolina
June 15, 2015

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Lancaster County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case No. 2014-000594**

THE STATE,

Respondent,

vs.

DEVATEE TYMAR CLINTON,

Appellant.

FINAL BRIEF OF RESPONDENT

**ALAN WILSON
Attorney General**

**JOHN W. McINTOSH
Chief Deputy Attorney General**

**DONALD J. ZELENKA,
Assistant Deputy Attorney General**

**WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General**

**P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305**

**RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
P.O. Box 607
Lancaster, SC 29721
(803) 416-9367**

ATTORNEYS FOR RESPONDENT.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in excluding the statements given by the four-year-old son of the Victim to multiple law enforcement and EMS professionals, shortly after witnessing Victim's murder, which identified someone other than Clinton as the murderer?
- II. Did the trial court err in failing to direct a verdict in favor of Clinton where the evidence and testimony merely raised a suspicion, but failed to meet the elements of the charged crime?

COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether assuming that Clinton's argument is preserved for appellate review despite his failure to make an adequate proffer at trial to support introduction of the testimony, after obtaining a favorable *in limine* ruling on its admissibility, the trial judge did not abuse his discretion by sustaining the State's objection because there was no evidence that the victim's son witnessed the shooting of his mother and Clinton did not satisfy the other foundational requirements for introducing the out-of-court statement under Rule 803(2), SCRE?
- II. Whether the trial judge properly denied Appellant Clinton's motion for a directed verdict on the charge of murdering Jenika Jones because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt, either individually or under a theory of accomplice liability?

STATEMENT OF THE CASE

Appellant, Devatee Tymar Clinton (Clinton), is currently incarcerated in McCormick Correctional Institution, where he is serving a life sentence for murdering Jenika Jones on January 19, 2012, in her Lancaster County residence. The Lancaster County Grand Jury indicted him in in 2012 for murder (2012-GS-29-616). **R. pp. 678-81.** His co-defendant, Al Martinez Green¹ was also indicted for her murder (2012-GS-29-636). **R. pp. 678-79.** William P. Frick, Esquire, represented Clinton in the trial court, while Amy S. Raney, Esquire, represented Green. Sixth Circuit Solicitor Douglas Barfield prosecuted the case.

On March 10-14, 2012, Clinton and Green received a joint jury trial before the Honorable R. Knox McMahon. The jury convicted both men of murder and each juror affirmed the verdict when the jury was polled. **R. pp. 646-649.** Judge McMahon sentenced both defendants to life imprisonment. **R. 668, lines 15-25.** Clinton timely served and filed a Notice of Appeal.² This appeal follows.

ARGUMENTS

I. Assuming that Clinton's argument is preserved for appellate review despite his failure to make an adequate proffer at trial to support introduction of the testimony, after obtaining a favorable *in limine* ruling on its admissibility, the trial judge did not abuse his discretion by sustaining the State's objection because there was no evidence that the victim's son witnessed the shooting of his mother and Clinton did not satisfy the other foundational requirements for introducing the out-of-court statement under Rule 803(2), SCRE.

Clinton first argues that the trial judge erred by refusing to permit him to elicit an out-of-court declaration by the victim's four year old son that someone other than Clinton or Green shot

¹ Although the judge granted Green's pretrial motion to prevent his jury from learning his nickname, Green's nickname is "Capone," which is the same surname as one of the most notorious gangsters in American history. **R. p. 28, line 18 – p. 29, line 13.**

² Green has likewise appealed his conviction and sentence, and his appeal is pending. See *State v. Al Martinez Green*, Appellate Case No. 2014-000603.

his mother. Assuming *arguendo* that Clinton's argument is preserved for appellate review even though he did not make an adequate proffer at trial to support introduction of the testimony, after obtaining a favorable *in limine* ruling on its admissibility, the trial judge did not abuse his discretion by sustaining the State's objection because there was no evidence that the victim's son witnessed the shooting of his mother and Clinton did not satisfy the other foundational requirements for introducing the out-of-court statement under Rule 803(2), SCRE.

A. The State's pretrial motion and the trial judge's *in limine* ruling.

The State moved pretrial to bar either Clinton or Green from eliciting out-of-court declarations by the victim's four year old son to the first responders after the Sheriff's Department took custody of them, "until other arrangements could be made." **R. pp. 14-15.** Counsel for Clinton explained that after law enforcement arrived and was "still trying to assess what occurred," the victim's four year old son "spontaneously states to I think Investigator Crump first and then to another officer and I think maybe a third officer on the scene that Shi's daddy shot my momma." Later, the child says that "Shortycake shot my momma." **R. pp. 15-16.**

To further clarify the issue, counsel explained that the victim's son was named Antonio Lamont Truesdale, II, that the son's nickname is Deuce," and that his father was Antonio Lamont Truesdale. The nickname in the son's declaration, "Shortycake," was not the nickname of either Clinton or Green. Rather, it was the nickname of a Rashad Johnson, who is the father of "Shi." **R. pp. 16-17.**

The Solicitor stated that the State had verified that there was a child whose nickname was Shi, that Rashad Johnson was Shi's father, and that Rashad Johnson's nickname is "Shortycake." The Solicitor also acknowledged that "Deuce" had made a statement to Inv. Crump. **R. pp. 17-18.**

After Clinton's attorney confirmed that his position was the statement was admissible as an excited utterance, under Rule 803(2), SCRE, the trial judge stated, "I realize [under Rule] 803 [the] availability of a witness is immaterial but you have to determine the competency of the individual that made the statement. In this regard I'm dealing with a four-year old." **R. p. 18.**

The Solicitor indicated that the child's competency was the basis for his objection. He argued that the declarant must be competent to testify for an excited utterance to be admissible, and that Clinton would have to make a showing of the child's competency as a witness before the statement could be introduced. In response to Clinton's point that the Sheriff's Office had investigated Johnson, the Solicitor noted that the competency as a witness was a different question than whether the statement would be investigated. **R. pp. 18-19.**

Counsel for Clinton then argued that the child was four years old at the time of the murder. Almost immediately after the shooting, Deuce

goes to the next door neighbor's house and asks for help. They called 911. The police respond within 15 minutes." Because it was cold, Deuce and his siblings were "put in an ambulance. [Deuce] makes the comment Shi's daddy hurt my momma. Jamia's (phonetics) daddy hurt my momma. Jamia and Shi are the same person and daddy they are referring to is Rashad Johnson. He makes this statement ... to Investigator Crump. He makes it in the ambulance in front of some of first responders who are on the [S]olicitor's witness list, and Mr. Plyler and Mr. Hope and then he says it spontaneous to Christy Rogers who is a CSI officer that responds there on the scene.

R. pp. 19-20.

Counsel presented three cases to the trial judge in support of the position admissibility of this declaration under Rule 803(2) did not depend upon the competency of the out-of court declarant and he asked the trial judge to consider these cases before ruling. Specifically, counsel relied upon *State v. Ladner*, 373 S.C. 103, 644 S.E.2d 684 (2007) (the incompetency of a declarant at the time of trial does not preclude the admission of that declarant's excited utterance

through a different, competent witness), *State v. Sims*, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002), and *In Interest of Smith*, 277 S.C. 187, 284 S.E.2d 586 (1981) (three year old victim's statements describing defendant's actions to mother immediately after the incident, while she was still crying and showing signs of pain, were admissible under *res gestae* exception to hearsay rule in case charging juvenile defendant with criminal sexual conduct in the first degree). **R. p. 20.**

The trial judge pointed out factual differences between those three cases and this case.³ However, in response to argument by counsel for Green, the trial judge made clear that his real problem with the proffer was that there must be a "foundation of the personnel knowledge of the hearsay declarant and then meet the three requirements within the rules." *See* Rule 602, SCRE. He also observed that "[p]resence in the home doesn't mean observation of the fatal act. That's all I am saying. ... That goes back to the rule 600 or something." **R. pp. 20-24.**

When counsel for Green asked if he was referring to the rule governing competency of a witness, the trial judge emphatically said, "No, ma'am. I am referring to the rule of personnel knowledge and I just don't have the number right now." **R. p. 24.** He added, "I am not saying it is or isn't admissible. I am saying a foundation has got to be laid for its admissibility and ... you all are welcome to do it in whatever manner you all so choose." **R. p. 25.**

The trial judge addressed this issue again the following morning. He stated that:

As to the hearsay exception, under that Ladner case it appears and my thoughts yesterday was the difference between a victim who makes the statement, a child victim versus a child witness. It is clear in the case that is cited in Ladner, Sims and I forget the other name -- that those two children that were witnesses were found competent and then would not continue to testify on behalf of the State. They were called by the State. *It is clear* Judge Waters said *there does not have to be a finding of competency of the child necessarily under that hearsay exception.*

³ He specifically noted that in two of the three cases relied upon by Clinton, the children were competent to testify, and the child declarant in the third case was the victim. **R. pp. 20-23.**

Depending on how it develops, I think is admissible.

Now, having said that that if it meets the standard of 803.2. As far as the startling event, under the influence of the startling event, no time for reflection, quite frankly I really struggled with no time for reflection having many times in my life been around four years old I don't know what reflection they really do. But at the same time I can't group four year olds and say absolutely they don't reflect. With that being said it does not mean that [Deuce] [cannot] be called as a witness. I'm not saying he should be. I am just saying it does not mean he [cannot] be, if either side chooses to do that and of course the jury could determine their observations of his competency. Of course it has been two years. [Sic]]. It's fuzzy in my memory, but there was a big difference in my children four to six years old. They are now regressing, but back then it was a big difference between four and six years as far as maturity level. As I say they are now regressing.

R. p. 34, line 10 – p. 35, line 15. (Emphasis added).

When the Solicitor indicated that his understanding of the trial judge's ruling was that the declaration could be admitted "if the competency issue is not there and if they can establish the elements of the excited utterance," the trial judge again stated that the defendants did not have to show the declarant's competency "for purposes of asking those questions, but they do have to lay the foundation under the excited utterance." The child's competency or incompetency, however, could be presented to the jury. **R. p. 35, line 16 – p. 36, line 13.**

B. Events during trial.

On Clinton's cross-examination of Inv. Taylor, he established that Inv. Taylor saw the children at the crime scene on the night of the 19th; that all three had blood on their clothing, including the oldest child; and that Inv. Taylor had seized their bloody clothing. **R. p. 256, line 25 – p. 258, line 24.**

Clinton then engaged in the following inquiry, which he contends preserves the present issue for appellate review:

Q Did you ever have any conversation with any of these children?

A Yes.

Q Which one?

A Oldest child.

Q Okay. Where did you have this conversation?

A In the EMS truck.

Q Do you recall about when you had this conversation? How long you [had] been on the scene?

A I had probably been there about maybe 20 minutes, 30 minutes. So it was probably shortly before midnight, maybe.

Q Do you recall the demeanor of this child?

A He seemed -- he didn't really seem too upset to a great extent. Kind of being entertained by EMS folks. They were trying to keep him and his sister and I guess the younger brother occupied to keep [their] mind[s] off maybe their thoughts or whatever.

Q Okay. Did you take a statement from any of these children?

A No, I did not take a statement.

Q Was anything told to you?

MR. BARFIELD: Objection.

MR. FRICK: I didn't ask what.

THE COURT: I will sustain the objection. You may ask your next question.

MR. FRICK: Thank you, Your Honor.

R. p. 258, line 25 – p. 259, line 25.

On cross-examination by Green, Inv. Taylor testified that he had been in the ambulance with the children “[p]robably about ten minutes.” **R. pp. 274-275.** Also, based upon the blood of the children’s clothing, it appeared that they would have been physically close to the victim; and

the four year old was able to see the blood on his siblings' clothing while he was in the ambulance. However, he appeared to be "happy-go-lucky" during the time that Inv. Taylor was with him. R. pp. 275-278.

- C. **Assuming that Clinton's argument is preserved for appellate review, even though he did not make an adequate proffer at trial to support introduction of the testimony, after obtaining a favorable *in limine* ruling on its admissibility, the trial judge did not abuse his discretion by sustaining the State's objection because there was no evidence that the victim's son witnessed the shooting of his mother and Clinton did not satisfy the other foundational requirements for introducing the out-of-court statement under Rule 803(2), SCRE.**

Initially, Respondent submits that the current issue is not preserved for appellate review. As the discussion in section A reflects, Clinton received a favorable *in limine* ruling and the trial judge repeatedly stated that testimony concerning the out-of-court declaration would be admissible if the defense established an adequate foundation for the introduction of the testimony by offering evidence that (1) the child had witnessed the shooting, see Rule 602, SCRE ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter"), and (2) the declaration met the other requirements for introduction into evidence as an excited utterance under Rule 803(2), SCRE. Because he did not make an adequate proffer in accordance with the favorable *in limine* ruling, there is nothing for this Court to decide on appeal. See *State v. Trotter*, 322 S.C. 537, 543, 473 S.E.2d 452, 455 (1996) ("Inasmuch as petitioner was granted the relief he sought, but failed to take advantage of it, there was actually no issue to be decided on appeal"); *State v. Sinclair*, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (where defendant received the relief requested from the trial court, there is no issue for the appellate court to decide); *State v. Brown*, 274 S.C. 48, 260 S.E.2d 719 (1979) (same). See also *State v. Simmons*, 360 S.C. 33, 46, 599 S.E.2d 448, 454 (2004) (the failure to make a proffer of excluded evidence will preclude review on appeal); *TNS*

Mills, Inc. v. S.C. Dep't of Rev., 331 S.C. 611, 628, 503 S.E.2d 471, 480 (1998) (a failure to make a proffer of what an excluded witness's testimony would have been precludes appellate review); *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 244, 391 S.E.2d 546, 547 (1990) (“An alleged erroneous exclusion of evidence is not a basis for establishing prejudice on appeal in absence of an adequate proffer of evidence in the court below”) (citations omitted).

Yet, even assuming *arguendo* that this issue is preserved for appellate review, Clinton is not entitled to relief. “The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion.” *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). “Hearsay is defined as ‘a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’ Rule 801(c), SCRE. Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court rule, or by statute. Rule 802, SCRE.” *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011) “In order for [an appellate court] to reverse a case based on ... exclusion of evidence, error and prejudice must be shown.” *State v. Bell*, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990).

Clinton does not dispute that the oldest child’s declarations were hearsay but argues that these declarations were admissible “under the excited utterance exception to the rule against hearsay. **IBOA**, p. 17 (citing Rule 803(2), SCRE). Respondent submits that the trial judge did not abuse his discretion by sustaining the State’s objection. First, it is axiomatic that in order for the declaration that “Shi’s daddy shot my momma” to have been admissible, the four year old declarant must have, in fact, witnessed the shooting. See Rule 602, SCRE (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not,

consist of the witness' own testimony"); *State v. Brockmeyer*, 406 S.C. 324, 339 n. 11, 751 S.E.2d 645, 653 n.11 (2013).

Clinton assumes that the four year old child saw the shooting of his mother and that this was the basis for his declaration. However, the trial judge correctly recognized that he had not made any such proffer and that he had only established that the child was in the house (with his siblings) when the victim was shot: "Presence in the home doesn't mean observation of the fatal act." **R. p. 24, lines 14-15.**

In the absence of a proffer tending to show that the child witnessed the shooting - as opposed to being awakened by the noise of the gunshot that night - the testimony concerning his declaration was inadmissible. Indeed, even assuming that the child was competent to testify and was called as a witness, he could not have testified that "Shi's daddy shot my momma," unless he had witnessed the shooting. *Id.*

Based upon the current record, it is not possible to determine why the child made the statement at issue. In other words, it cannot be determined whether (1) this was something that he thought that he saw, (2) he disliked Shi's father for some unstated reason, (3) he dreamed this, or (4) the suggestion that Rashad Johnson was responsible for the shooting was suggested to him by an adult whom he encountered when he went to his neighbor's residence to report the shooting. Moreover, the failure to affirmatively establish that the declarant witnessed the shooting distinguishes this case from *Ladner*, *Sims*, and *In Interest of Smith*, *supra*. See, e.g., *Sims*, 348 S.C. at 21, 558 S.E.2d at 521 (finding that non-testifying child's statement to officer "relates to the startling event of the son seeing his mother after she was attacked and possibly while she was being attacked").

Nor did the declaration fall within the ambit of Rule 803(2), SCRE. An excited utterance

may be admitted whether or not the declarant is available as a witness. *See* Rule 803, SCRE (entitled "Hearsay Exceptions; Availability of Declarant Immaterial"). Also, when a statement is admissible under a Rule 803 exception, it may be used substantively, *i.e.*, to prove the truth of the matter asserted. *See State v. Dennis*, 337 S.C. 275, 283–84, 523 S.E.2d 173, 177 (1999).

The Supreme Court explained in *Ladner* that:

there are three elements that must be met to find a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition. *State v. Sims*, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002). The excited utterance exception is based on the rationale that "the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication." *State v. Dennis*, 337 S.C. at 284, 523 S.E.2d at 177. A court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance exception, and that determination is left to the sound discretion of the trial court. *Sims, supra*.

Ladner, 373 S.C. at 116, 644 S.E.2d at 691.

"Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant's demeanor, the declarant's age, and the severity of the startling event." *Sims*, 348 S.C. at 22, 558 S.E.2d at 521. Whether a statement is admissible as an excited utterance depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court. *See State v. Harrison*, 298 S.C. 333, 380 S.E.2d 818 (1989).

In the present case, Clinton cannot meet his burden on these criteria. As to the first requirement, Respondent does not dispute that the child's statements "relate to a startling event or condition." Rather, Respondent asserts that there was a failure to establish that the child witnessed startling event or condition. More importantly, Clinton did not establish that the statement must have been made while the four year old child was under the stress of excitement.

Clinton maintains that this requirement was met because the statements were made at the

scene and less than two hours after the event. He further asserts that “too much analysis of the child's demeanor here is fraught with uncertainty.” **IBOA, p. 23.**

However, as the party offering the declaration, it was his burden to establish that it was admissible under Rule 803(2). The only evidence in the record is that, at the time the child made these declarations, “he didn't really seem too upset to a great extent” (**R. p. 259, lines 11-13**) and he was “happy-go-lucky.” **R. p. 277, lines 19-22; p. 278, lines 20-24.** In contrast, the victim's five year old son in *Sims* was “found upset and crying outside the apartment of his mother.” *Sims*, 348 S.C. at 18, 558 S.E.2d at 520. The three year old victim in *In Interest of Smith*, described the defendant's actions to her mother immediately after the sexual assault, while she was still crying, disheveled and showing signs of pain. *See* 277 S.C. at 188, 284 S.E.2d at 587. In *Ladner*, the hearsay statement “was made by a two-and-a-half year old girl to her caretakers immediately after they discovered blood coming from her vaginal area.” *Ladner*, 373 S.C. at 113, 644 S.E.2d at 689.

While the statements in each of those cases appear to have been made while the declarants were under the stress of excitement, and the stress of excitement was caused by the startling event or condition, the same cannot be said here. There was simply no evidence that the four year old declarant was crying, despondent or even upset by the time he made the declarations at issue. Thus, the rationale underpinning the excited utterance exception was absent. *Contra Dennis*, 337 S.C. at 284, 523 S.E.2d at 177.

Clinton did not argue a Rule 403, SCRE, analysis in the trial court. Thus, his argument on pages 24-25 of his brief is not properly before this Court on appeal. *See State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989) (a party cannot argue one theory at trial and a different theory on appeal). *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for

an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal”).

Moreover, the proffered testimony does not survive a Rule 403, SCRE analysis, even assuming its admissibility under Rule 803(2). Rule 403 provides that “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” “Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one.” *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App. 2003). Here, the child’s statement had very little probative value. While it was evidence that Rashad Johnson -someone other than Clinton and Green - was responsible for murdering Jenika Jones, it was made by a four year old child who may not have been competent to testify and, more importantly, who may not have even witnessed the shooting.

Also, the proffer was that the child went to his next door neighbor’s residence to get help. Because evidence presented at trial was that the victim lived in a mobile home adjacent to the one Clinton shared with his grandmother (**R. pp. 418; 429; 455**), it is possible that the neighbor from whom the child sought assistance or another person whom the child encountered suggested that Rashad Johnson shot the victim. Further, there was absolutely no other evidence presented tying Johnson to the shooting. *Contra Holmes v. South Carolina*, 547 U.S. 319, 330-31, 126 S.Ct. 1727 (2006).

On the other hand, the prejudicial effect of introducing the statement would have been tremendous. It would have diverted the jury’s attention from the issues that were properly before it and caused jurors to speculate about whether the victim’s son actually witnessed the shooting when there was no evidence that he had witnessed it. Likewise, introduction of the declaration would divert jurors to the question of third party guilt. In turn, the State would have been

required to present Deuce to testify as to what he actually witnessed and, worse, the State would have had to present evidence negating the question of third party guilt even though the statement by the child was the only evidence connecting Johnson to the murder of Jenika Jones was this unsubstantiated statement and the only evidence uncovered by the State's investigation was that the victim was murdered by Clinton, while Green and McDow, his friends and co-defendants acted as accomplices. *Contra Holmes, supra*; see also *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941).⁴

Nor did Clinton argue in the trial court that the child's declarations were admissible under the present sense impression exception to the hearsay rule. See Rule 803(1), SCRE. As a result, his argument based upon that Rule is not properly before this Court. See *Bailey*, 298 S.C. at 5-6, 377 S.E.2d at 584; *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94. See also *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (issues not raised to and ruled on by the trial judge are not preserved for appeal); *State v. Newton*, 274 S.C. 287, 262 S.E.2d 906 (1980) (questions neither presented to nor passed upon by the trial judge are waived and should not be considered by the appellate court for the first time on appeal).

Finally, Respondent submits that any error in excluding the proposed line of inquiry was harmless beyond a reasonable doubt. "Error is harmless beyond a reasonable doubt where it did

⁴ In *Gregory*, the Court explained that:

[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

198 S.C. at 104-05, 16 S.E.2d at 534-35 (internal citations omitted).

not contribute to the verdict obtained.” *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (citing *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). “When guilt is conclusively proven by competent evidence such that no other rational conclusion can be reached, [the appellate court] will not set aside a conviction because of insubstantial errors not affecting the result.” *State v. Kelley*, 319 S.C. 173, 179, 460 S.E.2d 368, 371 (1995); *State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006); *State v. Livingston*, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

Here, the evidence was harmless because it could not have affected the result of the trial. The prosecution’s evidence is discussed at length in **Argument, II**. Although the case was largely based upon circumstantial evidence, Respondent submits that the State presented overwhelming evidence of Clinton’s guilt, including his admission to his cousin, Wayne Blakeney, that “I shot that bitch.” **R. p. 427, lines 16-17**. Because any error was harmless, this issue lacks merit.

II. The trial judge properly denied Appellant Clinton’s motion for a directed verdict on the charge of murdering Jenika Jones because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt, either individually or under a theory of accomplice liability.

Clinton also contends that the trial judge erred by denying his motion for a directed verdict. Respondent submits that the trial judge properly denied Clinton’s motion because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove that he was guilty of murdering Jenika Jones, either individually or under a theory of accomplice liability.

A. The prosecution’s evidence.

The direct and circumstantial evidence presented at trial, viewed in the light most

favorable to the State, is that, in January 2012, Jenika Jones (the murder victim) lived in a Lancaster County trailer park with her three minor children, ages four, two and one. **R. pp. 38; 40-41; 43-48; 85-86.** Unfortunately for Jenika, Devatee "Tate" Clinton's grandmother was her next door neighbor and Clinton was living there at the time. **R. pp. 418; 429; 455.**⁵

On the night of January 19, 2012, officers with the Lancaster County Sheriff's Office, responding to a dispatch for a home invasion at Jenika's residence, found her dead from a single gunshot wound to the head. Her minor children were also still in the house. The only information that authorities had at that time was that three unnamed black males were seen running from the trailer. **R. pp. 37-49; 55; 57-62.**⁶

Latoya Green testified that she is Al Martinez Green's sister. Also, she had been both friends with and a cousin of Jenika Jones. Jenika and her children had shared an apartment with Latoya and Green at one time. When Jenika moved out, she moved into an apartment with the man she was dating, "Nard" Roseboro. Jenika had only lived in the trailer park for several weeks before her death. Ms. Green testified that her brother and Clinton were friends. **R. pp. 82-88.**

Dominique Davis was living in a Lancaster apartment complex in January 2012. On the morning of January 18, 2012, Ms. Davis and her daughter went to the apartment of her friend and neighbor, Y'eisha Tinsley, in the same complex. Ms. Tinsley was Green's girlfriend at the time and Green was at her apartment that morning. Clinton and Ms. Tinsley's brother, Madrey

⁵ Jenika's back door opened to the same area as the front door on the trailer owned by Clinton's grandmother. **R. p. 455, lines 5-15.**

⁶ Although EMS responded to the residence, the victim was already dead from her wound and, after examining the body, the Lancaster County Coroner requested an autopsy of Jenika's body. **R. pp. 76-81.** Dr. Janice Ross, the forensic pathologist who performed the autopsy, opined that the cause of death was "[a] laceration of the brain due to the gunshot wound to the head." This wound "was right in front of the left ear on the left cheek." The bullet then travelled "backward[,]slightly upward and slightly toward the right, slightly toward the middle of the skull and it was found inside the skull just in the back just toward the right midline." Dr. Ross removed this bullet (State's Exhibit 34) and explained that the wound caused by it was the only injury found at autopsy. **R. p. 133-40.**

Tinsley, were also there. **R. pp. 89-92.**

While Ms. Davis and Ms. Tinsley were talking, Ms. Davis overheard Clinton and Green discuss doing a “lick,” or robbing someone. She also heard Clinton say that “he had Taz’s gun and he wasn’t going to give it back to him.” Further, Ms. Davis heard Green ask whether “she” drove “a black car.” However, the men never mentioned an intended victim by name or location and Ms. Davis did not know whom the friends planned to rob. **R. pp. 92-100.**

Jamal Twitty lived in the same apartment complex as Ms. Davis and Ms. Tinsley in January 2012. Also, he knew both women, Clinton and Green. He did not know the victim. Mr. Twitty saw Green at Ms. Tinsley’s apartment on the morning of January 18, 2012. Mr. Twitty did not see Clinton there that morning, but he did not stay at the apartment very long. **R. pp. 102-05.**

Sometime between 10:00 and 11:00 p.m. on the 18th, Mr. Twitty had a conversation with Clinton while the men were standing in the area outside Ms. Tinsley’s apartment.⁷ Teeshan Harris and Maleek Moore were also present. Clinton asked Twitty if Twitty wanted “to go on a lick with him.” Mr. Twitty explained that a “lick” was slang for robbery. Mr. Twitty told Clinton, “yeah, whatever.” **R. pp. 105-07; pp. 108-09; 112-13.**

In response to Mr. Twitty’s question of where it would take place, Clinton said, “Not far.” Twitty changed his mind about participating in the robbery and talked Clinton out of doing it on the 18th when Clinton asked if Twitty could get a car because Twitty did not have a car and his girlfriend had told him that her car was parked for the night. **R. pp. 107-09; 113-14.**

Green walked up a few minutes after that conversation, and Clinton asked Green whether Green “want[ed] to go on a lick.” Green replied, “yeah, whatever,” indicating that “he was down

⁷ The location where the conversation occurred was between Tinsley’s apartment and Dominique Davis’ apartment. **R. p. 105.**

for it. ...[H]e was like, yeah, he's ready." After these conversations, the men went their separate ways. While Twitty did not see Clinton with a gun that night, he had previously seen Clinton with one. Twitty was not with either Clinton or Green on January 19th. **R. pp. 107-10; 113-15.**

Lt. Christy Rogers, of the Lancaster County Sheriff's Office, testified that she supervises the Office's crime scene investigators. In the early morning hours of January 19th, Lt. Rogers, Inv. Ken Taylor and Inv. Jeff Steel processed the victim's residence pursuant to a search warrant. There were no signs of forced entry on the front door and the back door was locked. In the den and kitchen area, they found the victim with the gunshot wound to her head. They also found a .380 cartridge casing (State's Exhibit 41) behind the couch on which they found the victim and between the couch and the wall. Further, a picture had been knocked off of a wall near the front door and onto the floor. **R. pp. 164-72; 175-77; 186-87; 196-97; 201; 209-11; 213-22.**

There was a great deal of blood covering the victim's face, head, upper arms and on the couch under her body. (See State's Exhibit 11). Blood also pooled on the floor in that area. There were bloody footprints that had apparently made by Jenika's children and the only blood elsewhere in the residence had apparently been transferred by the children. There did not appear to be any bloody footprints made by adults. **R. pp. 171; 178-79; 184-85; 213-18; 255-258; 260; 274-76.**

The only other area of the residence that had been disturbed was the master bedroom, and it had been "ransacked." No fingerprints of evidentiary value were recovered from the residence, there was no sign of forced entry and the front door was open when the officers arrived. Nevertheless, Inv. Taylor took swabs from underneath the exterior and interior door handles to the screen door (State's Exhibit 42) and the main door (State's Exhibit 43), to see if touch DNA could be developed. **R. pp. 171-74; 193-94; 213-18; 223-31.**

Shakela Montgomery and her cousin, Tameca Nelson, testified that they dined at Applebee's on the night of January 19th. They returned to the trailer park where the crime occurred between 9:30 and 10:30 p.m. because they were planning to stay there that night with Shakela's brother. As soon as they turned onto the road going into the trailer park, they were almost run off of the road by a white car coming out of the trailer park without its lights on and traveling fast. Neither woman saw EMS, law enforcement or a crowd present at the time, and neither learned that a murder had occurred until the next day. **R. pp. 64-74; 116-22.**

Shakela could not tell anything about the other vehicle's occupants. However, she described the car as a late model vehicle, and indicated that it was "an Oldsmobile, Buick, [or] Cadillac style." **R. pp. 69; 72; 74.** Tameca likewise could not tell anything about the other car's occupants, but she testified that the car "was a white Cadillac with a rag top." **R. pp. 118-19.** She saw the same car parked at a nearby Piggy Wiggly the next day. It had a flat tire at that time. **R. pp. 119-22.**

As it turns out, the white car that they described was owned by fifty year old Pomp Blackmon. Mr. Blackmon testified that he had lived in the city of Lancaster, South Carolina for all of his life. On January 19th 2012, he owned an "[e]ggshell white" 1991 Cadillac Seville "rag top." *See* State's Exhibits 16-18 (photographs of vehicle). While his car was not a convertible, it looked like one. Mr. Blackmon would give a ride to others on occasion, but it was unusual for anyone to ask that he loan it to them. **R. pp. 142-43; 145-46.**

"A little after seven" on the night of January 19th, a black male, who was approximately 5' 8" tall and wearing a "bluish black" jumpsuit came to Mr. Blackmon's house and asked Mr. Blackmon to give him a ride to the store or let him use the Cadillac. Mr. Blackmon would not drive the car because he had been drinking beer and he would not let the man borrow the car

because he knew that the man did not have a driver's license. This man said that his cousin had a license. The man momentarily left and returned with his cousin. When Mr. Blackmon saw that the cousin had a license, he let the men borrow his vehicle. After the car pulled out of Mr. Blackmon's driveway and stopped at a stop sign, two more men wearing hoodies got into the car. **R. pp. 144-48.**

Mr. Blackmon had expected that his Cadillac would be returned within ninety minutes and that he would receive beer and cigarettes in exchange for letting the men use his car. However, neither of these occurred. He reported his car missing to the City of Lancaster Police Department the next morning and set out, on foot, to find his car. He found it in the parking lot of Piggly Wiggly located roughly a mile from the crime scene around 5:00 p.m. on January 20th. It had a flat tire on the front, driver's side, and it was almost out of gas. Mr. Blackmon called police and let them know that he had found the car; however, he did not take it home until Saturday, January 21st. **R. pp. 148-53; 159-60; 212.**

When Mr. Blackmon got his car on Saturday, the key to the car was missing, the car had red mud on it, a piece of molding was missing, and a blue jumpsuit (State's Exhibit 37) and an ID card had been stuffed on the floorboard behind the passenger seat. Mr. Blackmon testified that the car was not muddy and the molding had not been missing when he loaned it on the 18th; that the ID card had not been in the car when he loaned it; and that the jumpsuit was not his. So, he called law enforcement to report what he had found, and he was later interviewed by Inv. Fred Thompson. **R. pp. 153-63.**

Frederick Thompson testified that he was employed as an investigator in the Lancaster County Sheriff's Office in January 2012. As part of his duties in this case, he spoke to Mr. Blackmon on January 23rd, 2012. Inv. Thompson seized the blue jumpsuit (State's Exhibit 37)

and the ID card from the trunk of the Cadillac. Upon learning that a piece of the car's molding was missing, Inv. Thompson went to the road leading into the trailer park, to see if he could locate the missing piece of molding. He found some molding in the area of that road and subsequently verified that it was the missing piece by comparing it to the space on the car that did not have molding. **R. pp. 291-97; 303-04.**

Additionally, Lt Rogers, Inv. Taylor and Inv. Steel processed Mr. Blackmon's Cadillac. Inv. Taylor first processed the car on January 23rd, 2012, at Mr. Blackmon's residence. No identifiable latent prints were found, either inside or outside of the vehicle. All three officers processed it on March 7th, 2012, at a building owned by the Sheriff's Office. The officers re-searched it in the hopes of finding evidence of blood in it. They used a "blue star chemical" that reacts positively to the presumptive presence of blood to help locate possible areas of human blood. Because the chemical reacted positively in several areas of the car, the officers took three swabs of reddish brown stains from the rear seat (State's Exhibit 46); cuttings from the front driver's seat (State's Exhibit 47) and front passenger's seat (State's Exhibit 48); and cuttings from the front passenger's seat belt (State's Exhibit 49). **R. pp. 202-04; 223-41.**

Vivian Stradford testified that she has lived in Lancaster for thirty years and that she had known Jenika Jones for three or four years. Also, she knows Clinton and she "knows of" Green. Someone called Ms. Stradford and informed her of Jenika's death around 10:30 p.m. on January 18th. After going to her aunt's house to discuss what she had heard with her aunt and cousin, Ms. Stradford drove to the Crenco convenience store, which is located on Main St. in Lancaster. A nightclub known as the Hole in the Wall was across the street from Crenco in January 2012. **R. pp. 373-77.**

Ms. Stradford saw Clinton walk up to Crenco before she went inside. He was wearing the

blue jumpsuit later found in the Cadillac (State's Exhibit 37), and he was coming from the Hole in the Wall. Clinton asked her for a cigarette and Ms. Stradford said that she did not have any but was going into the store to get some. When she told Clinton that "Somebody just killed my home girl," Clinton was uninterested in talking about the topic. Ms. Stradford went inside and purchased cigarettes. After she gave two to Clinton, he walked out of the store. By the time that she reached her vehicle, he was gone. **R. pp. 376-382.**

Y'eisha Tinsley testified that she was Green's girlfriend and that she was pregnant with his child in January 2012. Ms. Tinsley also knows Clinton. She corroborated that Green, Clinton, Dominique Davis, and Jamal Twitty were all at her apartment during the day on January 18th. **R. pp. 366-70.**

Ms. Tinsley and Latoya Green learned about Jenika's death on the 19th. Ms. Tinsley and Green thereafter talked about where he had been on the night of the 18th. He told her that he had been at the Hole in the Wall and that he met up with Clinton there. **R. pp. 370-72.**

Wayne Anthony Blakeney, Jr., testified that he was arrested on March 8, 2012, and charged with murder in this case. He was facing between thirty years and life on that charge and the State had not made any promises in exchange for his testimony.⁸ Clinton is his cousin and friend, and they hung out together sometimes. Blakeney also knows Green and he knew Delico McDow by nickname. He was not close to Green or McDow, the latter of whom he had met through Clinton. **R. pp. 403-07; 410-12.**

Clinton did not have a driver's license at the time and Blakeney drove Clinton places "a few times." Each time, Clinton provided the car. Mr. Blakeney testified that he was with Clinton

⁸ Following his testimony in this trial, Blakeney's murder charge was reduced to accessory after the fact to a felony, under the Youthful Offender Act. He received a sentence of six years, suspended on time served and probation for 18 months. The disposition date for his case was not until April 17, 2014. See <http://publicindex.sccourts.org/lancaster/publicindex/> (Under search "Blakeney Jr, Wayne Anthony").

Green and McDow on the night of January 19th, 2012. They met up in the Newton area. They later went to a residence, where they borrowed the white Cadillac shown in State's Exhibit 16. After Clinton spoke to the Cadillac's owner, the men got the car and Blakeney drove them to the Hole in the Wall. **R. pp. 409-410; 412-16.**

Blakeney drank beer while there, but he did not think that Clinton drank anything while there. He did not pay close attention to Green or McDow and he did not know whether or not they drank anything. The men left the Hole in the Wall when Clinton said that he needed for Blakeney "to drive him to get some money." Clinton did not indicate who owed him the money or where they were going in order to get it. However, he promised to give Blakeney some money for taking him to get it. **R. pp. 416-17.**

So, the four men got into the white Cadillac, with Blakeney driving and Clinton in the passenger seat. Following Clinton's directions, Blakeney drove to the trailer park where Jenika was murdered. As they rode to the trailer park, Blakeney saw that Clinton had a gun at his side. When they reached the trailer park, Blakeney parked the Cadillac in a location selected by Clinton. **R. pp. 417-420; 422-23; 439-40.**

Blakeney stayed in the car, but Clinton, Green and McDow got out of it. The three men then went behind a trailer and disappeared. They came running back to the Cadillac about ten minutes later. Although Clinton told Blakeney to "just chill," Green and McDow told him to "go." So, Blakeney drove "pretty quick[ly]" out of the trailer park and back to the Hole in the Wall. The four men hung out at the nightclub for thirty or forty minutes before leaving. **R. pp. 421-25; 440-41; 452-53.**

When they left this time, two men whom Blakeney did not know also got into the car with them. Mr. Blakeney dropped off Green, McDow and the two strangers in the Newton area.

He then took Clinton home. Following Clinton's directions, Blakeney drove Clinton back to the trailer park where they had been earlier and to the mobile home of Clinton's grandmother, where Clinton was staying. **R. pp. 418; 425-27; 433; 442.**

Along the way there, Clinton told Blakeney, "I shot that bitch."⁹ By the time Clinton got out, it was well into the morning of January 19th. Clinton told Blakeney that he had left his gun in the glove compartment and he asked Blakeney to "hold it for him." **R. pp. 427-28; 433.**

Blakeney left the trailer park but soon realized that the car was low on gas. Also, it had a flat tire. So, Blakeney parked it in the parking lot of the Piggly Wiggly. He left the car unlocked with the key in it, and he walked home. He took Clinton's handgun with him. **R. pp. 428-30.**

Blakeney sold the gun to his cousin, Marcus Barnes several weeks later. His arrest was prompted by a friend telling law enforcement that Blakeney had admitted involvement in the crime. After his March 2012 arrest, Blakeney gave a statement to the Sheriff's Office. While he was not completely truthful at first, he soon was completely honest about what had occurred. Also, both he and Inv. Thompson unsuccessfully tried to get the weapon from Barnes. However, Barnes would not cooperate. **R. pp. 430-35; 437; 455-56.**

Also, following Clinton's arrest, Inv. Thompson also had three conversations with him concerning his whereabouts on the night of January 19th. The first conversation occurred on January 27th 2012 and was initiated by Clinton, who was in his jail cell. Clinton told Inv. Thompson that he had gone to "the Hole in the Wall nightclub on Market Street" and that his cousin, Tony Cunningham, had taken him there. **R. pp. 457-59.**

On February 23rd, 2012, Inv. Thompson interviewed Clinton in a break room at the

⁹ Blakeney did not believe Clinton at first because he did not know to what Clinton was referring. Blakeney started to believe that Clinton had been serious when he found out about Jenika's death a couple of days later.

Sheriff's Office. Clinton's trial attorney, William P. Frick, Esquire, was also present, as was Capt. Craig Bailey. Before they discussed the case, Inv. Thompson advised Clinton of and secured a written waiver of his *Miranda* rights,¹⁰ with the exception of his right to counsel in light of counsel's presence. (State's Exhibit 61). The purpose of this lengthy interview was another attempt to establish where Clinton had been on the night of January 19th. **R. pp. 459-69; 481-82.**

Clinton claimed that he had been "[a]t the Self Controlled Brothers or at the Hole in the Wall." He also claimed that he had worn "a camouflage jumpsuit." Clinton brought up the topic of a blue jumpsuit. He admitted that he owned one but claimed that he would occasionally loan it to others. One person that he supposedly loaned it to was his roommate at the trailer park, Reggie Stover. Another was a person named "Wayne," but he did not give a last name for Wayne. **R. pp. 470-71; 482-83.**

Even though Jenika Jones lived in a mobile home immediately adjacent to the one in which Clinton was staying, he claimed that "[h]e didn't know that she lived in the mobile home right beside his." When asked about Pomp Blackmon and a white "rag top" Cadillac, Clinton initially claimed that he did not know Mr. Blackmon and that he had not seen such a car. However, he later admitted knowing Mr. Blackmon. He likewise admitted having seen Mr. Blackmon in various places and knowing both that Mr. Blackmon lived in the Newton area and that Mr. Blackmon owned a white "rag top" Cadillac. **R. pp. 471-73.**

Clinton denied that he had ever been in the white Cadillac. When asked whether it would be possible for his DNA to be in the Cadillac, he said that he had leaned into it once while talking to a girl. This occurred at the Hole in the Wall on January 19th, 2012. He explained that

¹⁰ See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

his DNA would be on the blue jumpsuit because he had touched it when he moved it in his residence and when he loaned it to people. **R. pp. 473-74.**

Inv. Thompson's third conversation with Clinton occurred on March 9, 2012. He first met with Clinton in the detention center and did not advise him of his *Miranda* rights at that time. Later that same day, however, Clinton initiated another conversation with Inv. Thompson and he was interviewed at the Sheriff's Office. Inv. Thompson advised Clinton of his *Miranda* rights and secured a written waiver of those rights before speaking to him. (See State's Exhibit 62). Inv. Thompson was especially careful to emphasize Clinton's waiver of his right to counsel because Mr. Frick represented him, but Clinton wanted to speak to Inv. Thompson without Mr. Frick present. **R. pp. 474-78; 484-85.**

The resulting interview lasted "probably less than an hour." This time, Clinton admitted that he had seen Wayne Blakeney at the Hole in the Wall on January 19th. He also said that Blakeney was in the white Cadillac. **R. pp. 478-79.**

Capt. Michael Greene, of SLED, was likewise involved in the investigation of Jenika Jones' murder, and he interviewed Green on January 25th, 2012 at the Lancaster County Sheriff's Office. Green had already been arrested for murder. Before they spoke, Capt. Greene used a Lancaster County Sheriff's Office advice of rights form (State's Exhibit 63) to advise Green of his *Miranda* rights, and Green made a signed, written waiver of his rights. Capt. Bailey, of the Lancaster County Sheriff's Office was also present. Green was not restrained and was in street clothes. **R. pp. 489-95.**

In the interview, Green claimed the witness that he had been at the Hole in the Wall, starting around 11:30 p.m. on the night of January 19th. **R. p. 496.**

At various points during the investigation, investigators collected a known blood sample

of the victim taken at autopsy (State's Exhibit 35), as well as buccal swabs from Clinton (State's Exhibit 38), Pomp Blackmon (State's Exhibit 50), Wayne Anthony Blakeney, Jr. (State's Exhibit 51), Delico Lamar McDow (State's Exhibit 52), and Green (State's Exhibit 53). This evidence was subsequently used for DNA testing by SLED. **R. pp. 139-40; 180-83; 200-01; 241-45; 287-89.**

A SLED DNA analyst took fourteen cuttings from the blue jumpsuit. SLED items 6.1 through 6.5 were introduced as State's Exhibit 56, and SLED items 6.6 through 6.14 were introduced as State's Exhibit 57. A presumptive test for the presence of blood was positive for each of these cuttings. **R. pp. 319-22.**

Maryann Boehm, another SLED DNA analyst, testified that she had received the victims known blood standard, as well as the buccal swabs from Clinton, Mr. Blackmon, Wayne Blakeney, Jr., McDow and Green. She was able to develop DNA profiles for each of these individuals. She also received a number of items of evidence and tested those items against the known standards. Specifically, she received the .380 shell casing; the swabs from the underside of the exterior storm door handle; swabs from the exterior doorknob on the main door; twelve cuttings from the blue jumpsuit; a swab from the jumpsuit and debris from the jumpsuit; cuttings from a portion of the passenger side seat belt; a cutting from a stained fabric from the front passenger seat; a cutting from stained fabric from the front driver's seat; and swabs of reddish brown stains from the rear seat, which she sub-categorized as swabs of reddish brown stains from the rear seat, seat section, and swabs of reddish brown stains from the rear seat back rest. **R. pp. 334-36; 340-43; 345-46.**

The DNA profile developed from the .380 shell casing found at the murder scene (State's

Exhibit 41) matched the victim.¹¹ **R. pp. 343-44.** Agent Boehm did not get a match on the swabs from the storm door and the doorknob (State's Exhibits 42-43). Although Clinton, Green and Blakeney could be eliminated from the DNA found in the swab of the screen door handle (State's Exhibit 42), the co-defendant McDow could not be eliminated. With respect to the swab of the door handle (State's Exhibit 43), "no conclusive statement could be made regarding inclusion or exclusion of Jenika Jones or Devatee Clinton as contributor to the mixture." **R. pp. 346-48.**

Agent Boehm did not find human blood on any of the cuttings from the jumpsuit, State's Exhibits 56-57. She also tested for the presence of touch DNA. The DNA profile developed on item 6.1 was a mixture of at least three people. The victim, Mr. Blackmon and the four defendants – Clinton, Green, McDow and Blakeney – were excluded as possible contributors to this mixture. Also, the DNA profile developed on item 6.2 was from an unidentified male. However, the DNA profile developed on item 6.3 was a mixture of at least two individuals and "Clinton could not be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in 580." Also, Agent Boehm opined that "[n]o conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones as possible contributor to this mixture."¹² **R. pp. 348-52; 359.**

As to the DNA profile developed SLED item 6.4, a swab from the blue jumpsuit, Agent Boehm found a "mixture of at least four individuals." Again, Clinton could not be excluded as a possible contributor to the mixture. "The probability of randomly selecting an unrelated

¹¹ Agent Boehm opined that "[t]he probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one and 8.9 quadrillion." **R. p. 344.**

¹² She later explained that this means that "[t]here is not enough information to either include them or exclude them from that mixture." **R. p. 364.** Also, she was able to exclude all other individuals that she had compared as contributors. **R. p. 352.**

individual who could have contributed to this mixture is approximately one in 12.” Also, she could not make a conclusive determination as to whether the victim, Green or McDow were contributors to the mixture found. Agent Boehm performed more specific testing for the presence of human blood on one of the cuttings from the Cadillac’s passenger side seatbelt and the other cuttings and swabs taken from the Cadillac, but she did not find human blood. **R. pp. 352-56.**

SLED Agent Suzann Cromer, a firearms and tool mark examiner employed in SLED’s forensic services laboratory, was qualified as an expert in firearms identification, without objection. **R. pp. 383-85.** Agent Cromer examined the fired bullet recovered from the victim’s head at autopsy (State’s Exhibit 34) and the .380 cartridge casing found at the scene. (State’s Exhibit 41). Unfortunately, she did not have a firearm with which to compare these items because both items had markings on them that would have potentially allowed her to identify the items to a particular weapon. The .380 caliber casing was marked “CBC or Magtech ammunition.” Agent Cromer opined that the bullet had “nine [lands] and grooves and it was going to go spin to the left coming ... out of the barrel of the gun. At this time there is only one known manufacturer that uses nine left rifling and that is High Point firearms.” She also explained that a .380 caliber bullet could be fired by a 9 mm. firearm because it is the same size as a 9 mm. Luger bullet. **R. pp. 386-94.**

B. Clinton’s directed verdict motion and the trial judge’s denial of it.

Clinton moved for a directed verdict at the close of the State’s case. He argued that even when the evidence was viewed “in the light most favorable to the State I do not believe there is enough evidence for the jury to consider it.” He further contended that, although the prosecution had presented “a lot” of evidence, it was a circumstantial evidence case and the State had failed to prove substantial circumstantial evidence. As a result, he was entitled to a directed verdict. **R.**

p. 503, lines 4-16.

Green likewise moved for a directed verdict. R. p. 503, line 19 – p. 507, line 11. The State responded and opposed both motions, arguing that the evidence was sufficient to go to the jury. R. p. 507, line 14 – p. 509, line 17.

The trial judge denied both motions as follows:

Well, as I review the evidence and the standard that I must apply at this stage it appears there have been 22 witnesses presented, or actually 21. One of those [witnesses testified] twice. That being Mr. Thompson.

If you start with the analysis of the testimony of Dominique Davis hearing the conversation on 1-18-12 that Green and Clinton were talking about doing a lick. That Clinton said he still had Taz's gun and was not going to give it back. That was on the a.m. of the 18th. And then on the p.m. of the 18th there's multiple individuals outside of these same apartments; Mr. Twitty [and] Mr. Clinton having a conversation. There [are] others around also -- about Clinton recruiting someone to do a lick. He asked Twitty. He ... responds, yeah whatever, and then when Al Green came up he asked Al Green and Twitty's indication was he said yeah, whatever. That he was down for it.

There's ... multiple witnesses that talk about the relationship between Clinton and Green. So within 24 hours, 36 hours of the homicide you have two separate and distinct individuals. One hearing a conversation between Green and Clinton about doing the lick. Another having that conversation with Clinton about doing a lick and then hearing Clinton ask Green and Green being down for it in that regard.

Now, you also have then I guess as you progress in time, you have different testimony from ...one of the individuals about the neighborhood of Newtown and that two individuals, black males, go to Newtown and borrow a vehicle from Pomp Blackmon; a white ragtop Caddy that they are going to bring back within an hour and a half, two hours.

Now, you have witnesses ...circumstantially and by more direct witnesses placing that Cadillac on [the trailer park road]. That would be the testimony of Shakela Montgomery and her cousin Tameca Nelson [who were] coming home from Applebees and saw the vehicle coming out being driven in a fast, reckless manner, a white ragtop caddy. Both of them describe it as a white caddy and then Tameca Nelson further goes to say she saw that same car the next day over at the Piggly Wiggly. They further state that when they drive in there that night and they see that car coming out that they don't see police. They don't see EMS. They don't see a crowd. They don't see parties in there where something had potentially

already occurred. When that car is both reported to Lancaster police and then recovered by Mr. Pomp Blackmon he testified he kept his car clean. Its got some red clay mud-type on it, it's kind of messy inside and further it was missing a piece of molding. I think that's by the 23rd when Detective [Thompson] is ... out there at Pomp Blackmon 's house, and on that same day on the 23rd, Detective [Thompson] goes out and locates the what appears to be molding off of the Cadillac on [the trailer park road]. So, you got witnesses identifying it out there at particular time saying they saw it the next day -- one of them saying they saw it the next day at Piggly Wiggly. Then you have a piece of a car I would say, or at least just it's jury issue as to whether it is a piece of the car or not found on [the trailer park road].

Going all the way back to Pomp Blackmon too, he did not identify anyone in this case however he does say four black males; one [is] the driver, one passenger and two in the back. That is the same indication that Mr. Blakeney testifies to that he is driving. Mr. Clinton is in the front. He is saying what he [had] done earlier that day. Mr. Green and a person that he does not know at that time who is later identified as being ... Mr. McDow is in the back seat. So, they got mode of transportation. They got the planning in mind to do a lick. They got tools in which to do a lick and I submit not only are the tools to do a lick but also the fact that ... at least one of them is wearing a jumpsuit. When the car is recovered by Mr. Blackmon and the police go out there and ... he has already found the jumpsuit and [I] think there is the ID also from Tyson. Now, when you get to that jumpsuit and you get to the DNA analysis[,] [and] perhaps some of the numbers aren't very great, but there is some corroboration of Mr. Blakeney in the DNA analysis. DNA profile developed from item two is mixture of at least three individuals; Jenika Jones and Delrico McDow [cannot] be excluded as a possible contributor to the mixture. That is swabs from the [underside] of the storm door handle exterior. ... [R]egardless of what the numbers are that corroborates Blakeney.

Item three profile -- item three swab from doorknob, DNA profile developed from item three is a mixture of at least two individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jenika Jones and Devatee Clinton as possible contributors. ...Pomp Blackmon, Wayne Blakeney, Delrico McDow and Al Martinez Green can be excluded.

Item 6.1 which is a cutting from the jumpsuit excludes all parties. Item 6.2 is an unidentified male individual. Item 6.3 -- and I will note 6.2 is an unidentified individual. I do not see that Reggie the roommate that they got buccal swabs from him, unless I am incorrect in that regard. Item 6.3 Clinton can't be excused as a contributor. All this is coming from the jump suit. Item 6.4 is mixture of four individuals. Clinton can't be excluded. No statements can be made about inclusion or exclusion of ... Jones, McDow -- I should say Miss Jones, McDow, and Green in that mixture. That is a corroborating testimony as to Mr. Blakeney, where you have this mixture of individuals, again I say regardless of the numbers. Further

from the statements given Green, Clinton and Blakeney were at the Hole in the Wall on the 19th.

Testimony of Miss Stradford that she was at ... Crenco. And she was approach by Clinton wanting cigarettes and he was wearing that blue jumpsuit. The blue jumpsuit in evidence. Her testimony is he was wearing that blue jumpsuit She told him oh, this friend of mine did you hear what happened to Jenika and ... he is not interested. Well, he is not interested in this Court's opinion because he already knows what has [happened] to Jenika or that can be an inference that could be drawn ... from the evidence.

Y'eisha Tinsley also [testified] concerning the Hole in the Wall on the 19th. Again Mr. Clinton gives conflicting statements. Mr. Frick wants out on the cross examination of Mr. [Thompson], but it is not usual for someone not to tell the truth, the whole truth and nothing but the truth on [their] first statement to the police. The cross examination of Mr. Blakeney well, why didn't you tell him the truth on the first statement. So you have all this corroborating circumstantial evidence, and I would further add whether there is blood, whether there is fingerprints, whether there is hair, whether there is fiber, whether there is someone's driver's license at the scene, the absence of evidence is not evidence of absence. You have the testimony of Mr. Blakeney that says he was driving. Two individuals that he knew he identified. Three of them got out of the car, went in down there [at the trailer park], came back in a hurry within ten minutes. The one with the gun appeared to be cool, calm and collected. He says chill. The other ones, lets go, lets go, lets go. I think that shows his manner in which he is driving that I don't know if he skimmed something, hit a rut or what, and that molding comes off. But I think there is both direct and substantial circumstantial evidence as to both Mr. Clinton and Mr. Green and I would be remiss if I didn't point out also the direct statement by Mr. Clinton to Mr. Blakeney that I killed that individual. Not by name but by expletive.

R. p. 509, line 19 – p. 515, line 25.

Both defendants rested without presenting additional evidence. Clinton then renewed his directed verdict motion. **R. p. 525, lines 9-12.** Green also renewed his prior motions. **R. p. 525, lines 15-17.** The trial judge renewed his ruling on the directed verdict motion. **R. p. 525, lines 18-19.**

C. The trial judge properly refused to grant a directed verdict.

South Carolina defines “murder” as the “killing of any person with malice aforethought,

either express or implied.” S.C. Code Ann. § 16-3-10 (2003). *See also State v. Blakely*, 402 S.C. 650, 742 S.E.2d 29 (Ct.App. 2013). “Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong.” *State v. Wilds*, 355 S.C. 269, 276-77, 584 S.E.2d 138, 142 (Ct.App. 2003); *Kelsey*, 331 S.C. at 62, 502 S.E.2d at 69 (same). “It is the doing of a wrongful act intentionally and without just cause or excuse.” *Tate v. State*, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002). Alternatively, “malice” has been defined as “something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief.” *Arnold v. State*, 309 S.C. 157, 163, 420 S.E.2d 834, 837 (1992). *See also State v. Fennell*, 340 S.C. 266, 275 n. 2, 531 S.E.2d 512, 517 n. 2 (2000) (“[m]alice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it”).

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict [only] when the state fails to produce evidence of the offense charged.” *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). “In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury.” *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998). “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” *State v. Irvin*, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing *State v. Massey*, 267 S.C. 432, 229 S.E.2d 332

(1976)). See also *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013); *State v. Martin*, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

Applying the above principles to the facts of this case, Respondent submits that the trial judge properly denied Clinton's motion because the direct and circumstantial evidence presented at trial, viewed in the light most favorable to the State, reasonably tended to prove his guilt or was such that his guilt could be fairly and logically deduced. *Kelsey*, 331 S.C. at 62, 502 S.E.2d at 69. As Clinton acknowledges, the State proceeded under a theory of accomplice liability.¹³ The Court explained in *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 769-70 (Ct.App. 2010), that:

Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, m]ere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.

State v. Thompson, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct.App.2007) (internal quotations and citations omitted).

"Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.' " See *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct.App.2002) (quoting *State v. Langley*, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999)). In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties. *Id.* at 193, 562 S.E.2d at 324 (stating that

¹³ "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (citations omitted); *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987); *State v. Cox*, 258 S.C. 114, 187 S.E.2d 525 (1972); *State v. Hicks*, 257 S.C. 279, 185 S.E.2d 746 (1971); *State v. Hunter*, 79 S.C. 73, 60 S.E. 240 (1908). Accordingly, the State may present an indictment charging a defendant as a principal based on information of aiding and abetting the crime charged. *Id.* See also *State v. Fleury*, 2 Brev. 338, 4 S.C.L. 338, 1809 WL 338, 7 (S.C. Const. 1809) ("The distinction, however, of principal in the first and second degree being merely nominal, and no ways essential, it seems to be useless to preserve it in indictments").

under the hand of one is the hand of all theory, “[a] formally expressed agreement is not necessary to establish the conspiracy” which brings the accomplice to the scene of the crime).

Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769-70. *See also* **R. pp. 639-41 (Jury charge).**

As the trial judge correctly observed, the State presented evidence from several witnesses that Clinton and Green were friends and associated with one another. Further, Clinton lived with his grandmother in a trailer adjacent to the one in which Jenika lived and where the murder occurred. When later questioned by the Sheriff’s Office after his arrest, however, he denied knowing that she lived next to him. **R. p. 471.**

On the morning of January 18th, Dominique Davis overheard Clinton and Green discuss doing a “lick” or robbing someone. Ms. Davis also heard Clinton say that “he had Taz’s gun and he wasn’t going to give it back to him.” Further, Ms. Davis heard Green ask whether “she” drove “a black car.” However, the men never mentioned an intended victim by name or location and Ms. Davis did not know whom the friends planned to rob. **R. pp. 89-100.**

On the night of the 18th, Jamal Twitty had a conversation with Clinton in the presence of two other men, in which Clinton asked if Twitty wanted “to go on a lick with him.” Twitty told Clinton, “yeah, whatever.” **R. pp. 105-07; pp. 108-09; 112-13.** Clinton did not give an address of the place he wanted to rob but said that it was “Not far.” Twitty changed his mind about participating in the robbery and talked Clinton out of doing it on the 18th when Clinton asked if Twitty could get a car because Twitty did not have a car and his girlfriend had told him that her car was parked for the night. **R. pp. 107-09; 113-14.**

Green walked up a few minutes later, and Clinton asked Green whether Green “want[ed] to go on a lick.” Green replied, “yeah, whatever,” indicating that “he was down for it. ...[H]e was like, yeah, he’s ready.” While Twitty did not see Clinton with a gun that night, he had

previously seen Clinton with one. R. pp. 107-110; 113-15.

Thus, there was evidence of a conspiracy by Clinton and Green to commit an armed robbery, which supports an inference of malice. This evidence also established an undeniable motive for the subsequent murder. Although "motive is not an element of murder and ... the State need not prove motive, *State v. Smith*, 307 S.C. 376, 385, 415 S.E.2d 409, 414 (Ct.App. 1992), this evidence provides a reason for the subsequent murder of Jenika Jones. *Accord Williams v. State*, 363 S.C. 341, 611 S.E.2d 232 (2005) (circumstantial evidence showed defendant's motives for murdering his wife and child were financial gain and elimination of his domestic problems); *State v. Rice*, 368 S.C. 610, 615-16, 629 S.E.2d 393, 395-96 (Ct.App. 2006) (trial court did not err by refusing to sever murder and trafficking in cocaine charges where State's theory as to the motive for victim's murder involved the drugs victim stole from Rice when he stole Rice's car, as well as the drug-related argument the two recently had involving the marijuana); *Commonwealth v. Pacell*, 497 A.2d 1375, 1378 (Pa.Super.Ct.1985) (finding evidence that defendant struck common-law wife five days before the murder of wife's paramour was relevant to defendant's motive, and remoteness did not vitiate relevance given incident was part of the sequence of events leading directly to the homicide).

More importantly, Wayne Blakeney's testimony, various parts of which were corroborated by testimony from other witness' and DNA, provided further evidence that both defendants were guilty of murdering the victim. Blakeney testified that he is Clinton's cousin and friend, and that they sometimes hung out together. Blakeney also knows Green and McDow. Clinton did not have a driver's license at the time. So, Blakeney occasionally drove him places, if Clinton provided the transportation.

On the night January 19th, Blakeney met up with Clinton, Green and McDow in the

Newton area. They later went to a residence in the same part of town, where they borrowed the white Cadillac shown in State's Exhibit 16. Blakeney did not know the name of the man from whom they borrowed the Cadillac, but Pomp Blackmon's testimony confirms that it was his 1991 eggshell white Seville. Although Mr. Blackmon did not identify the persons to whom he loaned his vehicle, his testimony was that he did not loan it to the first person who asked to borrow it because that man did not have a license. Rather, Mr. Blackmon only loaned the car after he was certain that the first man's cousin had a license.

Additionally, Mr. Blackmon saw the car stop after these two men left his driveway in it and two more men got into it. He thus corroborated Blakeney's testimony that there were four people in the Cadillac: Blakeney, Clinton Green and McDow. Blakeney also testified that the four men first went to the Hole in the Wall. They all got into the Cadillac and left when Clinton asked Blakeney to take him to get some money.

Following Clinton's directions, Blakeney drove the Cadillac to the trailer park where the murder occurred and where Clinton lived with his grandmother. Along the way there, Blakeney saw that Clinton was armed with a gun. Once they reached the trailer park, Blakeney parked the Cadillac at a location selected by Clinton. Clinton, Green and McDow then get out of the car. Together, they walked behind a mobile home and disappeared for about ten minutes. When they returned, they were running. Clinton, who was armed, told Blakeney to chill. On the other hand, Green and McDow told Blakeney to "go" and were anxious to leave the scene. Blakeney's testimony that they were running is corroborated by information in the 911 call that three men were seen running from the scene.

Also and as the trial judge correctly observed, Blakeney's testimony that he quickly drove out of the trailer park is circumstantially corroborated by cousins Shakela Montgomery

and Tameca Nelson. When they turned on the road to go into the trailer park, a white car headed in the opposite direction almost ran them off of the road. The car's headlights were not on and it was being driven fast. A clear inference from their testimony is that this occurred shortly after the murder because neither woman saw police or EMS.

Shakela testified that the car was "an Oldsmobile, Buick, [or] Cadillac style." **R. pp. 69; 72; 74.** Tameca described the car as "a white Cadillac with a rag top." **R. pp. 118-19.** Tameca saw the same car the next day over at the Piggly Wiggly with a flat tire. This corroborates Blakeney's testimony of where he left the car and the condition it was in, as well as Blackmon's testimony about the condition of the vehicle when he found it the next day.

Blakeney's testimony that he quickly drove out of the trailer park is also circumstantially corroborated by testimony that a missing piece of molding that was on the Cadillac when Mr. Blackmon loaned out the car on the 19th was found by Inv. Thompson on January 23rd, in the area of the road leading to the trailer park. Blakeney's testimony is likewise corroborated by evidence that there was red mud on the Cadillac that previously had not been on it.

Blakeney also testified that he drove back to the Hole in the Wall after leaving the trailer park. Both Green and Clinton admitted that they were at the Hole in the Wall on January 19th, and Ms. Stradford saw him there. Blakeney later dropped off Green, McDow and two strangers in the Newton area before he took Clinton home: *i.e.*, back to the mobile immediately adjacent to the victim's. As they were headed to Clinton's residence, Clinton said, "I shot the bitch." This is express evidence of malice. *E.g.*, *Salazar v. State*, 397 S.W.2d 220 223 (Tex. Cr.App. 1966) ("Statements made by a slayer before, at the time of, and after the homicide are pertinent evidence to show express malice"); *Hinton v. People*, 169 Colo. 545, 551, 458 P.2d 611, 613 (Colo. 1969) (in light of defendant's statement to victim, "Bitch, I'll kill you," promptly

followed by defendant delivering a staggering blow and the fatal stabbing, "the jury could find that defendant killed [the victim] with deliberation and premeditation, and hence, with express malice"); *Hopkins v. State*, 190 Ga. 180, 185, 8 S.E.2d 633, 636 (Ga. 1940) (un-contradicted evidence that defendant cursed victim and called him a "vile and vulgar name" immediately before striking the fatal blow was sufficient to show express malice). Also, Clinton left the murder weapon in the glove compartment of the Cadillac and asked his unsuspecting cousin, Blakeney, to hold it for him.

Additionally, Mr. Blackmon testified that there was a blue jumpsuit in his car when he retrieved it on January 23rd that had not been in it when he loaned it out on the 19th. So, he turned the jumpsuit over to the Sheriff's Office. Vivian Stradford testified that she was at Crenco after 10:30 p.m. on the 19th when Clinton approached her and asked for cigarettes. He was coming from the Hole in the Wall and he was wearing the same blue jumpsuit that Mr. Blackmon later found in the Cadillac. (State's Exhibit 37). Ms. Stradford tried to discuss what she had heard about the victim with Clinton, but he was not interested in discussing the matter. Once again, the trial judge correctly reasoned that a reasonable inference from her testimony is that the reason he did not want to discuss the victim's death is because he already knew what had occurred: either he, Green or McDow had murdered her.

Furthermore, even though the DNA evidence in this case did not yield the type of statistical analyses that often identify a criminal wrongdoer(s) with virtually unerring precision, it nevertheless corroborated other evidence presented by the State. The DNA profile on a swab of the screen door handle (State's Exhibit 42, SLED item 2) was a mixture of individuals and neither the victim nor co-defendant McDow could be excluded from that mixture.

This provides circumstantial evidence of his presence at the crime scene and thereby

circumstantially corroborates Blakeney's testimony. Again, Clinton's statement that "I shot that bitch" tends to prove that he was the triggerman and thus establishes his presence when the crime was committed. Further, in light of Blakeney's testimony as to what occurred at the trailer park, a reasonable inference is that both Green and McDow were with him when he shot her.

With respect to the touch DNA testing of the blue jumpsuit, the DNA profile developed on SLED item 6.3 was a mixture of at least two individuals and "Clinton could not be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in 580." Also, there was not enough information to either include or the victim from that mixture. **R. pp. 346-352, 359; 364.**

The DNA profile developed SLED item 6.4, a swab from the blue jumpsuit, was a "mixture of at least four individuals." Again, Clinton could not be excluded as a possible contributor to the mixture. "The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in 12." Also, Agent Boehm could not make a conclusive determination as to whether the victim, Green or McDow were contributors to the mixture found. **R. pp. 352-56.**

In addition, the murder in this case was committed with a deadly weapon and malice may be inferred or implied from the use of that weapon. *See State v. Belcher*, 385 S.C. 597, 672, 685 S.E.2d 802, 810 (2009) ("The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill)"); *In re Walter M.*, 386 S.C. 387, 391 & n. 2, 688 S.E.2d 133, 135 & n. 2 (Ct.App. 2009) (finding that "[b]ecause the family court could infer malice from a defendant's use of a deadly weapon or from

the evidence that the discharge of the weapon was likely not accidental, this evidence was sufficient to overcome Appellant's motion for a directed verdict" and concluding that *Belcher's* disapproval of the instruction where there is evidence supporting a lesser-included offense of self-defense was not dispositive of reliance upon inference at directed verdict stage). *See also R. pp. 542 (Solicitor's closing argument); 638 (jury charge)*. Finally, Clinton and Green both admitted that they had been at the Hole in the Wall on the night of the 18th and Clinton made the inconsistent statements to law enforcement discussed, *supra*.

Notwithstanding Clinton's contrary argument concerning perceived deficiencies in the prosecution's proof of his guilt, Respondent submits that the trial judge properly refused to grant a directed verdict because there was sufficient direct and substantial circumstantial evidence of Clinton's guilt submit the murder charge to the jury. *E.g., Kelsey*, 331 S.C. at 62, 502 S.E.2d at 69; *Irvin*, 270 S.C. at 543, 243 S.E.2d at 197; *Martin*, 340 S.C. at 602, 533 S.E.2d at 574.

Many of the arguments presented by Clinton on appeal are not properly before this Court because they were not presented to the trial judge in support of the directed verdict motion made at trial. *See Bailey*, 298 S.C. at 5-6, 377 S.E.2d at 584 (a party cannot argue one theory in support of directed verdict motion at trial and a different theory on appeal). *See also State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (an objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error); *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct.App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court"); *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal"). For instance, he did not argue in the trial court the various

matters that he felt the State was required to prove but did not, he did not attack Blakeney's testimony as self-serving and he did not cite any of the cases now referenced in his brief.

Moreover, none of his arguments demonstrate error by the trial judge in refusing to grant a directed verdict. First, his analysis of perceived shortcomings in the State's evidence is without merit. For instance, his suggestion that the State did not prove that he was present inside the victim's home ignores both the reasonable inferences discussed from Blakeney's testimony and the DNA from the screen door handle discussed above, as well as his admission to his cousin that "I shot that bitch." Also, the State was not required to produce the murder weapon. However, the State's evidence explained that the reason it was unable to locate the murder weapon was because Clinton gave the gun to Blakeney when he got out of the Cadillac at his grandmother's house and asked Blakeney to hold it for him.¹⁴

Similarly, his complaint about the prosecution's failure to connect the blue jumpsuit to the victim or her home is a red herring. It ignores that Clinton could not be excluded as a possible contributor to the DNA profile developed SLED item 6.4, a swab from the blue jumpsuit. His argument in this regard likewise ignores that the State's evidence was that Ms. Stradford saw him wearing this jumpsuit on the night of the 18th and he later left it in the Cadillac, whereas he lied to Inv. Thompson when asked about that jumpsuit. In his interview with Inv. Thompson, he claimed that he wore a camouflage jumpsuit on the 19th and that he loaned the blue jumpsuit to others. Also, his DNA would only be on the blue jumpsuit from handling it.

¹⁴ A reasonable inference from this evidence was that he was attempting to dispose of the weapon or, at the very least, he was attempting to hide it until he was certain that he was not a suspect in the murder. Moreover, when considered with statement that he made to Inv. Thompson on March 9th, 2012, a reasonable inference is that he may have tried to set up his cousin to take the rap for the murder. Specifically, he told Inv. Thompson that he had seen Wayne Blakeney at the Hole in the Wall on January 19th, and that Blakeney was in the white Cadillac. R. pp. 478-79.

The attack on Blakeney's credibility only goes to the credibility that he felt the jury should assign to the testimony and has no bearing on whether the trial judge should grant a directed verdict. *E.g.*, *Weston*, 367 S.C. at 292, 625 S.E.2d at 648 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict [only] when the state fails to produce evidence of the offense charged"); *McHoney*, 344 S.C. at 97, 544 S.E.2d at 36 (same).

Respondent submits that the State's evidence in this case is a far cry from the circumstantial evidence cases where this Court or the Supreme Court has found that a directed verdict should have been granted. *See, e.g.*, *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); *State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct.App. 2014).¹⁵ Unlike *Bostick*, *Odems*, *Bennett* and *State v. Schrock*, 283 S.C. 129,

¹⁵ In *Bostick*, the Court found that the prosecution's evidence only established a mere suspicion of Bostick's guilt. It found that the State had only presented the following pieces of circumstantial evidence of his guilt: the victim's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, but the blood could not be matched to the victim's DNA. The Court held that this was insufficient to withstand a directed verdict motion because (1) the State did not present any direct evidence linking Bostick to the crime scene or to the items found in the burn pile; (2) the State failed to establish that he had control over his family's burn pile; (3) the State did not introduce any weapon that it contended had been used to beat the victim in the head; (4) there was no evidence that Bostick knew that the victim may have had money in her briefcase; and (5) there was no evidence any money was in the briefcase on the Sunday of her murder. *Bostick*, 392 S.C. at 141-42, 708 S.E.2d at 778.

In *Odems*, the state presented circumstantial evidence that: (1) police found Odems in the getaway car with the burglars and the stolen goods less than 90 minutes after the burglary; (2) Odems fled from law enforcement when the car was stopped; and (3) Odems asked an individual not involved in the offenses to lie for him. 395 S.C. at 588, 720 S.E.2d at 51. However, other evidence presented did not tend to prove Odems' guilt. For instance, the lone eyewitness saw only two people at the crime scene; a forensic investigator collected twelve sets of fingerprints from the crime scene, but none matched Odems' fingerprints; and a co-defendant testified during the State's case-in-chief that Odems did not participate in the crime but was present in the car after he offered him a ride. *Id.* The Supreme Court reversed, finding that there was not substantial circumstantial evidence on which to base a conviction, and therefore, the trial court erred in refusing to direct a verdict in favor of the petitioner. *Id.* at 592, 720 S.E.2d at 53.

Likewise, *Bennett* was purely a circumstantial evidence case. This Court held that, at most, the evidence presented merely raised a suspicion that defendant committed the crimes. Therefore, this evidence – including evidence (1) that the defendant's fingerprint was found on a community room television set that may have been manipulated by

322 S.E.2d 450 (1984), this was not a purely circumstantial evidence case. Rather, there was direct evidence of Clinton's presence at the crime scene. Also unlike *Bostick*, there was express malice and evidence of motive in this case, all of which pointed directly at Clinton, Green and their co-defendants.

Based upon this record, Respondent submits that the directed verdict motion was properly denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that his Court should affirm the judgment, as well as Appellant's conviction of and sentence for murder.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

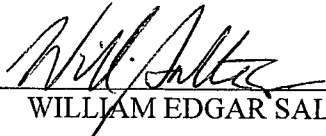
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
P.O. Box 607

the burglar in an attempt to remove the television, and (2) that two small droplets of blood matching his DNA were found below the space where a stolen television once sat in the computer room, where he had frequently been - was insufficient to support the defendant's convictions for burglary in the second degree, petty larceny, and malicious injury to real property. 408 S.C. at 307-08, 758 S.E.2d at 745-46.

Lancaster, SC 29721
(803) 416-9367

June 16, 2015.

By: 
WILLIAM EDGAR SALTER, III

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case No. 2014-000594

THE STATE,

Respondent,

vs.

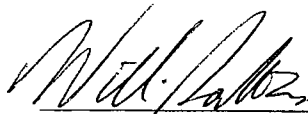
DEVATEE TYMAR CLINTON,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 16nd day of June, 2015.



WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Lancaster County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case No. 2014-000594**

THE STATE,

Respondent,

vs.

DEVATEE TYMAR CLINTON,

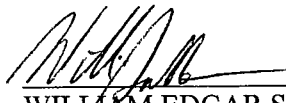
Appellant.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Chad Johnston, Esq., Willoughby & Hoefer, P.A., 930 Richland Street, P.O. Box 8416, Columbia, South Carolina 29202-8416, and to Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 16th day of June, 2015.



WILLIAM EDGAR SALTER, III
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000594

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SC Court of Appeals

The State, ... Respondent,

v.

Devatee Tymar Clinton, ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330
Attorneys for Appellant

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ARGUMENT

I. The trial court abused its discretion in failing to admit the statements of Victim's four-year-old son to first responders.

The primary issue raised in the Appellant's Brief relates to the trial court's failure to apply clear precedent from our State Supreme Court that is directly on point to the issue of the oldest son's statements to first responders. While first half-heartedly arguing against the preservation of this issue on appeal, despite the trial court's clear ruling on the record denying the admittance of the statements, the State's Respondent's Brief avoids any meaningful analysis of State v. M. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002) altogether. Instead, the State advocates for a standard of admissibility for an excited utterance that is impossible to attain, while not addressing the merits, at all, of Clinton's argument as to the admission of the oldest child's statements as present sense impressions. Finally, the State engages in improper speculation as to the source of the oldest child's statements, creating facts and theories out of whole cloth that have no basis or support in the record. For all of these reasons, the State's Brief fails to overcome or justify the trial court's clear error of law and abuse of discretion in excluding the oldest child's statements and the trial court should be reversed.

a. The statements were raised to and ruled upon by the trial court and are therefore preserved for this Court's review.

To start, the State devotes an unenthusiastic single page to its argument that Clinton's excited utterance argument on appeal is unpreserved for this Court's review. See Resp. Br. at 7-8. However, this argument is deserving of the tepid support it was given. In order for an argument to be preserved for appellate review, it must be raised to and ruled upon by the trial court. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (describing the "long-established preservation

requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments”) (citing Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court) (additional citations omitted)); see also State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) (stating an issue must be raised and ruled upon in the trial court in order to be preserved for appellate review). Notwithstanding, “[s]o long as the judge had an opportunity to rule on an issue, and did so, it was not incumbent upon ... counsel to harass the judge by parading the issue before him again.” State v. McDaniel, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) (internal quotations omitted).

Here, Clinton’s contention that the trial court abused its discretion in excluding the oldest child’s statements to first responders is clearly preserved for review. As discussed extensively in the Brief of the Appellant, the issue of these statements was first raised to the trial court by way of the Solicitor’s pre-trial motion *in limine*. **(R. pp. 14-36)**. The trial court and the Solicitor were initially distracted by a discussion as to whether an additional, but inapplicable, element of competency was required in the evaluation of the excited utterance hearsay exception.¹ **(R. pp. 18-20)**. Upon further consideration, however, the trial court correctly concluded in the *in limine* hearing that no finding of competency was required and the oldest child’s statements could be admitted as excited utterances, assuming the elements of the exception and sufficient foundation were met. **(R. pp. 34-36)**.

¹ See discussion, infra, regarding the preservation and merits of Clinton’s present sense impression argument.

However, when Clinton's counsel cross examined Officer Ken Taylor, one of the officers to whom the oldest child made his statements, the trial court inexplicably reversed course and sustained the State's renewed objection to the oldest child's statements coming into evidence. (R. p. 259). As the colloquy between Officer Taylor and Clinton's counsel demonstrates, (R. pp. 258-59) (included in its entirety in the Brief of the Appellant at 15-16), foundation for the child's statements was laid and when Clinton's counsel sought to elicit the hearsay statement, the Solicitor immediately renewed his previous, *in limine* objection **and the trial court sustained the objection and directed Clinton's counsel to ask his next question.** (R. p. 259).

The State's argument that an "adequate" proffer was not made by Clinton's trial counsel widely misses the mark and misstates the applicable standard.² The trial court was under no misconception as to the content of the proffered hearsay statement, which is the purpose of an appellate court's review of the "adequacy" of the proffer.³ See, e.g., Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 435 n.1, 472 S.E.2d 612, 613 n.1 (1996) (discussing the sufficiency of a proffer in the context of whether or not the record is clear as to the content of the rejected testimony, holding "[w]e find the proffered testimony fairly shows what the rejected testimony would have been") (citing State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979)). The record is unquestionably clear

² By imposing an additional layer of review related to the "adequacy" of the proffer, the State seeks to lay and spring a trap on unwitting trial counsel. But see Elam v. SC Dep't of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) (holding that court rules and preservation requirements "should not be written or interpreted to create a trap for the unwary lawyer or party"). Moreover, even though Clinton raised the issue and received an adverse ruling thereon by the trial court, the State implies that his trial counsel should have harassed the trial court about a change of mind, a practice this Court has expressly protected trial counsel from having to undertake. See McDaniel, *supra*.

³ The State's supporting case law on this point is therefore not relevant to the situation that occurred in this case. See Resp. Br. at 7.

as to the content of the hearsay statements, based on the *in limine* hearing. (R. pp. 14-36). Here, the proffer of the hearsay testimony was made through the attempted elicitation of the statement from Officer Taylor. Under the case law of this State, that was a proffer of the excited utterance; therefore, the issue was **raised** to the trial court. As stated above, the trial court thereafter sustained the Solicitor's renewed objection. Consequently, the record is unequivocal that this issue was **ruled upon** by the trial court. And so it is preserved for this Court's review.

- b. The State fails to refute the controlling precedent of the Supreme Court in *State v. M. Sims*, 348 S.C. 16, 558 S.E.2d 518 (2002).

Beyond challenging the preservation of the argument and the adequacy of the proffer, the State does not refute the Supreme Court's decision in Sims, the facts of which are startlingly similar to this case and whose holdings as to the excited utterance exception are controlling. Initially, the State concedes the first element of the excited utterance test as to the oldest child's statements relating to a startling event or condition. Resp. Br. at 10 ("As to the first requirement, Respondent does not dispute that the child's statements "relate to a startling event or condition."). Instead, the State contends that Clinton failed to demonstrate that the oldest son was under the stress of excitement when the statements were given to first responders.⁴

The focus of the State's brief is on the demeanor of the child when he provided the statements to first responders. Yet, in Sims, the Supreme Court expressly **de-emphasized** the analysis of the person's demeanor in the context of an excited utterance where the declarant is a child. 348 S.C. at 22, 558 S.E.2d at 521. The child's age and the

⁴ However, as argued in the Brief of the Appellant, see n.15, the State did not contend at trial that the length of time between the incident and the child's statements was too great to meet the temporal restrictions traditionally applied to an analysis of excited utterances, thus that argument has been waived.

severity of the startling event were given more probative value than the child's "demeanor" with first responders. Id. Thus, the State's focus on the fact that there is "no evidence that the four year old declarant was crying, despondent or even upset by the time he made the declarations at issue" is the incorrect standard applicable under the express holdings of Sims.

Moreover, the totality of the circumstances clearly demonstrates that the oldest child had personal knowledge to support the statements he made to first responders. As described in the Initial Brief, it is unrefuted that the oldest child was in the mobile home, and after seeing his mother in that condition, he is the person who went next door to notify neighbors. (R. pp. 19; 23-24; 258). According to the testimony of Officer Taylor, the oldest child had his mother's blood on his clothing, as did his siblings. (R. pp. 257-58). His actions are what precipitated the police and first responders coming to the mobile home in the first place. (R. pp. 19; 23-24). Moreover, the statements that the oldest child made to police officers and first responders on multiple occasions were in the form of declarative sentences—*i.e.*, "Shi's daddy shot my Momma," "Shortcake shot my Momma," and "Jamia's Daddy hurt⁵ my Momma"— with no question but that the oldest child perceived the event and is reporting what he saw. (R. pp. 15-19).

Moreover, the State's emphasis on the oldest child witnessing the event ignores the clear holding in Sims, which, ironically, the State quotes in its brief. Resp. Br. at 9 (quoting Sims, 348 S.C. at 21, 558 S.E.2d at 521 ("because it relates to the startling event

⁵ Additionally, while the State focuses its attention on the oldest child's statements that declared Shi's Daddy/Shortcake to have "shot" his mother, the State ignores the additional statement that Jamia's Daddy "hurt" his mother, which arguably does not require the oldest child to have witnessed the fatal shot in order for the statement to come in under the excited utterance.

of the son seeing his mother after she was attacked and possibly while she was being attacked.)” (emphasis added)). Thus, under Sims,⁶ the declarant is under no absolute requirement to have witnessed the attack, see n.5, supra; the personal knowledge element stressed by the State on appeal can be met based on the totality of the circumstances. Indeed, the State’s contention that witnessing the event is the only manner in which a child might be under the stress of the excitement from the situation is absurd. Seeing your mother lying on a couch and unresponsive, shot in the head, profusely bleeding and likely already dead, is an extremely startling event or condition, in and of itself. Any statement made after witnessing such circumstances would independently meet the elements of an excited utterance. Thus the State’s absolute focus on witnessing the shooting here is misplaced, and the oldest child’s statements are clearly based on his personal knowledge.

- c. The State’s conjectural musings as to why the four-year-old made the statements to first responders are highly inappropriate and should be disregarded by the Court.

Briefly, on multiple occasions, see Resp. Br. at 9, 12, and n.14, the State’s Respondent’s Brief speculates and theorizes as to evidence and facts that have no basis in this case, were not presented below, and are therefore not a proper part of the record on appeal. For example, the State purports to hypothesize as to why the oldest child made the statements to first responders. See Resp. Br. at 9 (“In other words, it cannot be determined whether (1) this was something that he thought he saw, (2) he dislikes Shi’s father for some unstated reason, (3) he dreamed this, or (4) the suggestion that Rashad

⁶ There is no indication in Sims that the child actually witnessed his mother being attacked, as demonstrated by the Supreme Court making a point of stating it was possible for the child to be under the stress of excitement from having seen his mother *after* she was attacked.

Johnson was responsible for the shooting was suggested to him by an adult whom he encountered when he went to his neighbor's residence to report the shooting.”). Later, the State suggests that “it is possible that the neighbor from whom the child sought assistance or another person whom the child encountered suggested that Rashad Johnson shot the victim.” Resp. Br. at 12.

Beyond being irrelevant, the State's inclusion of this conjecture was inappropriate and should be disregarded by the Court, as there is **no evidence in the record** to support any of these theories. See, generally Rule 210, SCACR (stating that the record on appeal may not contain any “matter which was not presented to the lower court” and the appellate court is restricted from considering “any fact which does not appear in the Record on Appeal”); C.f. In re Crawford, 205 S.C. 72, 30 S.E.2d 841, 848 (1944) (rejecting unsubstantiated theories “not related to a single fact or circumstance” in the case that “cannot under the circumstances ... be regarded as anything else than surmise, conjecture, or speculation”); Collier v. Varco-Pruden Bldgs., 911 F.Supp. 189, 192 (D.S.C. 1995) (finding an affidavit “amount[ed] to nothing more than his speculation as to what ‘most likely’ happened, and has no support in the record”). It should give this Court pause that the State, who bears the absolute burden of proving guilt beyond a reasonable doubt, particularly on a charge of murder carrying a sentence of life in prison, is relegated to inventing facts and alternative theories on appeal to justify and sustain a conviction.

d. The State concedes the merits of Clinton's present sense impression argument regarding the four-year-old's statements to first responders.

In its initial brief, Appellant advanced the argument that the oldest son's statements to the first responders should have been admitted by the trial court under the

present sense impression exception to the rule against hearsay, in addition to or in the alternative of their admittance as excited utterances. App. Br. at 25-26. As described in the brief, the basis for that argument is the trial court's holding that the oldest child's statements did not qualify under the traditional *res gestae* exception to hearsay.⁷ (R. pp. 24; 652); App. Br. n.9. By virtue of the trial court's express discussion and holding under *res gestae*, the trial court **ruled** that the oldest child's statements did not qualify as present sense impressions.

Notwithstanding, in the Brief of the Respondent, the State contends that Clinton's present sense impression argument was neither raised to nor ruled upon below and is therefore unpreserved for this Court's review. Resp. Br. at 13. In rushing to proclaim the argument unpreserved, however, the State fails to address the Court's *res gestae* ruling and its implication on the arguments that are preserved for review. More importantly, the State does not address, at all, the merits of whether the oldest child's statements qualify as present sense impressions. The State's failure to contest the merits of this argument should be deemed an admission. See Jean Hoefer Toal, et al., Appellate Practice in South Carolina 232 (2d ed. 2002) (citing First Union Nat. Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) reversed in part on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997) (holding that if a respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct)).

⁷ Again, the former *res gestae* exception to hearsay is a traditional, common law concept used to describe the totality of circumstances surrounding a crime and has been replaced by two modern day exceptions to the rule against hearsay: present sense impression (Rule 803(1)), SCRE and excited utterance (Rule 803(2)), SCRE).

Thus, if the Court agrees, as it should, that the trial court's *res gestae* holding preserves Clinton's present sense impression argument on appeal, then such argument should be deemed conceded as true by the State and warrants reversal as an abuse of discretion by the trial court. See 5 Am. Jur. 2d Appellate Review § 512 ("[A Respondent]'s response to an issue must consist of more than a conclusory statement that the appellant's proposition has no merit. If a [Respondent] fails to respond to an issue in its brief, the court may treat the failure to respond as a confession that the appellant's position is correct, reverse the judgment on that issue if the appellant establishes prima facie error, or determine the issue on the merits."); Toal, et al., *supra*, at 232; First Union Nat. Bank, *supra* (citing same).

- e. The trial court's exclusion of the four-year-old's statements was not harmless, as they reasonably could have affected the jury's verdict in a case lacking any direct evidence of Clinton's guilt.

Predictably, given the clear precedent of Sims, the State contends that the trial court's legal error and abuse of discretion in failing to allow the oldest child's statements into evidence was harmless error. However, harmless error is unavailing here given the lack of any direct evidence⁸ and the high probative value⁹ of the oldest child's statements. Statements made by a witness who was present during or immediately after the commission of this crime, which identify someone other than the persons charged with the crime, is a significant piece of evidence that goes to reasonable doubt of Clinton's

⁸ See discussion, infra, on the trial court's failure to grant Clinton's motion for a directed verdict.

⁹ The State is critical of Clinton's Rule 403, SCRE analysis that was included in the Brief of the Appellant, suggesting such an analysis is not preserved for this Court's review. This argument is nonsensical, however, as the trial court excluded the oldest child's statements on the basis that they did not meet the elements of *res gestae* and did not reach the subsequent analysis of whether the statements' probative value outweighed any prejudicial effect.

guilt. This is particularly true given the dearth of evidence presented by the State and its own almost-exclusive reliance upon Wayne Blakeney's testimony and the alleged hearsay statement of Clinton¹⁰ that was relayed to the jury.

The State's strained argument that admittance of the oldest child's statements would be improperly prejudicial to the State's case is similarly unavailing. The possibility of prejudice by the oldest child's statements might be presumed if Shi's Daddy/Shortycake/Rashad Johnson was on trial for the Victim's murder, but he is not. It is hard to imagine a more relevant and probative piece of evidence to the defense of Mr. Clinton than testimony that someone else committed the charged offense.¹¹ It is precisely because the statements speak to reasonable doubt of Clinton's involvement in the murder that causes the probative value of the statements to far outweigh any prejudicial effect to the State's case.¹²

¹⁰ While Clinton's alleged statement that "I killed that bitch" was admitted as a statement against interest or an admission by a party opponent, it is nonetheless clearly an out of court statement proffered for the truth of the matter asserted. The State's reliance on a hearsay statement for this murder conviction cuts in favor of a finding that the exclusion of the oldest child's statements was not harmless; if the basis for a conviction is a hearsay statement, then how can it be said that the exclusion of a competing hearsay statement tending to disprove the alleged confession is harmless? It cannot.

¹¹ The probative value of the oldest son's statements becomes clearer when put in the context of other testimony elicited at trial. As provided in the Brief of the Appellant, co-defendant Al Green, Green's girlfriend, the Victim, **and her children**, including the oldest son, lived together in an apartment only months before the Victim was murdered. The fact that the oldest son identified Shi's Daddy/Shortycake/Rashad Johnson as the person who killed his mother, but did not mention seeing Green, with whom he had lived just a few months prior to this incident, is significant, impactful, and most definitely not harmless. This fact also renders the State's citation to State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) inapt and irrelevant. See Resp. Br. at n.4.

¹² The fact that these statements were proffered by the Defendants in this case weighs heavily in favor of a finding that the trial court erred and that the court's abuse of discretion was not harmless.

II. The circumstantial evidence presented at trial did not rise to the level of surviving Clinton's motion for a directed verdict.

- a. Despite numerous references to the existence of "direct evidence" linking Clinton to the crime, none was presented at trial and the State fails to identify any direct evidence in its brief.

Appellant's Initial Brief sets out in explicit detail¹³ the reasons why the trial court's denial of his motion for a directed verdict constituted an error and an abuse of discretion under the Supreme Court's recent explication of the directed verdict standard under Rule 19, SCRCrP. See State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013). While a significant portion of the State's brief is devoted to repackaging¹⁴ and, in some cases, overstating the facts and evidence introduced below, the evidence admitted at trial fell woefully short of amounting to substantial circumstantial evidence required to prove the elements of the crime charged. Clinton's motion for a directed verdict should have been granted.

Two points, in particular, from the Respondent's Brief on this issue require a rebuttal in this reply. First, although the Respondent's Brief states no less than five times that Clinton's motion for a directed verdict was properly denied on the basis of "direct evidence," see, e.g., Resp. Br. at 14, the State fails to identify a single piece of direct evidence linking Clinton to the Victim's murder. In fact, as discussed in the Brief of the Appellant, there was no direct evidence presented below, and the State's case against

¹³ Mr. Clinton does not intend on rehashing his argument on the trial court's failure to grant his directed verdict motion, as the State provides no meaningful rebuttal to the Solicitor's failure to present competent evidence of his guilt on the charge of murder. Mr. Clinton relies upon and reiterates each of the points made in his Brief of the Appellant.

¹⁴ Indeed, entire pages are devoted to recitations of facts that in no way link Clinton to and/or are irrelevant to the crime charged. See, e.g., Resp. Br. at 17-18.

Clinton is based entirely on circumstantial evidence. While the State is certainly capable of obtaining a conviction based solely on circumstantial evidence, the lack of direct evidence changes the calculus of this Court's analysis of Clinton's directed verdict motion,¹⁵ and the State must demonstrate the existence of substantial circumstantial evidence that did more than raise a suspicion of Clinton's guilt. C.f. State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems 395 S.C. 582, 782 S.E.2d 48 (2011). It is also misleading to continually overstate the character and amount of evidence that was presented below, particularly where the State carries the absolute burden of proof in a criminal case; no matter how many times evidence is called direct evidence, it does not make it true if it does not meet the definition of direct evidence.¹⁶ See State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) ("Direct evidence is based on personal knowledge or observation and ..., if true, proves a fact *without inference or presumption.*") (emphasis added).

¹⁵ While the existence of any direct evidence may be sufficient to sustain a trial court's denial of a directed verdict, a purely circumstantial case requires the demonstration of substantial circumstantial evidence. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 (citing Cherry, 361 S.C. at 593–94, 606 S.E.2d at 478; Mitchell, 341 S.C. at 409, 535 S.E.2d at 127). For instance, the State places tremendous significance on the testimony of Wayne Blakeney, and his testimony that he drove Clinton, co-defendant Green, and an uncharged third person, Delrico McDow to the Roseanna Lane mobile home community and thus the scene of the crime. However, the State conveniently ignores the evidence that Clinton lived in that same mobile home community with his Grandmother, in the mobile home immediately adjacent to Victim's. Therefore, it is entirely reasonable for Clinton to have been in the mobile home community on the night of Victim's murder, and equally reasonable for Clinton to have stated a need to go to the mobile home community to "get some money," (R. p. 417) from the home in which he was living. (R. pp. 418; 455; 561).

¹⁶ Even Clinton's alleged hearsay statement to Blakeney that "I killed that bitch," setting aside the understandable insensitivities that it invokes, does not constitute direct evidence of Clinton's involvement in the Victim's murder, as it requires additional information, inference, or presumption to determine its subject.

With respect to the DNA evidence, despite the State's best efforts to couch the evidence in a manner that would suggest otherwise, the DNA collected in this case does not support the State's theory of Clinton's guilt. Indeed, in the Respondent's Brief, the State says that, "even though the DNA evidence in this case did not yield the type of statistical analyses that often identify a criminal wrongdoer(s) with virtually unerring precision, it nevertheless corroborated other evidence presented by the State." Resp. Br. at 38. Which is a dressed up way of saying the DNA in this case was worthless. The State's contention that the DNA evidence corroborates other evidence in the case is simply unsupported by the evidence; none of the samples collected and tested by the State provided a direct match or link between Clinton and the Victim's murder. In fact, the DNA in this case failed to match anyone to anything.¹⁷

In sum, none of the evidence put forward by the State did anything more than raise a mere suspicion of Clinton's guilt. See State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) ("Accordingly, a trial judge should grant a directed verdict

¹⁷ Contrary to the State's representation that the DNA evidence "corroborated other evidence presented by the State," no such corroboration was ever identified. In fact, it is worth emphasizing that an "inability to exclude" a particular person from a tested sample is not the same thing as evidence of contact with that piece of evidence or presence of that person at the scene of the crime. The State's reliance on this inconsequential DNA evidence on appeal is telling as to the lack of any real competent evidence of Clinton's guilt. In fact, the one example of corroboration provided in the Respondent's Brief is inaccurate and misleading. The State contends that "[t]he DNA profile on a swab of the screen door handle ... was a mixture of individuals and neither the victim nor co-defendant McDow could be excluded from that mixture." Resp. Br. 38. However, there is no evidence in the record that Delrico McDow was ever arrested or charged with Victim's murder and therefore was not a "co-defendant" to anyone on this matter. In fact, during the sentencing phase of the trial it was represented on the record that McDow was on probation at the time of Victim's murder and was wearing a GPS tracking device which, when checked by the police, revealed that McDow was nowhere near the scene of the crime on that evening. (**R. pp. 661-62**). Thus, this fact actually contradicts Blakeney's testimony, rather than corroborates it.

motion when the evidence merely raises a suspicion the accused is guilty.”) (citing State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000)). While lacking any evidence linking Clinton to the Victim’s mobile home, see Brief of the Appellant at 29-30 (listing the inadequacies of the State’s evidence at trial), the State’s case was instead built around the self-serving testimony of Blakeney, who was also charged with the Victim’s murder and stood to gain (and did subsequently gain) significant favor by providing incriminating testimony about Clinton and Green. However, Blakeney’s testimony, even if believed and at most, demonstrates that he drove Clinton to the Roseanna Lane mobile home complex on the night of the murder to get some money. (R. pp. 417-19). Of course, this testimony proves nothing, as Clinton also lived in that same mobile home complex with his grandmother in the mobile home directly next door to the Victim. (R. pp. 418; 455; 561).

Taken as a whole, Blakeney’s testimony did not establish any precise fact that impacts an element of the murder charge against Clinton, see Rogers, 405 S.C. at 563, 748 S.E.2d at 270 (“Direct evidence is based on personal knowledge or observation and ..., if true, proves a fact *without inference or presumption*.”) (emphasis added), and does not rise to the level of substantial circumstantial evidence required to overcome Clinton’s motion for a directed verdict. See Lollis, 343 S.C. at 584, 541 S.E.2d at 256 (“‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.”) (citing (State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963))); see also State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955) (“It is not sufficient that they create a probability, though a strong one....”).

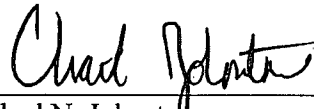
Because the State presented no direct evidence, and the circumstantial evidence did nothing more than raise a mere suspicion of Clinton's involvement in Victim's murder, the trial court erred as a matter of law in failing to direct a verdict for Clinton.

CONCLUSION

For the reasons set forth above, in addition to those advanced in the Initial Brief, the trial court should be reversed. The trial court erred as a matter of law, under the Sims case, in excluding the statements of Victim's four-year-old son, which qualified as both excited utterances and present sense impressions. The trial court's exclusion of the statements constituted an abuse of discretion that was not harmless and warrants reversal. Moreover, the State failed to present any direct evidence, and the circumstantial evidence presented was insufficient as a matter of law, as it failed to raise more than a mere suspicion of Clinton's guilt. Consequently, the trial court erred in failing to direct a verdict in favor of Clinton and his conviction should be reversed.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

(803) 252-3300

Robert M. Dudek

Chief Appellate Defender

SOUTH CAROLINA COMMISSION ON

INDIGENT DEFENSE

1330 Lady Street, Suite 401

Columbia, South Carolina 29201

(803) 734-1330

Counsel for Appellant

Devatee Tymar Clinton

Columbia, South Carolina

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